COURSE HANDBOOK

University of California – Access Compliance Training

September 25 and 28th, 2017

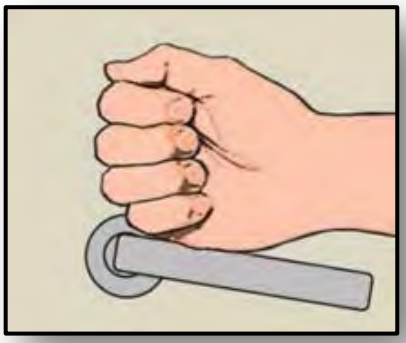
DOORS

University of California – Access Compliance Training

September 25 and 28th, 2017

Doors, Gates and Hardware

Door and Gate Hardware Operation



***11B*-404.2.7 Door and gate hardware.** Handles, pulls, latches, locks, and other operable parts on doors and gates shall comply with ***Section 11B*-309.4.** Operable parts of such hardware shall be 34 inches (*864* mm) minimum and *44 inches (1118 mm)* maximum above the finish floor or ground. Where sliding doors are in the fully open position, operating hardware shall be exposed and usable from both sides.

Exceptions:

1. Existing locks shall be permitted in any location at existing glazed doors without stiles, existing overhead rolling doors or grilles, and similar existing doors or grilles that are designed with locks that are activated only at the top or bottom rail.

2. Access gates in barrier walls and fences protecting pools, spas, and hot tubs shall be permitted to have operable parts of the release of latch on self-latching devices at 54 inches (*1372* mm) maximum above the finish floor or ground provided the self-latching devices are not also self-locking devices and operated by means of a key, electronic opener, or integral combination lock.

***11B*-309.4 Operation.** Operable parts shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts shall be 5 pounds (22.2 N) maximum.

Exception: Gas pump nozzles shall not be required to provide operable parts that have an activating force of 5 pounds (22.2 N) maximum.

USDOJ **Advisory 11B-404.2.7 Door and gate hardware.** Door hardware that can be operated with a closed fist or a loose grip accommodates the greatest range of users. Hardware that requires simultaneous hand and finger movements require greater dexterity and coordination, and is not recommended. ■

Door and Gate Opening Force

***11B*-404.2.9 Door and gate opening force.** The force for pushing or pulling open a door or gate shall be as follows:

1. Interior hinged doors and gates: 5 pounds (22.2 N) maximum.
2. Sliding or folding doors: 5 pounds (22.2 N) maximum.
3. *Required fire doors: the minimum opening force allowable by the appropriate administrative authority, not to exceed 15 pounds (66.7 N).*
4. *Exterior hinged doors: 5 pounds (22.2 N) maximum.*

These forces do not apply to the force required to retract latch bolts or disengage other devices that hold the door or gate in a closed position.

***Exception:** When, at a single location, one of every eight exterior door leafs, or fraction of eight, is a powered door, other exterior doors at the same location, serving the same interior space, may have a maximum opening force of 8.5 pounds (37.8 N). The powered leaf(s) shall be located closest to the accessible route.*

a. *Powered doors shall comply with Section 11B-404.3. Powered doors shall be fully automatic doors complying with Builders Hardware Manufacturers' Association (BHMA) A156.10 or low energy operated doors complying with BHMA A156.19.*
b. *Powered doors serving a building or facility with an occupancy of 150 or more shall be provided with a back-up battery or back-up generator. The back-up power source shall be able to cycle the door a minimum of 100 cycles.*
c. *Powered doors shall be controlled on both the interior and exterior sides of the doors by sensing devices, push plates, vertical actuation bars or other similar operating devices complying with Sections 11B-304, 11B-305 and 11B-308.*

At each location where push plates are provided there shall be two push plates; *the centerline of one push plate shall be 7 inches (178 mm) minimum and 8 inches (203 mm) maximum above the floor or ground surface and the centerline of the second push plate shall be 30 inches (762 mm) minimum and 44 inches (1118 mm) maximum above the floor or ground surface. Each push plate shall be a minimum of 4 inches (102 mm) diameter or a minimum of 4 inches by 4 inches (102 mm by 102 mm) square and shall display the International Symbol of Accessibility complying with Section 11B-703.7.*

At each location where vertical actuation [illegible] located so the bottom is 5 inches (127 mm) maximum [illegible] is 35 inches (889 mm) minimum above the floor or [illegible] vertical actuation bar shall be a minimum of 2 inches [illegible] wide and shall display the International Symbol of Accessibility complying with Section 11B-703.7.

Two push plates are required where the conditions in the exception are provided.

Where push plates, vertical actuation bars or other similar operating devices are provided, they shall be placed in a conspicuous location. A level and clear floor or ground space for forward or parallel approach complying with Section 11B-305 shall be provided, centered on the operating device. Doors shall not swing into the required clear floor or ground space.

d. *Signage identifying the accessible entrance required by Section 11B-216.6 shall be placed on, or immediately adjacent to, each powered door. Signage shall be provided in compliance with BHMA A156.10 or BHMA 156.19, as applicable.*
e. *In addition to the requirements of Item d, where a powered door is provided in buildings or facilities containing assembly occupancies of 300 or more, a sign displaying the International Symbol of Accessibility measuring 6 inches by 6 inches (152 mm by 152 mm), complying with Section 11B-703.7, shall be provided above the door on both the interior and exterior sides of each powered door.*

USDOJ **Advisory 11B-404.2.9 Door and gate opening force.** The maximum force pertains to the continuous application of force necessary to fully open a door, not the initial force needed to overcome the inertia of the door. It does not apply to the force required to retract bolts or to disengage other devices used to keep the door in a closed position. ■

Measuring Door or Gate Opening Force with Pressure Gauge

When using door gauges and other measuring devices, it is advisable to follow these steps (except where product instructions specify otherwise):

- Open the door so that the face edge aligns with the door frame outside edge
- Place gauge immediately above door operating hardware about 2½" from the latch edge of the door (approximately the centerline of the door hardware)
- Push slowly keeping the pressure gauge perpendicular to the face of the door
- Remove the pressure gauge when the door is open 70 degrees.

United States Access Board, Guide to the Standards, Chapter 4: Accessible Routes, Entrances, Doors, and Gates

BENCHES

University of California – Access Compliance Training

September 25 and 28th, 2017

ADA CRITERIA FOR BENCHES

What are the ADA requirements for outdoor benches?

Confusion abounds, mostly as a result of a misinterpretation of Section 903 of the ADA and ABA Accessibility Guidelines for Buildings and Facilities Section 903 requirements were developed to enable people in wheelchairs to transfer to benches in certain function- and situation-specific settings. It defines bench requirements for these enumerated facilities, rooms and elements: 612 Saunas and Steam Rooms (Chap 6); 803 Dressing, Fitting and Locker Rooms (chap 8); 807 Holding Cells and Housing Cells and 808 Courtrooms (chap 8).

The US Access Board confirms that Section 903 applies only to the above and that there are no ADA requirements specified in Section 903 for outdoor benches.

Nevertheless, efforts are sometimes made to apply the Section 903 standards to benches in outdoor public environments, no doubt prompted by the desire to ensure seating opportunities for people in wheelchairs. We believe this misapplication of standards may provide little real benefit to people in wheelchairs while actively disadvantaging other populations. Here's why:

- People in wheelchairs typically do not transfer to benches outdoors. Rather, they pull up next to or across from people sitting in benches or movable chairs or seating walls or picnic tables to join in social activity. Current approaches to site design and furniture are focused on creating more flexible elements and spaces. Fixed and dimensionally restricted benches limit choices and risk isolating people in wheelchairs, rather than expanding choices and bringing them closer to the center of action.

- Benches with high, exceptionally deep seats and without side arms, as specified in Section 903, are dysfunctional for people with other disabilities and needs, including:

  A smaller person, who can't sit in high, deep benches without having their legs dangle above the ground.

  People with mobility problems and the visually impaired who often need side arms to help them sit down and get up.

  Anyone needing back support. (It is difficult, if not impossible, to sit back in a bench seat so deep that it keeps the knees from bending.)

A single ADA guideline for outdoor benches appears in The Revised Draft Guidelines for Accessible Public Rights-of-Way. Although not currently an enforceable ADA standard, the guideline specifies a bench seat height of 17 inches minimum and 19 inches maximum above the ground or floor space. In addition, the Access Board has issued Advisory R307.6.3.2, which states, "Benches will be most useful if they have full back support and armrests to assist in sitting and standing."

Benches meeting these simple height guidelines and back and armrest advisements are readily available from Landscape Forms and other site furniture manufacturers.

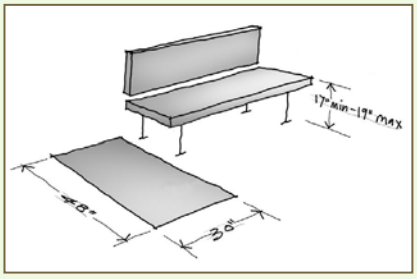
Beyond The Bench

People in outdoor spaces don't just line up on benches like birds on a wire. They sit in multiple configurations of seating and in optional locations that provide variety – in seating type, in exposure to sun and shade and wind, in aspect and views, in degree of proximity to other people and activities. Movable seating has contributed to the success of outdoor spaces, such as New York's iconic Bryant Park, and it might be noted that the wheelchair is the ultimate movable chair.

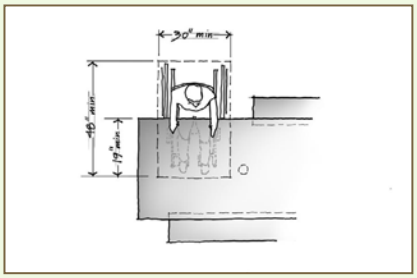
To enable people in wheelchairs to find a quiet place or join the party:

- Provide firm, stable ground surfaces with adequate clear ground space to permit maneuverability in public spaces. (A minimum 30" x 48" clear ground space is required to accommodate a single stationary wheelchair with occupant.)
- Provide adequate space around seating elements – for example facing groups of chairs and at the end of benches parallel to the short axis of the bench. (See illustration.)
- In outdoor eating areas provide picnic tables with one seat removed or with one bench made shorter on a side to permit wheelchair approach. ADA requires 36" clearance along all usable sides of the table measured from the back edge of the bench, and sufficient knee and toe clearance under the table (27" height, 30" width and 19" depth) for access, maneuverability and comfort. (click here for details) (See illustration.)

  NOTE: Landscape Forms 3-seat Carousel Table meets ADA requirements and special adaptations are available for other Landscape Forms picnic tables to meet compliance criteria.



Credit: Robert G. Chipman, ASLA



Credit: Robert G. Chipman, ASLA

The challenge is to provide variety and options in outdoor seating that offer more abundant accessible opportunities for all. There are many creative ways to make that happen.

We thank Bill Botten of the Access Board for his expertise and review. For technical assistance call the Access Board hot line: 1-800-872-2253 or send inquiries to ta@access-board.gov.

CODE CLASS - ACCESSIBILITY

University of California – Access Compliance Training

September 25 and 28th, 2017

TABLE OF CONTENTS

Code Class - Accessibility

DSA PR 15-01

PROCEDURE: REQUIRED INFORMATION FOR PATH OF TRAVEL UPGRADES ON CONSTRUCTION DOCUMENTS

DISCIPLINE(S): Accessibility

PURPOSE: To provide guidance on the required information to be shown on construction documents submitted to the Division of the State Architect (DSA) for path of travel upgrades required as a part of alteration, addition or structural repair projects in accordance with the 2013 California Building Code (CBC).

BACKGROUND: A project at an existing site is an alteration of that facility and subject to the requirements of **11B-202.4 Path of travel requirements in alterations, additions and structural repairs**. This applies to new construction on that site as well as to alteration, addition and structural repair of the existing construction. Detailed guidance on the scoping for the path of travel for these projects is provided in DSA Interpretation of Regulation IR 11B-10: Scoping and Path of Travel Upgrade Requirements for Facility Alteration, Addition and Structural Repair Projects.

PROCEDURE:

1. PATH OF TRAVEL DOCUMENTATION: Construction documents shall clearly delineate the path of travel for a project, including any upgrades of path of travel elements, as required by the CBC. It is essential that the path of travel shown be an accurate representation of the actual field conditions at the time the project is submitted to DSA.

1.1 Examination of Existing Conditions: The compliance status of path of travel elements, components and features shall be examined by or under the direction of the design professional in responsible charge during the preparation of the construction documents.

1.2 Use of Prior Project Documentation: Use of documentation or application numbers from prior projects does not relieve design professionals of their responsibility to accurately indicate the compliance status of the required path of travel elements serving the area of the alteration, addition or structural repair.

1.3 Required Documentation: Path of travel documentation shall include:

- A facility site plan showing the overall extent of the property on which the project is located, existing buildings and site improvements in diagrammatic form.
- Indication on the facility site plan of the project's area of work.
- Indication on the facility site plan of the project-specific accessible path of travel, beginning at the site arrival points and ending at the entrance to the area of alteration, addition or structural repair.
- Indication of the interior path of travel when the project area is within an existing building, including a plan of the primary entrance floor and in a multi-story building a plan of the floor on which the project area is located.
- Indication of any noncompliant path of travel elements, components or features that will be upgraded as part of the project, along with the key references to appropriate details and enlarged plans.

- When applicable, indication of any noncompliant path of travel elements that will not be upgraded as part of the project, based on valuation threshold limitations or a finding of unreasonable hardship.
- Project-specific plans and details for any required path of travel upgrades, suitable for construction and inspection; general references to "code compliance" or standard details requiring extensive modification to suit project conditions shall not be sufficient.

2. DESIGN PROFESSIONAL IN GENERAL RESPONSIBLE CHARGE STATMENT: The drawing sheet delineating the Path of Travel (POT) for a project shall include the following statement:

"**Design Professional in General Responsible Charge Statement:** The POT identified in these construction documents is compliant with the current applicable California Building Code accessibility provisions for **path of travel requirements for alterations, additions and structural repairs**. As part of the design of this project, the POT was examined and any elements, components or portions of the POT that were determined to be noncompliant 1) have been identified and 2) the corrective work necessary to bring them into compliance has been included within the scope of this project's work through details, drawings and specifications incorporated into these construction documents. Any noncompliant elements, components or portions of the POT that will not be corrected by this project based on valuation threshold limitations or a finding of unreasonable hardship are so indicated in these construction documents.

During construction, if POT items within the scope of the project represented as code compliant are found to be nonconforming beyond reasonable construction tolerances, they shall be brought into compliance with the CBC as a part of this project by means of a construction change document."

3. FIELD VERIFICATION: DSA may review the code compliance of the path of travel during the course of a project.

3.1 Plan Review: DSA may verify compliance of path of travel elements presented on the construction documents as part of the plan review process. Discrepancies between the construction documents and actual field conditions will be resolved as part of the plan review and back check process.

3.2 During Construction: Path of travel items within the scope of the project represented as code compliant but found to be nonconforming beyond reasonable construction tolerances shall be brought into compliance with the CBC as a part of the project. A construction change document to correct the discrepancy shall be prepared by the design professional in responsible charge.

3.3 At Completion: Any required path of travel upgrades not complete at the end of the project will be identified as Deficiency Items and indicated as such in the DSA Certification Box until corrected.

4. COMMON PATH OF TRAVEL ITEMS: While the path of travel is unique for each project, experience has shown that certain reoccurring path of travel elements, features and components should be checked during the development of project construction documents. These items include but are not limited to:

- Primary building or facility entrance
- Toilet and bathing facilities
- Drinking fountains
- Public telephones serving the area of alteration

REQUIRED INFORMATION FOR PATH OF TRAVEL UPGRADES ON CONSTRUCTION DOCUMENTS

- Exterior or interior signs along the path of travel
- Accessible route components
- Walking surfaces dimensions
- Running slope of walking surfaces, not to exceed 5% (1:20)
- Running slope of ramps, not to exceed 8.33% (1:12)
- Cross slope of walks and ramps not to exceed 2.083% (1:48)
- Landings and level area slopes not to exceed 2.083% (1:48)
- Vertical changes in level
- Openings in drains and gratings not to exceed ½ inch in predominant direction of travel
- Protruding objects and overhead obstructions
- Site arrival points, such as parking, load zones and bus areas

5. CONSTRUCTION TOLERANCES: While it is always advisable to avoid design requirements that are at or near dimensional thresholds, construction tolerances may be used when evaluating the compliance of existing path of travel elements. See DSA Interpretation of Regulation IR 11B-8: Use of Predetermined Construction Tolerance Guidelines for Accessibility.

A Division of the State Architect (DSA) Procedure documents a process or series of steps that DSA staff and/or external stakeholders must complete in order to fulfill one or more administrative requirements of DSA's plan and construction review programs.

SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS

Disciplines: Accessibility **History:** 04-27-15 Issued

PURPOSE: This Interpretation of Regulations (IR) provides guidance for projects submitted for accessibility review to the Division of the State Architect (DSA) on the upgrade of path of travel elements to the current edition of the California Building Code (CBC) when the area they serve is altered, added to or structurally repaired.

BACKGROUND: A project at an existing site is an alteration of that facility and subject to the requirements of CBC Section 11B-202.4: Path of travel requirements in alterations, additions and structural repairs. This applies to 1) alteration or structural repair of an existing building or feature on the site or 2) addition of a new building or new elements to an existing building, facility or site.

INTERPRETATION:

1. SCOPING CONSIDERATIONS FOR ALTERATION PROJECTS: A project at an existing facility is an alteration of that facility. This applies when either 1) existing elements are altered or 2) new elements, up to and including new buildings, are added.

1.1 Maintenance and Repair Projects: Projects limited to maintenance or repair are not alterations and do not trigger accessibility requirements. Definitions related to alteration projects are included in Attachment 1 of this IR.

1.2 Compliance with New Construction Requirements: The basic work of any project, whether new construction, an addition to an existing building or facility or an alteration of an existing building or facility, must comply with the following requirements for new construction:

- *"**11B-201.1 Scope.** All areas of newly designed and newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with these requirements."*[1]
- *"**11B-202.3 Alterations.** Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Division 2, including Section 11B-202.4."*

1.3 General Exceptions: The code then provides general exceptions to the requirements in 11B-203.[2] Many of these exceptions are applicable to public school, community college and higher education projects; a copy of Section 11B-203 is provided as Attachment 2 to this IR.

1.4 Accessible Route Requirements: For additions, the new construction provisions require an accessible route from the area of the addition to other accessible areas of the building, site or facility:

- *"**11B-206.2.2 Within a site**. At least one accessible route shall connect accessible buildings, accessible facilities, accessible elements and accessible spaces that are on the same site."*

[1] "These requirements" means the accessibility provisions of Chapter 11B and related sections within the California Building Code, current edition.

[2] "**11B-203.1 General.** Sites, buildings, facilities and elements are exempt from these requirements to the extent specified by Section 11B-203."

SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTRUAL REPAIR PROJECTS

1.5 Accessible Route Requirements for Campus Settings: For campus-style school facilities with multiple buildings and functional areas, the accessible route/path of travel situation can become more complex. The following factors may apply to projects on existing campus facilities:

- New construction on an existing site must be connected, as part of the basic project scope, with an accessible route to existing on-site circulation paths and accessible routes.
- When multiple paths of travel to a specific area of alteration, addition or structural repair are present but not code compliant, Section 11B-202.4 requires the upgrade of only **a** single primary path of travel to the project area. Upgrades of secondary paths of travel shall not be required.
- Path of travel (POT) upgrades only apply to existing construction; any new POT elements or accessible routes being provided as part of the basic project scope are not considered path of travel upgrades.
- The cost of new POT elements or a new accessible route is part of the project's adjusted construction cost and cannot be used to satisfy the 20-percent disproportionate cost limitation for path of travel upgrades on projects with an adjusted construction cost below the valuation threshold. See Section 3.1 of this IR.

1.6 Vehicular Way Exception: Again, there are exceptions to these general requirements. For example, if the only means of access between accessible buildings, accessible facilities, accessible elements and accessible spaces on a site is a vehicular way not providing pedestrian access, an accessible route connecting them is not required.[3, 4] The Section 11B-203 exceptions also apply to the extent specified.

2. PATH OF TRAVEL UPGRADE REQUIREMENTS FOR ALTERATION PROJECTS

2.1 Path of Travel Elements: Under the CBC, certain alteration, addition and structural repair projects trigger requirements for upgrades to accessibility elements outside the project's area of work. These "path of travel" upgrade requirements are found in:

- *"**11B-202.4 Path of travel requirements in alterations, additions and structural repairs.** When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided."*
- *The primary path of travel shall include:*
  - A primary entrance to the building or facility,
  - Toilet and bathing facilities serving the area,
  - Drinking fountains serving the area,
  - Public telephones serving the area, and
  - Signs.

Section 11B-202.4 then provides nine exceptions to the path of travel requirements; see Attachment 3 for the full text of these exceptions.

2.2 Path of Travel Exterior Elements: In addition to the five specific items listed above, the path of travel also includes an exterior approach to the project area. This requirement must be

[3] **11B-206.2.1 Site arrival points Exception 2.** An accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing pedestrian access.

[4] **11B-206.2.2 Within a site Exception.** An accessible route shall not be required between accessible buildings, accessible facilities, accessible elements and accessible spaces on a site if the only means of access between them is a vehicular way not providing pedestrian access.

evaluated on a project- and site-specific basis and could include parking, site arrival points, bus loading zones and the accessible route connecting them with the primary entrance to the project's area of work.

3. DISPROPORTINATE COST LIMITATIONS

3.1 Disproportionate Costs for Small Projects: Section 11B-202.4, Exception 8 addresses the issue of disproportionate costs for smaller projects and for projects where full compliance would be an unreasonable hardship.

- "When the adjusted construction cost is less than or equal to the current valuation threshold, as defined in Chapter 2, Section 202, the cost of compliance with Section 11B-202.4 shall be limited to **20 percent** of the adjusted construction cost of alterations, structural repairs or additions. When the cost of full compliance with Section 11B-202.4 would exceed 20 percent, compliance shall be provided to the greatest extent possible without exceeding 20 percent."
- Alteration, addition and structural repair projects with adjusted construction costs below the valuation threshold shall be permitted to use the disproportionate cost threshold of 20 percent to limit the scope and cost of path of travel upgrades.

3.2 Projects with Adjusted Construction Costs Above the Valuation Threshold: The 20-percent disproportionate cost limitation does not apply to projects with adjusted construction costs above the valuation threshold. These projects must comply with the path of travel upgrade requirements, whatever the cost, to provide a single accessible path of travel to the specific area of alteration. However, Section 11B-202.4 Exception 8 provides:

- *"When the adjusted construction cost exceeds the current valuation threshold, as defined in Chapter 2, Section 202, and the enforcing agency determines the cost of compliance with Section 11B-202.4 is an unreasonable hardship, as defined in Chapter 2, Section 202, full compliance with Section 11B-202.4 shall not be required."*
- *A finding of UNREASONABLE HARDSHIP may be made when the enforcing agency (DSA) finds that compliance with the building standard would make the specific work of the project affected by the building standard infeasible, based on an overall evaluation of the following factors:*
  1. *The cost of providing access.*
  2. *The cost of all construction contemplated.*
  3. *The impact of proposed improvements on financial feasibility of the project.*
  4. *The nature of the accessibility which would be gained or lost.*
  5. *The nature of the use of the facility under construction and its availability to persons with disabilities.*
- *"Compliance shall be provided by equivalent facilitation or to the greatest extent possible without creating an unreasonable hardship; but in no case shall the cost of compliance be less than 20 percent of the adjusted construction cost of alterations, structural repairs or additions."*[5]
- *"The details of the finding of unreasonable hardship shall be recorded and entered into the files of the enforcing agency and shall be subject to Chapter 1, Section 1.9.1.5, Special Conditions for Persons with Disabilities Requiring Appeals Action Ratification."*
- *The adjusted construction cost shall not include the cost of alterations to path of travel elements.*

[5] As long as there are noncompliant elements that need to be corrected, the cost of the path of travel upgrades cannot fall below 20 percent, as that is a requirement of the both the 2013 CBC and the 2010 ADA Standards.

3.3 Finding of Unreasonable Hardship: A finding of unreasonable hardship is appropriate only when the cost of full compliance is significantly above the 20-percent disproportionate cost limitation and would make the project financially infeasible. A finding of unreasonable hardship may be made by the enforcing agency and should be based upon a detailed project-specific analysis. For projects within DSA's jurisdiction, a finding of unreasonable hardship must be approved by the access supervisor and the regional manager.

3.4 Three Year History: For areas that have been previously altered without providing an accessible path of travel to those areas, the cost of any subsequent alterations to areas served by the same path of travel during a preceding three-year period shall be considered in determining whether the cost of making the path of travel is disproportionate.

3.5 Upgrades in Substantially Compliant Facilities: For projects where the path of travel elements serving the area of alteration, addition or structural repair are largely compliant, it shall not be required that the full 20 percent of the adjusted construction cost be spent.

4. COMPLIANCE WITH IMMEDIATELY PRECEDING EDITION:

4.1 Path of Travel Upgrades Not Required: *11B*-202.4 Exception 2 does not require path of travel upgrades for certain elements that have been previously constructed or altered in compliance with the accessibility requirements of the immediately preceding edition of the California Building Code. Retrofit to reflect incremental changes in the code solely because of an alteration to an area served by the following elements shall not be required:

- A primary entrance to the building or facility,
- Toilet and bathing facilities serving the area,
- Drinking fountains serving the area,
- Public telephones serving the area, and
- Signs.

4.2 Immediately Preceding Edition: The immediately preceding edition of the code includes:

- The initially adopted and published code;
- Intervening Code Cycle Amendments adopted and issued as Supplements;
- Emergency Amendments, if any, adopted and issued as Supplements;
- Errata.

Compliance with any version of the immediately preceding code edition qualifies an element for this exception. Section 202.4 Exception 2 provisions in the immediately preceding edition of the CBC shall not be permitted to iteratively utilize provisions in earlier editions of the CBC.

5. ADJUSTED CONSTRUCTION COST

5.1 Costs Included: For the purposes of 11B-202.4, the adjusted construction cost for a project shall include:

- All direct or "hard" costs directly associated with the contractor's construction of the project.
- All fees and reimbursable expenses paid to construction managers, if any.

The direct or "hard" costs shall not be reduced by the value of components, assemblies, building equipment or construction not directly associated with accessibility or usability.

5.2 Cost Not Included: The adjusted construction cost shall not include:

- Project management fees and expenses.
- Architectural and engineering fees.
- Testing and inspection fees.
- Utility connection or service district fees.

6. WHEN FULL COMPLIANCE CANNOT BE REQUIRED

6.1 Priority List: For projects where full compliance of the path of travel elements cannot be required, based on the disproportionate cost limitation or a determination of unreasonable hardship, Section 11B-202.4, Exception 8 establishes the following priority list:

- "In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:
  1. An accessible entrance;
  2. An accessible route to the altered area;
  3. At least one accessible restroom for each sex;
  4. Accessible telephones;
  5. Accessible drinking fountains; and
  6. When possible, additional accessible elements such as parking, storage and alarms."

6.2 Additional Accessible Elements: The obligation to upgrade the additional accessible elements in Item 6 applies only to those elements within the primary path of travel serving the project-specific area of alteration. Typically, Item 6 will come into play only when all of the elements in the preceding items either 1) are in compliance with the requirements, 2) have been included in the project's path of travel upgrades scope of work or 3) are discretionary items, such as public telephones, and not present as existing elements.

6.3 Operational Considerations: In situations where a fully compliant path of travel cannot be required, from a civil rights perspective the public agency operating the facility still has an obligation to make its programs and services accessible. The fact that the building code did not require full compliance does not remove this ***program delivery*** obligation. However, this is an operational consideration outside of the building code and shall not be used as a condition of approval for projects under DSA's jurisdiction.

REFERENCES:

California Code of Regulations (CCR) Title 24
Part 2, California Building Code, Sections 11B-202.4

Attachment 1

Definitions

The California Building Code defines “Alteration” as:

- “A change, addition or modification in construction, change in occupancy or use, or structural repair to an existing **building or facility**. Alterations include but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.”

“Facility” is defined in the CBC as:

- “All or any portion of buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways located on a site.”

“Alteration or Alter” is defined as:

- “. . . any change, addition or modification in construction or occupancy or structural repair or change in primary function to an existing **structure** made by, on behalf of or for the use of a public accommodation or commercial facility. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts of elements, and changes or rearrangement in the plan configuration of walls and full-height partitions.”

The term “structure” within the definition of alteration is broadly defined as:

- “That which is built or constructed.”

The underlying premise is clear—alterations are not limited to projects within buildings and can occur anywhere on a facility or site.

The CBC defines “path of travel” as:

- “An identifiable accessible route within an existing site, building or facility by means of which a particular area may be approached, entered and exited, and which connects a particular area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. When alterations, structural repairs or additions are made to existing buildings or facilities, the term “path of travel” also includes the toilet and bathing facilities, telephones, drinking fountains and signs serving the area of work.”

Attachment 2

General Exceptions

***11B*-203.1 General.** Sites, buildings, facilities, and elements are exempt from these requirements to the extent specified by *Section 11B*-203.

***11B*-203.2 Construction sites.** Structures and sites directly associated with the actual processes of construction, including but not limited to, scaffolding, bridging, materials hoists, materials storage and construction trailers shall not be required to comply with these requirements or to be on an accessible route. Portable toilet units provided for use exclusively by construction personnel on a construction site shall not be required to comply with *Section 11B*-213 or to be on an accessible route.

***11B*-203.3 Raised areas.** Areas raised primarily for purposes of security, life safety, or fire safety, including but not limited to, observation or lookout galleries, prison guard towers, fire towers or life guard stands shall not be required to comply with these requirements or to be on an accessible route.

***11B*-203.4 Limited access spaces.** Spaces *not customarily occupied and* accessed only by ladders, catwalks, crawl spaces, or very narrow passageways shall not be required to comply with these requirements or to be on an accessible route.

***11B*-203.5 Machinery spaces.** Spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment shall not be required to comply with these requirements or to be on an accessible route. Machinery spaces include, but are not limited to, elevator pits or elevator penthouses; mechanical, electrical or communications equipment rooms; piping or equipment catwalks; water or sewage treatment pump rooms and stations; electric substations and transformer vaults; and highway and tunnel utility facilities.

***11B*-203.6 Single occupant structures.** Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels, shall not be required to comply with these requirements or to be on an accessible route.

***11B*-203.7 Detention and correctional facilities.** In detention and correctional facilities, common use areas that are used only by inmates or detainees and security personnel and that do not serve holding cells or housing cells required to comply with *Section 11B*-232, shall not be required to comply with these requirements or to be on an accessible route.

***11B*-203.8 Residential facilities.** In *public housing* residential facilities, common use areas that do not serve residential dwelling units required to provide mobility features complying with *Sections 11B*-809.2 through *11B*-809.4 *and adaptable features complying with Chapter 11A, Division IV* shall not be required to comply with these requirements or to be on an accessible route.

***11B*-203.9 Employee work areas.** Spaces and elements within employee work areas shall only be required to comply with *Sections 11B*-206.2.8, *11B*-207.1, and *11B*-215.3 and shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the employee work area.

SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTRUAL REPAIR PROJECTS

***11B*-203.10 Raised refereeing, judging and scoring areas.** Raised structures used solely for refereeing, judging or scoring a sport shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

***11B*-203.11 Water slides.** Water slides shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

***11B*-203.12 Animal containment areas.** Animal containment areas that are not for public use shall not be required to comply with these requirements or to be on an accessible route. *Animal containment areas for public use shall be on an accessible route.*

***11B*-203.13 Raised boxing or wrestling rings.** Raised boxing or wrestling rings shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

***11B*-203.14 Raised diving boards and diving platforms.** Raised diving boards and diving platforms shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

Attachment 3

Path of Travel Upgrade Requirements

***11B*-202.4 Path of travel requirements in alterations, additions and structural repairs.** When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:

1. A primary entrance to the building or facility,
2. Toilet and bathing facilities serving the area,
3. Drinking fountains serving the area,
4. Public telephones serving the area, and
5. Signs.

Exceptions:

1. Residential dwelling units shall comply with Section 11B-233.3.4.2.
2. If the following elements of a path of travel have been constructed or altered in compliance with the accessibility requirements of the immediately preceding edition of the California Building Code, it shall not be required to retrofit such elements to reflect the incremental changes in this code solely because of an alteration to an area served by those elements of the path of travel:
    1. A primary entrance to the building or facility,
    2. Toilet and bathing facilities serving the area,
    3. Drinking fountains serving the area,
    4. Public telephones serving the area, and
    5. Signs.
3. Additions or alterations to meet accessibility requirements consisting of one or more of the following items shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4:
    1. Altering one building entrance.
    2. Altering one existing toilet facility.
    3. Altering existing elevators.
    4. Altering existing steps.
    5. Altering existing handrails.
4. Alterations solely for the purpose of barrier removal undertaken pursuant to the requirements of the Americans with Disabilities Act (Public Law 101-336, 28 C.F.R., Section 36.304) or the accessibility requirements of this code as those requirements or regulations now exist or are hereafter amended consisting of one or more of the following items shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4:
    1. Installing ramps.

2. Making curb cuts in sidewalks and entrance.
3. Repositioning shelves.
4. Rearranging tables, chairs, vending machines, display racks, and other furniture.
5. Repositioning telephones.
6. Adding raised markings on elevator control buttons.
7. Installing flashing alarm lights.
8. Widening doors.
9. Installing offset hinges to widen doorways.
10. Eliminating a turnstile or providing an alternative accessible route.
11. Installing accessible door hardware.
12. Installing grab bars in toilet stalls.
13. Rearranging toilet partitions to increase maneuvering space.
14. Insulating lavatory pipes under sinks to prevent burns.
15. Installing a raised toilet seat.
16. Installing a full-length bathroom mirror.
17. Repositioning the paper towel dispenser in a bathroom.
18. Creating designated accessible parking spaces.
19. Removing high-pile, low-density carpeting.

5. Alterations of existing parking lots by resurfacing and/or restriping shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4.
6. The addition or replacement of signs and/or identification devices shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4.
7. Projects consisting only of heating, ventilation, air conditioning, reroofing, electrical work not involving placement of switches and receptacles, cosmetic work that does not affect items regulated by this code, such as painting, equipment not considered to be a part of the architecture of the building or area, such as computer terminals and office equipment shall not be required to comply with Section 11B-202.4. unless they affect the usability of the building or facility.
8. When the adjusted construction cost is less than or equal to the current valuation threshold, as defined in Chapter 2, Section 202, the cost of compliance with Section 11B-202.4 shall be limited to 20 percent of the adjusted construction cost of alterations, structural repairs or additions. When the cost of full compliance with Section 11B-202.4 would exceed 20 percent, compliance shall be provided to the greatest extent possible without exceeding 20 percent.

   When the adjusted construction cost exceeds the current valuation threshold, as defined in Chapter 2, Section 202, and the enforcing agency determines the cost of compliance with Section 11B-202.4 is an unreasonable hardship, as defined in Chapter 2, Section 202, full compliance with Section 11B-202.4 shall not be required.

Compliance shall be provided by equivalent facilitation or to the greatest extent possible without creating an unreasonable hardship; but in no case shall the cost of compliance be less than 20 percent of the adjusted construction cost of alterations, structural repairs or additions. The details of the finding of unreasonable hardship shall be recorded and entered into the files of the enforcing agency and shall be subject to Chapter 1, Section 1.9.1.5, Special Conditions for Persons with Disabilities Requiring Appeals Action Ratification.

For the purposes of this exception, the adjusted construction cost of alterations, structural repairs or additions shall not include the cost of alterations to path of travel elements required to comply with Section 11B-202.4.

In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:

1. An accessible entrance;
2. An accessible route to the altered area;
3. At least one accessible restroom for each sex;
4. Accessible telephones;
5. Accessible drinking fountains; and
6. When possible, additional accessible elements such as parking, storage and alarms.

If an area has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area or a different area on the same path of travel are undertaken within three years of the original alteration, the total cost of alterations to the areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

9. Certain types of privately funded, multistory buildings and facilities were formerly exempt from accessibility requirements above and below the first floor under this code, but as of, April 1, 1994, are no longer exempt due to more restrictive provisions in the federal Americans with Disabilities Act. In alteration projects involving buildings and facilities previously approved and built without elevators, areas above and below the ground floor are subject to the 20-percent disproportionality provisions described in Exception 8, above, even if the value of the project exceeds the valuation threshold in Exception 8. The types of buildings and facilities are:

    1. Office buildings and passenger vehicle service stations of three stories or more and 3,000 or more square feet (279 m^2) per floor.
    2. Offices of physicians and surgeons.
    3. Shopping centers.
    4. Other buildings and facilities three stories or more and 3,000 or more square feet (279 m^2) per floor if a reasonable portion of services sought and used by the public is available on the accessible level.

    For the general privately funded multistory building exception applicable to new construction and alterations, see Section 11B-206.2.3, Exception 1.

The elevator exception set forth in this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements in this code. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor.

BULLETIN: IDENTIFICATION OF SINGLE-USER TOILET FACILITIES AS ALL-GENDER

PURPOSE: The Division of the State Architect (DSA) provides this bulletin for reference by schools, community colleges, and other entities under its jurisdiction, as an aid in complying with new state law requirements. Subject to approval by the local enforcing agency, this bulletin is also provided for reference by other interested parties as an aid in complying with new state law requirements.

BACKGROUND: Assembly Bill 1732 (Ting, Chapter 818, Statutes of 2016) was signed into law on September 29, 2016, to create Health and Safety Code Section 118600, relating to the identification of single-user toilet facilities as all-gender toilet facilities.

Health and Safety Code Section 118600 requires:
(a) All single-user toilet facilities in any business establishment, place of public accommodation, or state or local government agency shall be identified as all-gender toilet facilities by signage that complies with Title 24 of the California Code of Regulations, and designated for use by no more than one occupant at a time or for family or assisted use.
(b) During any inspection of a business or a place of public accommodation by an inspector, building official, or other local official responsible for code enforcement, the inspector or official may inspect for compliance with this section.
(c) For the purposes of this section, “single-user toilet facility” means a toilet facility with no more than one water closet and one urinal with a locking mechanism controlled by the user.
(d) This section shall become operative on March 1, 2017.

DISCUSSION: The following directive is provided for clarity, to address identification of single-user toilet facilities as all-gender, in compliance with the accessibility provisions of California Building Code (CBC) Chapter 11B. It is important to note that the clarification provided herein is not the result of a change in accessibility regulations, and is in accordance with existing accessibility requirements for symbols at entrances for toilet facilities, and wall-mounted designation signs if provided, as is already expressed in both the 2013 CBC and 2016 CBC.

1. The provisions of CBC Chapter 11B require that a sanitary facility that is not specifically identified as for "men" or "women" (referred to in Chapter 11B as a “unisex” facility) have a geometric symbol on the door that is an equilateral triangle superimposed onto a circle. The "unisex" symbol is the only specific indicator required to be provided by Chapter 11B for a toilet facility that is available for use by all

individuals. No pictogram, text, or braille is required on the symbol. (See attachment, Exhibit A.)

2. CBC Chapter 11B does not require a wall-mounted designation sign identifying a permanent room or space to be provided for a toilet facility. CBC Chapter 11B provisions for designation signs are conditional and the technical requirements apply only when a designation sign is provided.

2.1 According to CBC Chapter 11B, where a toilet facility is identified with a designation sign adjacent to the door, the sign is required to comply with the technical requirements for visual characters, raised characters, braille, and must also comply with other accessibility requirements for mounting height, clear floor space, and proximity to the door/entrance of the room. A pictogram is not required to be provided; however, where a facility owner elects to identify a toilet facility with a pictogram, a text descriptor consisting of visual characters, raised characters, and braille is required to accompany the pictogram.

2.2 DSA does not have the authority to specify designation sign text, nor does DSA have the authority to regulate the image for a pictogram that is provided on a designation sign. The image of the pictogram and text descriptor is left to the discretion of the facility owner/operator. (See attachment, Exhibit B.)

The CBC requirements for use and application of designation signs are consistent with the 2010 Americans with Disabilities Act Standards (2010 ADAS).

IDENTIFICATION OF SINGLE-USER TOILET FACILITIES AS ALL-GENDER

The following information pertains to projects within DSA's enforcement jurisdiction, namely schools, community colleges, and state-funded facilities:

3. Addressing the enforcement provisions of the statute: HSC §118600 states: "an inspector, building official, or other local official responsible for code enforcement, the inspector or official may inspect for compliance." For projects within DSA enforcement jurisdiction, DSA provides the following guidelines for enforcement:

3.1 Projects under plan review as of March 1, 2017: If a project is in plan review, DSA access staff will review that all single-user toilet facilities in new construction, or those undergoing alteration that are part of the project, have the required "unisex" symbols on the door (see attachment, Exhibit A), and indicate that the symbol be provided without text, braille, or use of a pictogram. If the designer has indicated a wall-mounted designation sign will be provided at the single-user toilet facility, DSA will require the sign to be specified in the construction documents, and to be indicated as a designation sign with raised text, corresponding braille, and no pictogram (see attachment, Exhibit B).

3.2 Single-user toilet facilities in projects under construction, and existing single-user toilet facilities requiring a change of identification symbols: In accordance with the guidelines provided herein, implementation of the statute for existing single-user toilet facilities and for single-user toilet facilities in projects under construction is to be effected by the school district. The effective date for compliance is March 1, 2017. When changing identification symbols of existing single-user toilet facilities from gender-specific to all-gender, DSA advises against providing a pictogram to represent an all-gender image on a designation sign or unisex symbol. The pictogram might be perceived as inappropriate, and in fact, DSA reminds facility owners that a pictogram is not required.

ATTACHMENT

IDENTIFICATION OF ALL GENDER SINGLE-USER TOILET FACILITIES
Compliant with the California Building Code (CBC) Chapter 11B

EXHIBIT A - Door Symbol (required by the CBC)

This image represents the door symbol that is required by CBC 11B-216.8 to identify an all-gender/unisex single-user toilet facility. The symbol must comply with the requirements of CBC 11B-703.7.2.6.3. No pictogram, text, or braille is required on the symbol.

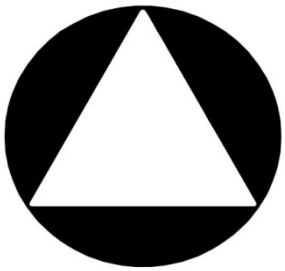


EXHIBIT B - Designation sign on wall

Designation signs are not required to be provided by the CBC or the 2010 ADAS. If provided, a designation sign adjacent to the door must comply with the scoping requirements of CBC 11B-216.2, and the technical requirements for raised characters (CBC 11B-703.2), braille (CBC 11B-703.3), visual characters (CBC 11B-703.5), and requirements for installation height and location (CBC 11B-703.4). No pictogram is required. The following signs illustrate acceptable examples for designation sign text:

Note: Braille translation not verified by DSA.

1-RUH

REQUEST FOR FINDING OF UNREASONABLE HARDSHIP

Please print or type all information – or you may fill out on-line and print for signatures
ALL FIELDS MUST BE FILLED IN PER INSTRUCTIONS

Use this form to request a finding of unreasonable hardship for a project with an Adjusted Construction Cost exceeding the Valuation Threshold. A hardship finding will provide relief from full compliance with the *path of travel* requirements of CBC section *11B*-202.4. Compliance shall be provided by equivalent facilitation or to the greatest extent possible without creating an unreasonable hardship; in no case shall the cost of compliance be less than 20 percent of the adjusted construction cost of alterations, additions or structural repairs. DSA shall approve proposed alternate compliance, to be included as part of this request.

School District/Owner/Agency:	DSA File #: -
Project Name/School:	DSA App. #: -

APPLICANT		
Firm Name:	Contact Name:	
Phone Number:	Email:	
Address:		
City:	Zip:	County:

DESIGN PROFESSIONAL IN GENERAL RESPONSIBLE CHARGE		
Name of Design Professional in General Responsible Charge:		
Professional License #:	Discipline:	
Facilities Director (or appropriate contact):		
Phone Number:	Email:	
Project Location:		
Project Address:		
City:	Zip:	County:

APPLICANT'S STATEMENT OF RESPONSIBILITY

I certify, under penalty of perjury, that I am acting for the School District/Owner/Agency in the legal capacity of agent making application for Finding of Unreasonable Hardship.

Signature: _____

DESIGN PROFESSIONAL IN GENERAL RESPONSIBLE CHARGE

Printed Name: _____

DESIGN PROFESSIONAL IN GENERAL RESPONSIBLE CHARGE

REQUEST FOR FINDING OF UNREASONABLE HARDSHIP

CBC, CHAPTER 11B

11B*-202.4 *Path of travel requirements in alterations, additions and structural repairs.

Exception 8: *When the adjusted construction cost* ***exceeds*** *the current valuation threshold, as defined in Chapter 2, Section 202, and the enforcing agency determines the cost of compliance with Section 11B-202.4 is an unreasonable hardship, as defined in Chapter 2, Section 202, full compliance with Section 11B-202.4 shall not be required. Compliance shall be provided by equivalent facilitation or to the greatest extent possible without creating an unreasonable hardship; but in no case shall the cost of compliance be less than 20 percent of the adjusted construction cost of alterations, structural repairs or additions.*

DESCRIBE THE NATURE OF THE USE OF THE FACILITY UNDER CONSTRUCTION AND ITS AVAILABILITY TO PERSONS WITH DISABILITIES: Attach additional pages if necessary.

DESCRIBE THE NATURE OF ACCESSIBILITY THAT WOULD BE GAINED (BY FULL COMPLIANCE) AND LOST (BY PROPOSED ALTERNATE COMPLIANCE): Attach additional pages if necessary.

IS THE PROJECT A *QUALIFIED HISTORICAL BUILDING OR FACILITY*, AS DEFINED IN THE CALIFORNIA HISTORICAL BUILDING CODE WHERE PROVIDING COMPLIANCE WILL THREATEN THE HISTORIC NATURE OF THE BUILDING?: If yes please describe. Attach additional pages if necessary.

REQUEST FOR FINDING OF UNREASONABLE HARDSHIP

CONSTRUCTION COSTS:		
Construction cost for proposed project (not including costs of improvements to the *path of travel* to the area of alteration):	$	(A)
Cost of alterations to areas on this *path of travel* undertaken during the preceding three-year period which did not provide an accessible *path of travel* to the area of alteration (as applicable):	$	(B)
Adjusted construction cost (C) = (A) + (B)	$	(C)

PATH OF TRAVEL CONSTRUCTION COSTS:					
Elements serving the area of alteration based on priority	Is element in compliance with Chapter 11B? (Y/N)	If no, will element be upgraded to Chapter 11B? (Y/N)	Estimated cost of full compliance with Chapter 11B	Proposed cost of partial compliance with Chapter 11B	
1. An accessible entrance			$	$	
2. An accessible route to the altered area			$	$	
3. At least one accessible restroom for each gender or a single accessible unisex restroom			$	$	
4. Accessible public telephones			$	$	
5. Accessible drinking fountains			$	$	
6. When possible, additional accessible elements such as:					
a. Parking			$	$	
b. Signs			$	$	
c. Storage			$	$	
d. Alarms			$	$	
e. Other			$	$	
Total cost of providing full compliance of *path of travel* elements:			$	(D)	
Total cost of providing partial compliance of *path of travel* elements:				$	(E)

COST OF PATH OF TRAVEL UPGRADES AS A PERCENTAGE OF ADJUSTED CONSTRUCTION COST:		
Full compliance of path of travel as % of adjusted construction cost: (F)% = (D) / (C)	%	(F)
Partial compliance of path of travel as % of adjusted construction cost: (G)% = (E) / (C)	%	(G)

REQUEST FOR FINDING OF UNREASONABLE HARDSHIP

DESCRIBE THE IMPACT ON THE FINANCIAL FEASIBILITY OF THE PROJECT WHEN THE COST OF PROVIDING FULL COMPLIANCE WITH CHAPTER 11B STANDARDS EXCEEDS 20%: *Attach additional pages if necessary.*

DESCRIBE THE EQUIVALENT FACILITATION PROVIDED (IF APPLICABLE): *Attach additional pages if necessary.*

DSA USE ONLY ***The details of any finding of unreasonable hardship will be recorded in the DSA project file.***				
FINDING OF UNREASONABLE HARDSHIP REQUEST GRANTED:				
☐	Elements listed in this form for modifications to meet compliance shall be included as part of this project and indicated on contract documents.			
FINDING OF UNREASONABLE HARDSHIP REQUEST DENIED:				
☐	☐ Equivalent facilitation is not provided ☐ Compliance to the greatest extent possible is not provided. ☐ Proposed cost for minimum compliance is less than 20% of the adjusted construction cost. ☐ Other If you disagree with this determination, the DSA code appeal process is available for further review.			
REVIEWED BY:				
Name:		Title:		
Signature:		Date:		
SUPERVISOR'S APPROVAL:				
Name:		Title:		
Signature:		Date:		
REFERRED TO STATEWIDE TEAM:		☐	Yes	☐ No
☐	Finding of Unreasonable Hardship Request Denied.			
☐	Finding of Unreasonable Hardship Request Approved.			
REASON FOR APPROVAL OR DENIAL:				

CCDA | California Commission on Disability Access

ACCESSIBILITY CONSTRUCTION INSPECTION CHECKLIST

2015 Edition

CALIFORNIA COMMISSION ON DISABILITY ACCESS
721 CAPITOL MALL, SUITE 250
SACRAMENTO, CA 95814
(916) 319-9974
WWW.CCDA.CA.GOV

CCDA ACCESSIBILITY CONSTRUCTION INSPECTION CHECKLIST

The California Commission on Disability Access (CCDA) is pleased to provide this Accessibility Construction Inspection Checklist (Accessibility Checklist) for use by trained building code officials/building inspectors as a reference guide to assist with on-site inspection of accessibility features and construction elements affecting accessibility compliance. The CCDA is authorized by California Government Code Sections 8299-8299.11 to provide educational material and information to assist trained building code officials/building inspectors with disability access requirements and to facilitate compliance with disability access laws. This Accessibility Checklist is based on the 2013 California Building Code (CBC), Part 2, Title 24, California Code of Regulations and should be used in conjunction with the regulations found in Chapter 11B of the CBC.

The purpose of this Accessibility Checklist is to provide trained building code officials/building inspectors with a reference list of the most common accessibility features to be inspected and/or verified during the construction phases of commercial projects. It is important during the progress inspections that the trained building code official/building inspector verify all elements will be able to meet the minimum accessibility requirements of the California Building Code at the time of final inspection. The Accessibility Checklist is intended to be utilized by trained building code officials/building inspectors as a reference guide only. It is not intended to be a complete list for full access compliance under applicable laws or regulations nor is it intended to identify any specific measurements or detailed requirements that may be required for full compliance with applicable disability access laws and regulations. Although the Accessibility Checklist has been produced and processed from sources believed to be reliable, no warranty expressed or implied is made regarding accuracy, adequacy, completeness, legality, reliability or usefulness of any information that is contained in the Accessibility Checklist.

The trained building code official/building inspector must assess the elevations and slopes of the existing streets and sidewalks, location of existing buildings, existing drainage and other physical conditions of the property relative to the accessibility improvements on the proposed plans. During construction inspection finish product thicknesses such as flooring materials or wall coverings must be considered when reviewing critical accessibility features, including but not limited to, widths of halls, corridors, door strike side, plumbing locations, built-in cabinets, and shower compartments.

ROUGH GRADE SITE INSPECTION	
Locate and verify the plan specified accessible routes from existing public sidewalks, accessible parking locations, and other site arrival points to building entrances and exits.	11B-206.1
Identify the plan specified accessible routes from all entrances and exits to common and public use areas on the site.	11B-206.2.2
If site conditions have swamp type lands, steep grades, drainage ditches, flood hazards or other inconsistencies with the approved plans, proper methods of compliance shall be reviewed and approved by the building official/plan checker prior to continuing.	*CBC Section 107.4
Verify that drainage, drainage swales, catch basins and grates do not violate slope or surface requirements along accessible routes, accessible parking and access aisles, etc.	11B-403
Verify if under-slab plumbing will provide adequate clearances from finished walls.	* 11B-604.2
Site Lighting shall be capable of providing a minimum of one foot candle to the surface.	CBC Section 1006
ROUGH FORM AND FOUNDATION INSPECTION	
Verify building form elevations are set relative to site features (accessible routes, accessible parking, common and public use areas, and other site arrival points) to ensure correct accessible slopes (5% running slope and 2.08% cross slope).	11B-403
Verify forms for sidewalks, ramps, landings, curb ramps and clear floor spaces are correctly installed so proper slopes, cross slopes, widths and clearances will be maintained at final inspection.	11B, Division 4 Accessible Routes.
Verify no abrupt changes in level will exceed ½" in the path of travel or 4" drop offs along edges.	11B-303.5
Verify forms include guardrail and handrail sleeves if required.	11B-505
Verify planned site lighting sleeves are provided.	CBC Section 1006
ROUGHS/FOUR WAY INSPECTION CHECKLIST	
VERIFY FRAMING – remember finish material thicknesses!	
Slope, width and headroom of all interior accessible routes.	11B-402
Door opening widths.	11B-404
Maneuvering clearances/landings at doors.	11B-404
Distance between doors in series.	11B-404.2.6
Grab bar backing in toilet/shower rooms.	11B-604.5, 11B-607.4, 11B-608.3
Backing for grab bars in bathtub/shower rooms.	11B-610
Width and depth of shower stalls.	11B-608.2
Drinking fountain alcoves/wing walls.	11B-602.9
Tread dimensions on stairs including nosings. Verify finish materials for variances	11B-504
Backing for handrails at ramps/stairs.	11B-505
Elevator shaft dimensions. Check plans for Fire Assembly thickness	11B-407.4
Location of controls for operable windows to meet reach range and operation	11B-229
Restroom dimensions.	11B-604.8
VERIFY ELECTRICAL – remember finish material thicknesses!	
Heights of all 30 amp or less outlet boxes. Measure to top or bottom of boxes	11B-308.1.1
Heights of all electrical switch boxes. Measure to top or bottom of boxes	11B-308.1.2
Alarm/detector systems.	11B-702
Height of HVAC controls.	11B-308
Location of elevator control/call/notification boxes.	11B-407
Installation of emergency egress lighting if required. High and Low	11B-1011
VERIFY ROUGH PLUMBING – remember finish material thicknesses!	
Location of toilet flanges from walls.	11B-604.2
Location of lavatory traps from side walls.	11B-606.6

Location of bathtub controls and drain.	11B-607.5
Installation height and location of shower controls.	11B-608.5
Location of shower drains and floor slope.	11B-608.5
Shower threshold.	11B-608.7
Kitchen or Common use sink plumbing	11B-608.5 11B-804
Plumbing for Drinking Fountains. Both high and low	11B-602
(OPTIONAL INSPECTION Pre-Concrete/Asphalt) Exterior Site sidewalk forms and grading per page 1	
FINAL INSPECTION CHECKLIST	
EXTERIOR ROUTES	
Floor and ground surfaces stable, firm and slip resistant.	11B-302.1
Openings in floor or ground surfaces 1/2 inch maximum with long dimension perpendicular to direction of travel.	11B-302.3
Vertical change in level 1/4 inch high maximum.	11B-303.2
Changes in level greater than 1/2 inch ramped.	11B-303.4
Abrupt changes in level exceeding 4 inches, vertical dimension shall be identified by warning curb.	11B-303.5
Running and cross slopes at walking surfaces. Walks, sidewalks and ramps.	11B-403.3 11B-405
Vertical clearances/protrusions along circulation paths.	11B-307
Site arrival points. An accessible route from parking, passenger loading zones, public streets and sidewalks to building entrance or facility.	11B-206.2.1
Within a site. One accessible route connecting accessible buildings, accessible facilities, accessible elements, and accessible spaces.	11B-206.2.2
Location of accessible routes coincides with general circulation paths.	11B-206.2.1 Exception 3
Clear width of walking surface.	11B-403.5.1
Contrasting stripe on upper approach and all treads.	11B-504.4.1
No open risers on stairways.	11B-504.3
Handrails on ramps and stairways.	11B-505
Curb ramps, blended transitions and islands.	11B-406
Raised islands in crossings shall be cut through level with the street or have curb ramps at both sides.	11B-406.6
Installation and color of required detectable warnings.	11B-705
Passing spaces along accessible routes with a clear width less than 60 inches.	11B-403.5.3
Walks with continuous gradients have resting areas.	11B-403.7
INTERIOR ROUTES	
Floor and ground surfaces stable, firm and slip resistant.	11B-302.1
Carpet pile height 1/2 inch maximum. Exposed edges securely fastened with trim on exposed edge.	11B-302.2
Vertical clearances/protrusions along circulation paths.	11B-307
Running and cross slopes at walking surfaces and ramps.	11B-403.3 11B-405
Handrails on ramps and stairways.	11B-505
Vertical change in level 1/4 inch high maximum.	11B-303.2
Changes in level greater than 1/2 inch ramped.	11B-303.4
Contrasting stripe at upper approach and lower tread.	11B-504.4.1
Accessible route to all functional areas of restaurants and dining facilities.	11B-206.2.5
Accessible route to performance area from an assembly area.	11B-206.2.6
Common use circulation paths within employee work areas.	11B-206.2.8
Accessible route to both sides of court sports.	11B-206.2.12
Clear width of walking surfaces.	11B-403.5.1
Width of accessible route at 180 degree turns.	11B-403.5.2

PARKING	
Location and number of van parking and standard parking spaces.	11B-208
Dimensions of accessible parking spaces and access aisles.	11B-502.2 11B-502.3
Marking at access aisles.	11B-502.3.3
Slope of accessible parking spaces and access aisles.	11B-502.4
Identification at accessible spaces and/or lot entrances.	11B-502.6 11B-502.8
Vertical clearance at parking spaces, access aisles and vehicular routes.	11B-502.5
Location, number and dimensions of passenger drop-off zones.	11B-503
Vertical clearance at vehicle pull-up spaces, access aisle, vehicular route.	11B-503.5
Passenger loading zone, accessible parking spaces and access aisles in valet lots.	11B-209.4
REACH RANGES AND OPERABLE PARTS	
Forward and side reach	11B-308.2/3
Over projections	11B-308.2.2/3.2
Clear floor space at controls	11B-309.2
5lbs operating force	11B-309.4
Reach ranges	11B-309.3
No tight grasping, pinching, twisting of wrist	11B-309.4
Top and bottom of switches and outlets AFF	11B-308.1.1&2
DOORS	
32” clear width	11B-404.2.3
Maneuvering clearances	11B-404.2.4.1
Level landings each side of doors	11B-404.2.4.4
Thresholds	11B-404.2.5
Doors in series	11B-404.2.6
Hardware	11B-404.2.7
Closing speed	11B-404.2.8.1
5lbs opening force	11B-404.2.9
10” smooth surface on push side of door	11B-404.2.10
Signs – Tactile/Braille	11B-703
VERTICAL ACCESS	
Elevators: Controls; visual and audio signals	11B-407.2
Elevators: Symbols	11B-407.4.7.1
Elevators: Support rail	11B-407.4.10
Platform Lifts	11B-410
Destination-oriented Elevators (July 2015)	11B-411
Stairs	11B-504
PLUMBING/RESTROOMS	
Turning space within the room	11B-603
Door swing not in clear floor space of any fixture (except single-user)	11B-603
Mirrors and accessories	11B-603
Clear floor space requirements at fixtures	11B-604
Compartment configuration side and end entry, toe clearances	11B-604
Side and rear wall grab bars	11B-609
Ambulatory compartments	11B-604.8.2
Urinals	11B-605
Accessible lavatories, heights, knee clearances	11B-606
Restroom symbols on door	11B-703.7.2.6
Shower compartments	11B-608
Bathtubs	11B-607
Drinking fountains	11B-211, 11B-602

BUILT-IN ELEMENTS	
Dining/work surfaces	11B-226, 11B-902.2
Benches	11B-903.2
Check out aisles	11B-904.3.2
Sales/service counters	11B-227, 11B-904.4.1
Food service lines	11B-904.5.1
Accessible sinks	11B-212, 11B-606
MISCELLANEOUS ELEMENTS	
Fire alarm systems: visible alarms	11B-215, 11B-702
Assistive Listening Systems	11B-219, 11B-706
ATMs, POS Machines, Fare Machines	11B-220, 11B-707
Windows	11B-229
Exercise Machines and Equipment	11B-236
Dressing, Fitting, and Locker Rooms	11B-222
Assembly areas: companion seats; wheelchair seats; semi-ambulant seats	11B-221, 11B-802
Storage	11B-225, 11B-811
Signs	11B-216, 11B-703
Variable Message Systems (July 2015)	11B-703.8
Exit Signs	CBC Section 1007.6
Areas of Rescue	CBC Chapter 10
Telephones and TTYs	11B-217, 11B-704
Vending Machines, Mail Boxes, Change Machines	11B-228
Play Areas	11B-240, 11B-1008
Swimming Pools, Wading Pools, and Spas	11B-242, 11B-1009
Sauna and Steam Rooms	11B-241, 11B-612

Please note: this is not an exhaustive list of the elements and spaces required to be accessible per the 2013 California Building Code. Items to be inspected for compliance if provided, include but are not limited to: outdoor developed areas, bus shelters, amusement rides, recreational boating facilities, fishing piers and platforms, golf and miniature golf facilities, and shooting facilities with firing positions.

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U.S. Department of Justice
Civil Rights Division
Disability Rights Section

U.S. Department of Transportation
Federal Highway Administration

Department of Justice/Department of Transportation Joint Technical Assistance[1] on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way. An important part of this requirement is the obligation whenever streets, roadways, or highways are *altered* to provide curb ramps where street level pedestrian walkways cross curbs.[2] This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with disabilities.

An alteration is a change that affects or could affect the usability of all or part of a building or facility.[3] Alterations of streets, roads, or highways include activities such as reconstruction, rehabilitation, *resurfacing*, widening, and projects of similar scale and effect.[4] Maintenance activities on streets, roads, or highways, such as filling potholes, are not alterations.

Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices. Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination; some people with disabilities may simply choose not to take this risk and will not venture out of their homes or communities.

Because resurfacing of streets constitutes an alteration under the ADA, it triggers the obligation to provide curb ramps where pedestrian walkways intersect the resurfaced streets. See Kinney v. Yerusalim, 9 F 3d 1067 (3rd Cir. 1993). This obligation has been discussed in a variety of technical assistance materials published by the Department of Justice beginning in 1994.[5] Over the past few years, state and local governments have sought further guidance on the scope of the alterations requirement with respect to the provision of curb ramps when streets, roads or highways are being resurfaced. These questions have arisen largely due to the development of a variety of road surface treatments other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt. Public entities have asked the Department of Transportation and the Department of Justice to clarify whether particular road surface treatments fall within the ADA definition of alterations, or whether they should be considered maintenance that would not trigger the obligation to provide curb ramps. This Joint Technical Assistance addresses some of those questions.

Where must curb ramps be provided?

Generally, curb ramps are needed wherever a sidewalk or other pedestrian walkway crosses a curb. Curb ramps must be located to ensure a person with a mobility disability can travel from a sidewalk on one side of the street, over or through any curbs or traffic islands, to the sidewalk on the other side of the street. However, the ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use. Nor are curb ramps required in the absence of a curb, elevation, or other barrier between the street and the walkway.

When is resurfacing considered to be an alteration?

Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Examples include, but are not limited to the following treatments or their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.

What kinds of treatments constitute maintenance rather than an alteration?

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road. Some examples of the types of treatments that would normally be considered maintenance are: painting or striping lanes, crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub sealing, joint crack seals, joint repairs, dowel bar retrofit, spot high-friction treatments, diamond grinding, and pavement patching. In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.

What if a locality is not resurfacing an entire block, but is resurfacing a crosswalk by itself?

Crosswalks constitute distinct elements of the right-of-way intended to facilitate pedestrian traffic. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.

July 8, 2013

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1 The Department of Justice is the federal agency with responsibility for issuing regulations implementing the requirements of title II of the ADA and for coordinating federal agency compliance activities with respect to those requirements. Title II applies to the programs and activities of state and local governmental entities. The Department of Justice and the Department of Transportation share responsibility for enforcing the requirements of title II of the ADA with respect to the public right of way, including streets, roads, and highways.

2 See 28 CFR 35.151(*i*)(1) (Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway) and 35.151(i)(2) (Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways).

3 28 CFR 35.151(b)(1).

4 2010 ADA Accessibility Standards, section 106.5.

5 See 1994 Title II Technical Assistance Manual Supplement, Title II TA Guidance: The ADA and City Governments: Common Problems; and ADA Best Practices Tool Kit for State and Local Governments: Chapter 6, Curb Ramps and Pedestrian Crossings under Title II of the ADA, available at ada.gov.

Glossary of Terms for DOJ/DOT Joint Technical Assistance on the ADA Title II Requirements to Provide Curb Ramps When Streets Roads or Highways are Altered Through Resurfacing

This glossary is intended to help readers understand certain road treatments referenced on page 2 of the DOJ/FHWA Joint Technical Assistance on the ADA Title II Requirements to Provide Curb Ramps When Streets Roads or Highways are Altered Through Resurfacing. The definitions explain the meaning of these terms from an engineering perspective and are provided in the order in which they appear in the Technical Assistance document.

Treatments that are considered alterations of the road surface

Reconstruction – Reconstruction refers to removing all or a significant portion of the pavement material and replacing it with new or recycled materials. This may include full-depth reclamation, where the pavement surface is demolished in place and new pavement surface is applied. In addition, reconstruction may also include grinding up a portion of the pavement surface, recycling it and placing it back, and then adding a wearing surface, such as in cold in-place asphalt recycling. Reconstruction often includes widening or geometrical changes to the roadway profile.

Rehabilitation - Rehabilitation refers to significant repairs made to a road or highway surface, including activities such as full slab replacement, filling voids under slabs (slabjacking), widening, and adding additional structural capacity.

Open-graded surface course – Open-graded surface course, also known as "open-graded friction course," involves a pavement surface course that consists of a high-void, asphalt concrete mix that permits rapid drainage of rainwater through the course and off the shoulder of the road. The mixture consists of either Polymer-modified or rubber-modified asphalt binder, a large percentage of one-sized coarse aggregate, and a small amount of fibers. This treatment prevents tires from hydroplaning and provides a skid-resistant pavement surface with significant noise reduction.

Microsurfacing – Microsurfacing involves spreading a properly proportioned mixture of polymer modified asphalt emulsion, mineral aggregate, mineral filler, water, and other additives, on a paved surface. Microsurfacing differs from slurry seal in that it can be used on high volume roadways to correct wheel path rutting and provide a skid resistant pavement surface.

Thin lift overlays – Thin lift overlays are thin applications of mixtures of hot mix asphalt. Thin lift overlays may also require some milling along curbs, manholes, existing curb cuts, or other road structures to assure proper drainage and cross slopes.

Cape seal – A cape seal is a thin surface treatment constructed by applying a slurry seal or microsurfacing to a newly constructed chip seal. It is designed to be an integrated system where the primary purpose of the slurry is to fill voids in the chip seal.

In-place asphalt recycling - In-place asphalt recycling is a process of heating and removing around 1-2 inches of existing asphalt and remixing the asphalt with the addition of a binder additive and possible aggregate to restore the wearing surface for placement and compaction. All of this is performed in a train of equipment.

Treatments that are considered maintenance of the road surface

Crack filling and sealing – Crack filling and sealing involves placing elastomeric material directly into cracks in pavement.

Surface sealing - Surface sealing involves applying liquid sealant to pavement surface in order to stop water penetration and/or reduce oxidation of asphalt products. Sand is sometimes spread over liquid to absorb excess material.

Chip seals – Chip Seals involve placing graded stone (chips) on liquid emulsified asphalt sprayed on pavement surface. The surface is rolled to enable seating of chips.

Slurry seal – Slurry seals involve spraying a mixture of slow setting emulsified asphalt, well graded fine aggregate, mineral filler, and water on the pavement surface. It is used to fill cracks and seal areas of old pavements, to restore a uniform surface texture, to seal the surface to prevent moisture and air intrusion into the pavement, and to improve skid resistance.

Fog seals – Fog seals are a type of surface sealing.

Scrub sealing – Scrub sealing is type of surface sealing

Joint crack seals – Joint crack seals are usually associated with concrete pavement. This work consists of routing and cleaning existing cracks and joints and resealing to prevent water and non-compressibles from entering into the pavement joints and subgrade materials.

Joint repairs – Joint repairs are usually associated with concrete pavement. This work consists of selectively repairing portions of the pavement where the slabs are generally in good condition, but corners or joints are broken. The depth of the patch could be full depth or partial depth.

Dowel retrofit – Dowel retrofits are usually associated with concrete pavement. This work involves the installation of dowel bars connecting slabs in existing pavements. Pavement with dowel bar retrofits can have life extensions of as much as 20 years. Its application is almost exclusively on high-speed Interstate highways.

Spot high-friction treatments – Spot high-friction treatments involve using epoxy based resin liquids as a binder for an aggregate with high-friction properties. These are used in locations where drivers are frequently braking and the pavement surface has less resistance to slipping.

Diamond grinding – Diamond grinding involves using a gang saw to cut grooves in the pavement surface to restore smoothness and eliminate any joint faulting.

Pavement patching – Pavement patching involves selectively repairing portions of the pavement where the slabs are generally in good condition, but corners or joints are broken. The depth of the patch could be full depth or partial depth.

July 8, 2013

Guidance on Use of the International Symbol of Accessibility Under the Americans with Disabilities Act and the Architectural Barriers Act
March 27, 2017

The U.S. Access Board provides the following guidance on use of the International Symbol of Accessibility (ISA) under the Americans with Disabilities Act (ADA) and the Architectural Barriers Act (ABA). This guidance explains how use of a symbol other than the ISA may impact compliance with standards issued under the ADA and the ABA.

The International Symbol of Accessibility (ISA)

Created in 1968 through a design competition by Rehabilitation International and adopted by the International Organization for Standardization (ISO), the ISA has served as a global icon for accessibility for almost 50 years. The ISO is an independent, non-governmental organization that represents over 160 national standard-setting entities and develops voluntary, consensus-based, international standards. As part of an ISO standard (ISO 7001 Graphic Symbols – Public Information Symbols), the ISA reflects considerable analysis by, and the consensus of, an international collection of technical experts.

ISA (1968)

The ISA continues to be recognized worldwide as a symbol identifying accessible elements and spaces. Standards issued under the ADA and ABA Standards reference and reproduce the ISA to ensure consistency in the designation of accessible elements and spaces. Uniform iconography promotes legibility, especially for people with low vision or cognitive disabilities. In addition, various codes and standards in the U.S. also require use of the ISA. They include the International Codes Council's *International Building Code* and *ICC A117.1 Standard for Accessible and Usable Buildings and Facilities*, the National Fire Protection Association's *NFPA 5000 Building Construction and Safety Code* and *NFPA 170 Standard for Fire Safety and Emergency Symbols,* and the Federal Highway Administration's *Manual on Uniform Traffic Control Devices for Streets and Highways*, among others.

Use of the ISA Under the ADA

The ADA Standards apply nationwide to places of public accommodation, commercial facilities, and state and local government facilities. Promulgated by the Department of Justice (28 CFR Parts 35 and 36) and the Department of Transportation (49 CFR Part 37), the ADA Standards require use of the ISA to label or provide direction to certain accessible spaces and elements, including parking spaces, entrances, toilet and bathing facilities, and check-out aisles (§216 and §703.7.2.1). In addition, ADA Standards for Transportation Vehicles (49 CFR Part 38)

implemented by the Department of Transportation (DOT) require that the ISA be used to designate accessible vehicles.

A symbol other than the ISA will not comply with the ADA Standards unless it satisfies the "equivalent facilitation" provision (§103). This provision allows alternatives to prescribed requirements if they result in "substantially equivalent or greater accessibility and usability." The burden of proof in demonstrating equivalent facilitation rests with the covered entity in the event of a legal challenge. Under DOT's ADA Standards, certain entities responsible for transportation facilities and systems, as well as manufacturers of products and vehicles used in transportation systems, can request a determination of equivalent facilitation from DOT as outlined in its ADA regulations (§37.7 and §37.9). If a court — or DOT, where DOT's ADA Standards are being applied — determined that an alternate symbol did not provide "equivalent facilitation," that symbol would not be permitted.

Use of the ISA Under the ABA

Standards issued under the ABA apply to facilities designed, built, or altered with federal funds or leased by federal agencies. The ABA Standards are implemented by the Department of Defense, the Department of Housing and Urban Development, the General Services Administration, and the U.S. Postal Service. Like the ADA Standards, these standards mandate use of the ISA to label or provide direction to certain accessible spaces and elements (§F216 and §703.7.2.1).

Any departure from the ABA Standards, including the referenced ISA, requires a waiver or modification (§F103). The agencies that implement the ABA Standards have authority to grant modifications and waivers on a case-by-case basis where "clearly necessary." Modifications and waivers are rare and are usually considered only in unique circumstances that make compliance with certain provisions exceptionally problematic. The Access Board is responsible for making sure that modifications and waivers are based on findings of fact and are consistent with the ABA.

Summary

Use of a symbol other than the ISA is permitted under the ADA Standards only if it satisfies the equivalent facilitation provision and under the ABA Standards only if a waiver or modification is issued. Otherwise, where the ADA or ABA Standards require accessible spaces or elements to be identified by the ISA, the ISA must be used even where a state or local code or regulation specifies a different symbol. Those who are interested in implementing an alternative symbol of accessibility are encouraged to contact the ISO's Technical Committee 145 on Graphic Symbols which maintains the graphic symbol standards.

Useful Website Addresses	
Division of the State Architect, California Department of General Services Division develops accessibility, structural safety, and historical building codes and standards utilized in various public and private buildings throughout the State of California.	http://www.dgs.ca.gov/dsa/Home.aspx
California Building Standards Commission Agency responsible for reviewing and approving building standards proposed and adopted by state agencies.	http://www.bsc.ca.gov/
California Department of Housing and Community Development Provides leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. Promulgates California Building Code, Chapter 11A.	http://www.hcd.ca.gov/
California Commission on Disability Access Promotes disability access in California through dialogue and collaboration with stakeholders including but not limited to the disability and business community and all levels of government.	http://www.ccda.ca.gov/
Certified Access Specialist Institute CASI is a resource for Certified Access Specialists and the public. Associate memberships are available for those who are not yet certified.	http://casinstitute.org/

Useful Website Addresses	
United States Department of Justice, Civil Rights Division Provides information and technical assistance on the Americans with Disabilities Act.	http://www.ada.gov/
United States Access Board Develops accessibility guidelines and standards for the built environment, transportation, communication, medical diagnostic equipment, and information technology.	http://www.access-board.gov/
United States Department of Housing and Urban Development Agency responsible for enforcement of Federal Fair Housing Laws.	http://portal.hud.gov/hudportal/HUD
Fair Housing Accessibility First Supported by HUD to promote compliance with the Fair Housing Act design and construction requirements.	http://www.fairhousingfirst.org/
ada National Network Information, guidance and training on the Americans with Disabilities Act.	http://adata.org/
Accessibility Online Training program coordinated by the ADA National Network and the US Access Board. Provider of online training webinars.	http://www.accessibilityonline.org/

DSA – New Access Regulations for EVCS

University of California – Access Compliance Training

September 25 and 28th, 2017

DSA
DIVISION OF THE STATE ARCHITECT
DEPARTMENT OF GENERAL SERVICES

Access California

New Accessibility Regulations for Electric Vehicle Charging Stations (EVCS)

Effective January 1, 2017

EV Charging
California Goals

Executive Order B-16-2012:

- By 2015, California's major metropolitan areas will be able to accommodate ZEVs through infrastructure plans.
- By 2020, California's ZEV infrastructure will be able to support up to 1 million vehicles.
- By 2025, 1.5 million ZEVs will be on California's roadways with easy access to infrastructure.

DSA
DIVISION OF THE STATE ARCHITECT
DEPARTMENT OF GENERAL SERVICES

EV Charging Infrastructure

2016 CALGreen Code

- Requires EV Infrastructure and EV Spaces for **new**:
  - Multifamily residential facilities
  - Nonresidential facilities
- EV Space: A space intended for future installation of EV charging equipment
- No requirement for EV spaces to be constructed or available until EV chargers are installed for use

DSA DIVISION OF THE STATE ARCHITECT DEPARTMENT OF GENERAL SERVICES

EV Charging

Definitions in CALGreen

Chapter 2 definitions in CALGreen that apply to EV charging:

- ELECTRIC VEHICLE (EV)
- ELECTRIC VEHICLE (EV) CHARGER
- ELECTRIC VEHICLE CHARGING SPACE (EV SPACE)
- ELECTRIC VEHICLE CHARGING STATION (EVCS)
- ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE)

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EV Charging Infrastructure

Multifamily Residential (1 of 3)

- **Mandatory Measures**
  - Applies to new facilities of 17 dwelling units or more
  - EV spaces are calculated as 3% of parking spaces provided
  - At least one EV space shall be in a common use area and available for use by all residents

- **Voluntary Measures**: Tier 1 and Tier 2
  - EV spaces are calculated as 5% of parking spaces provided

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EV Charging Infrastructure

Multifamily Residential (2 of 3)

Mandatory Measures for infrastructure:

- A listed raceway capable of accommodating a 208/240-volt dedicated branch circuit; minimum trade size 1
- Raceway shall originate at the main service or subpanel and terminate in an enclosure in close proximity to the proposed EV space
- Service panel and/or subpanel shall provide capacity to install a 40-amp minimum dedicated branch circuit

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EV Charging Infrastructure

Multifamily Residential (3 of 3)

EV spaces when EV chargers are installed

- In private multifamily residential facilities:
  - EV space shall be located adjacent to an accessible parking space with shared access aisle, or
  - EV space shall be accessible according to the specified requirements in CALGreen and located on an accessible route to the building
- In multifamily public housing facilities, EV spaces shall be provided in a public use and/or common use area and accessible according to California Building Code (CBC) Chapter 11B scoping and technical requirements

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DEPARTMENT OF GENERAL SERVICES

EV Charging Infrastructure

Nonresidential (1 of 3)

2016 CALGreen EV Spaces Required

Parking Provided	Mandatory Measures: EV Spaces Required	Voluntary Measures: EV Spaces Tier 1	Voluntary Measures: EV Spaces Tier 2
0 – 9	0	0	1
10 – 25	1	2	2
26 – 50	2	3	4
51 – 75	4	5	6
76 – 100	5	7	9
101 – 150	7	10	12
151 – 200	10	14	17
201 and over	6% of spaces	8% of spaces	10% of spaces

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EV Charging Infrastructure

Nonresidential (2 of 3)

Mandatory Measures for infrastructure:

- Type and location of EVSE
- Raceway shall originate at the main service or subpanel and terminate in an enclosure in close proximity to the proposed charging equipment
- Design shall be based upon 40-amp minimum branch circuits and have sufficient capacity to support future EVSE and be able to charge all required EVs at full rated amperage

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EV Charging Infrastructure

Nonresidential (3 of 3)

Design of EVCS (EV space and EV charger)

- EVCS shall be accessible according to CBC Chapter 11B
- Use CBC 11B-228.3 provides scoping requirements to determine the required number of accessible EVCS
- Design of EVCS shall be according to CBC 11B-812 technical requirements for the three types of accessible EV spaces: van, standard, and ambulatory accessible

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DEPARTMENT OF GENERAL SERVICES

EV Charging

Facility Planning

Site planning accessibility considerations include:

- Location of EVCS proximity to electrical service and EVSE
- Location of EVCS due to site topography in consideration of the requirements for:
  - Accessible route from the EVCS to the building entrance
  - Accessible route from EVCS to the site boundary (where not serving a particular building or facility)

DSA DIVISION OF THE STATE ARCHITECT DEPARTMENT OF GENERAL SERVICES

EV Charging

Federal Accessibility Requirements (1 of 3)

Private Multifamily Residential Facilities

- Facilities covered by the Fair Housing Act are required to have public and common use areas that are readily accessible and usable by people with disabilities.
  - Fair Housing Act requires accessible and usable public and common use facilities to be on an accessible route from covered dwelling units
  - Although required to be accessible, no requirements specific to EVCS are specified in federal standards; guidance requires using ANSI A117.1 accessibility standards

DSA DIVISION OF THE STATE ARCHITECT DEPARTMENT OF GENERAL SERVICES

EV Charging

Federal Accessibility Requirements (2 of 3)

**State and Local Government Facilities,
Public Accommodations, and Commercial Facilities,
under the Americans with Disabilities Act (ADA)**

- If available for use by the general public, then the EVCS must be accessible to individuals with disabilities
  - ADA Title II requires access to programs and services; such as EVCS provided by a state or local government or EVCS provided in housing by, for, or on behalf of a public entity
  - ADA Title III requires access to goods and services, such as EVCS provided by privately owned public accommodations

DSA DIVISION OF THE STATE ARCHITECT DEPARTMENT OF GENERAL SERVICES

Federal Accessibility Requirements (3 of 3)

**State and Local Government Facilities,
Public Accommodations, and Commercial Facilities,
under the Americans with Disabilities Act (ADA)**

- No federal accessibility standards specific to the design of EVCS, even though accessibility to EVCS is required.
- Legal precedents specify that lack of explicit scoping or technical requirements does not relieve ADA Title II and Title III entities from obligation to provide access.

DSA DIVISION OF THE STATE ARCHITECT DEPARTMENT OF GENERAL SERVICES

EV Charging

California Accessibility to EVCS (1 of 3)

Public Housing, Public Accommodations, Commercial Facilities, and Public Buildings covered by the California Building Code (CBC)

California determines that in order to ensure access to EV charging, regulations were needed. DSA convenes a working group of stakeholders to address accessibility concerns regarding EVCS, from which accessibility regulations in the CBC would be developed. By providing specific scoping and technical requirements, jurisdictional agencies could review for compliance to ensure access to new EVCS was provided.

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California Accessibility to EVCS (2 of 3)

EVCS Working Group of Stakeholders included the following:

- Individuals with disabilities
- Disability advocates
- Access professionals
- Building officials
- Architects
- State agencies
- EV charger manufacturers
- Electric utility companies
- Building industry representatives
- EV advocates

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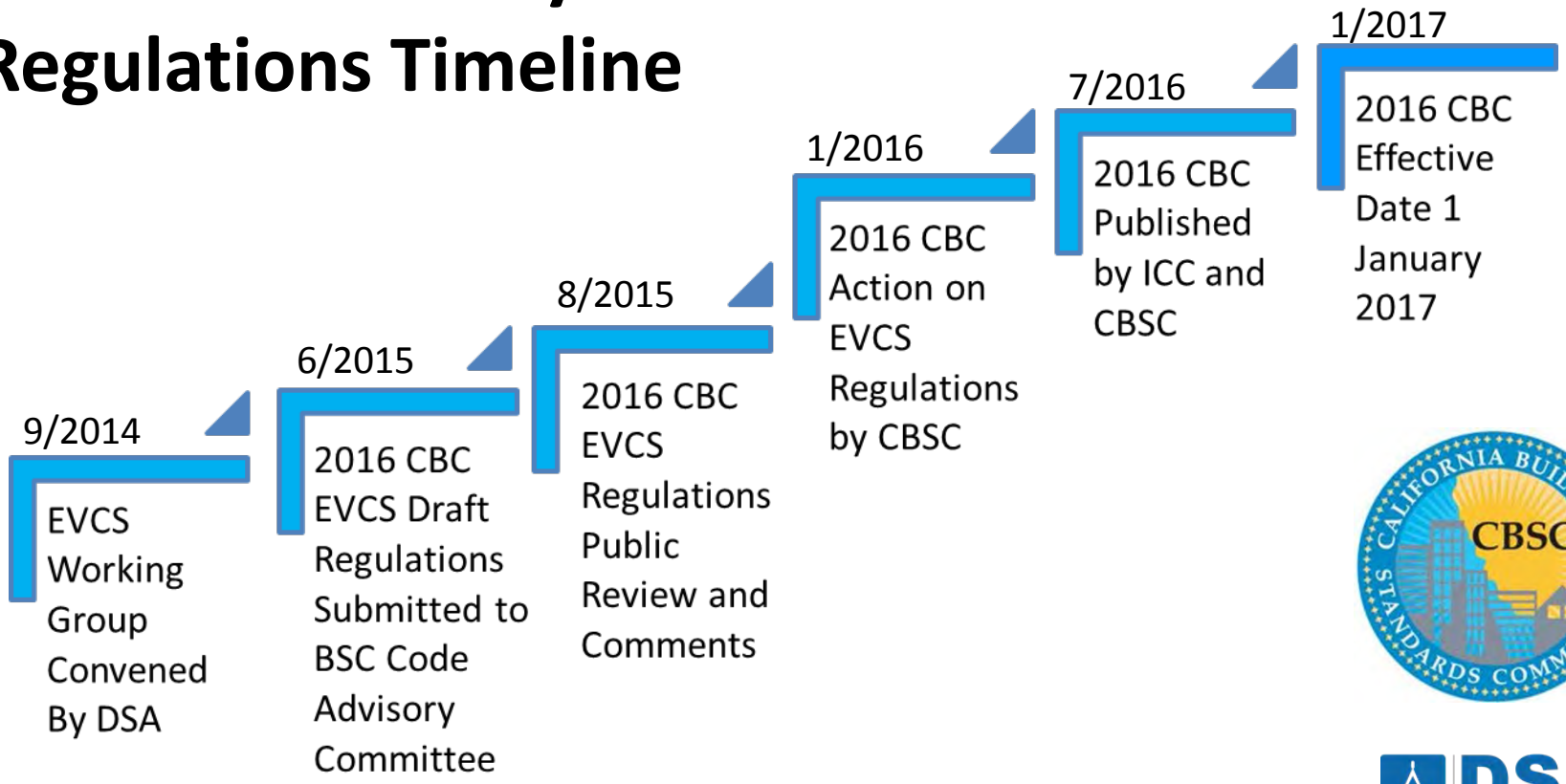
EV Charging

California Accessibility to EVCS (3 of 3)

EVCS Accessibility Regulations Timeline



EV Charging

CBC Accessibility Regulations

California's accessibility regulations for EVCS in **Public Housing, Public Accommodations, Commercial Facilities, and Public Buildings** are in the 2016 California Building Code

Effective January 2017.

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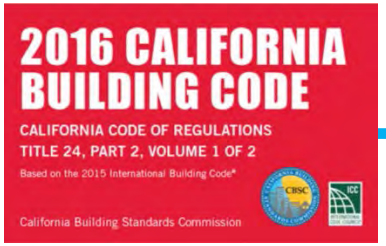

EV Charging Stations

CBC Accessibility Regulations

Definitions applicable to EVCS

- Chapter 2, Section 202 Definitions

Scoping: What type and how many?

- Chapter 11B, Division 2
  Section 11B-228.3 Electric Vehicle Charging Stations

Technical: Where located and how to make accessible?

- Chapter 11B, Division 8
  Section 11B-812 Electric vehicle charging stations

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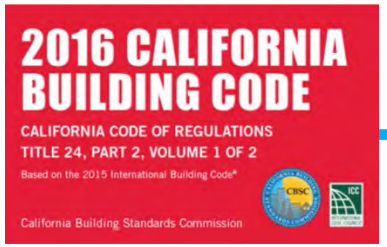

EV Charging Stations

CBC Definitions

Chapter 2 definitions in CBC that apply to EV charging:

- DRIVE UP ELECTRIC VEHICLE CHARGING STATION
- ELECTRIC VEHICLE (EV)
- ELECTRIC VEHICLE (EV) CHARGER
- ELECTRIC VEHICLE CHARGING SPACE (EV SPACE)
- ELECTRIC VEHICLE CHARGING STATION (EVCS)
- ELECTRIC VEHICLE CONNECTOR (EV CONNECTOR)

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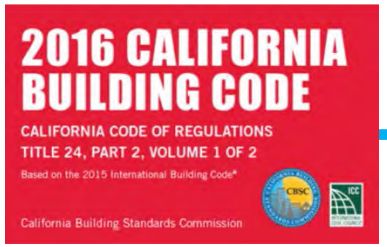

EV Charging Stations

Understanding Scoping (1 of 3)

CBC Scoping provisions are consistent with the following guidance provided by the United States Access Board:

- An EV does not need to charge every time it's parked; therefore public and common use EVCS are charging spaces and not parking spaces.
- While an EV needs to be in a parked state to charge; charging, and not parking, is the primary purpose of an EVCS.
- EV **charging is a service** provided by the facility owner or public entity, and therefore must be accessible to individuals with disabilities.

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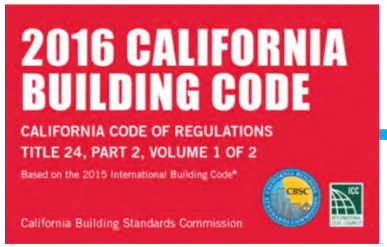

EV Charging Stations

Understanding Scoping (2 of 3)

- Local zoning codes may vary, and some jurisdictions may permit a facility owner to meet parking requirements with a combination of parking and charging stations; however, the accessibility requirements to parking and EVCS under the CBC are separate and different.
- Scoping provisions for parking are in CBC 11B-208. Scoping provisions for EVCS are in CBC 11B-228.3.
- Technical provisions for parking are in CBC 11B-502. Technical provisions for EVCS are in CBC 11B-812.

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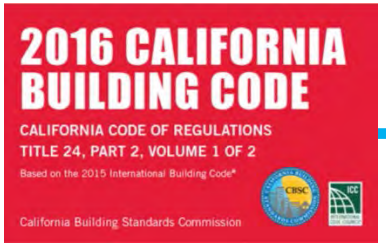

EV Charging Stations

Understanding Scoping (3 of 3)

Public Housing, Public Accommodations, Commercial Facilities, and Public Buildings covered by the California Building Code (CBC)

- Accessibility regulations do not require EVCS to be installed. As previously stated, CALGreen requires EV infrastructure to be provided and the EVCS to be planned, but not installed.
- When EVCS are installed, accessible EVCS shall be provided for common use/public use in accordance with the scoping and technical provisions.

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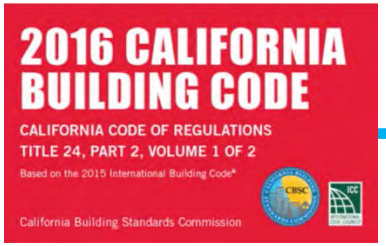

EV Charging Stations

CBC 11B-228.3 Scoping (1 of 4)

Two exceptions to providing accessible EVCS

- EVCSs not available to general public and intended for use by a designated vehicle or driver (example: public or private fleet vehicles and EVCS assigned to an employee)
- In public housing facilities, EVCS intended for use by an EV owner or operator at their residence (space can be provided and assigned to the EVCS owner)

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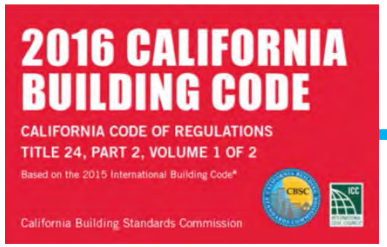

EV Charging Stations

CBC 11B-228.3 Scoping (2 of 4)

TABLE 11B-228.3.2.1

Total Number of EVCS at a Facility[1]	Minimum Number (by type of EVCS Required to Comply with Section 11B-812:[1] Van Accessible	Minimum Number (by type of EVCS Required to Comply with Section 11B-812:[1] Standard Accessible	Minimum Number (by type of EVCS Required to Comply with Section 11B-812:[1] Ambulatory
1 to 4	1	0	0
5 to 25	1	1	0
26 to 50	1	1	1
51 to 75	1	2	2
76 to 100	1	3	3
101 and over	1, plus 1 for each 200, or fraction thereof, over 100	3, plus 1 for each 60, or fraction thereof, over 100	3, plus 1 for each 50, or fraction thereof, over 100

[1] Where an EV charger can simultaneously charge more than one vehicle, the number of EVCS provided shall be considered equivalent to the number of electric vehicles that can be simultaneously charged.

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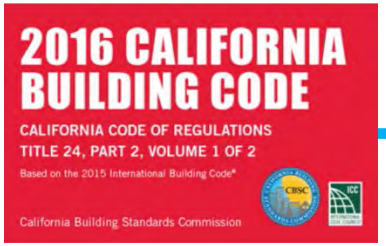

EV Charging Stations

CBC 11B-228.3 Scoping (3 of 4)

New Construction and Alterations of EVCS

- When new EVCS are added to a site with existing EVCS, the total number of new and existing EVCS is used to determine the number of accessible EVCS per Table 11B-228.3.2.1.
- Technical provisions apply only to new and altered EVCS; the CBC does not require existing EVCS to be altered to meet the new technical requirements.
- Operable parts on **all** new and altered EV chargers must comply with the requirements of CBC 11B-309.4.

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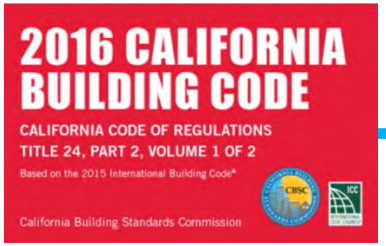

EV Charging Stations

CBC 11B-228.3 Scoping (4 of 4)

Table 11B-228.3.2.1. addresses four (4) types of accessible EVCS for determination on number/type per facility:

- Van Accessible
- Standard Accessible
- Ambulatory
- Drive-up

EVCS technical requirements are in CBC 11B-812.

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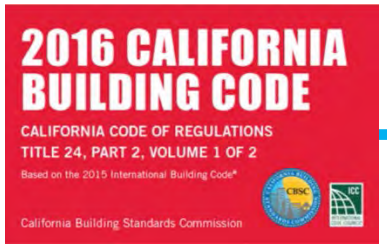

EV Charging Stations

CBC 11B-812 Technical (1 of 11)

Van accessible EV space

Similar configuration to van accessible parking space

- 12 feet (144 inches) minimum width
- 18 feet (216 inches) minimum length
- Access aisle 5 feet (60 inches) minimum width located on passenger side with head-in parking
- Surface marking 12" high letters “EV CHARGING ONLY”

9 feet stall/8 feet access aisle is not permitted for EV space

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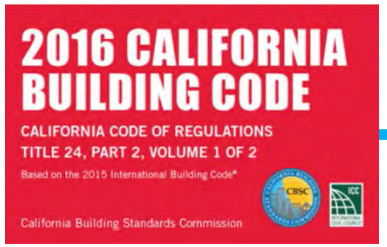

EV Charging Stations

CBC 11B-812 Technical (2 of 11)

Standard accessible EV space

Similar configuration to standard accessible parking space:

- 9 feet (108 inches) minimum width
- 18 feet (216 inches) minimum length
- Access aisle 5 feet (60 inches) minimum width located on passenger or driver side of EV space
- Surface marking 12" high letters “EV CHARGING ONLY”

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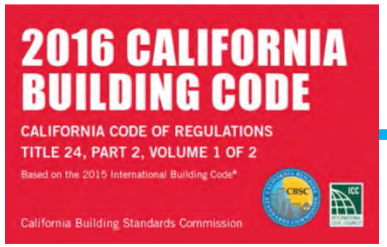

EV Charging Stations

CBC 11B-812 Technical (3 of 11)

Ambulatory accessible EV space

No comparable requirement in accessible parking

- 10 feet (120 inches) minimum width
- 18 feet (216 inches) minimum length
- No access aisle required
- Surface marking 12" high letters “EV CHARGING ONLY”

Additional width of space provides increased access for individuals with limited or temporary mobility challenges.

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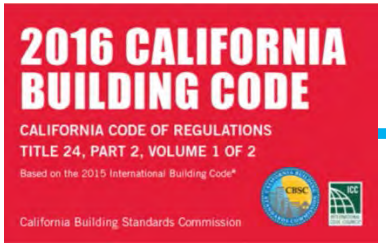

EV Charging Stations

CBC 11B-812 Technical (4 of 11)

Drive-up accessible EV space

Analogous to motor fuel pump island at filling stations

- 17 feet wide (204 inches)
- 20 feet long (240 inches)
- No access aisle required, and no surface markings to define space
- All drive-up EVCS must meet the specified accessibility requirements

Per Chapter 2 Definition, use of a drive-up accessible EV is limited to 30 minutes maximum.

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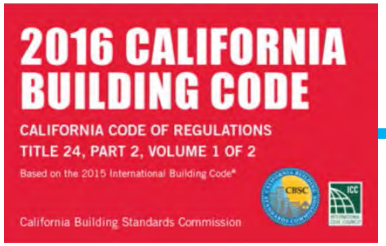

EV Charging Stations

CBC 11B-812 Technical (5 of 11)

Access aisle requirements

- Must extend to full length of EV space minimum
- Access aisle can be shared by two accessible EV spaces
- Painted borderline around the perimeter of the access aisle, hatch lines 36" on center maximum within, and “NO PARKING” in 12" high letters visible from the adjacent vehicular way
- Markings must contrast to vehicle surface, and the blue color required for identification of access aisles in accessible parking shall **not** be used.

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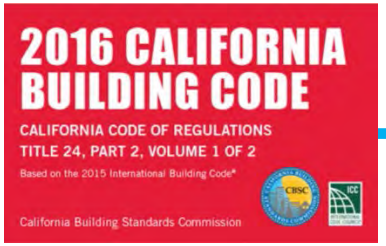

EV Charging Stations

CBC 11B-812 Technical (6 of 11)

Accessible route requirements

- An accessible route shall be provided connecting the EV space to the EV charger that serves it.
- EVCS shall be designed so accessible routes are not obstructed by cables or other elements.
- EVCS that serve a particular building or facility shall be located on an accessible route to an accessible entrance.
- Where EVCS do not serve a particular building or facility, EVCS shall be located on an accessible route to an accessible pedestrian entrance of the EV charging facility.

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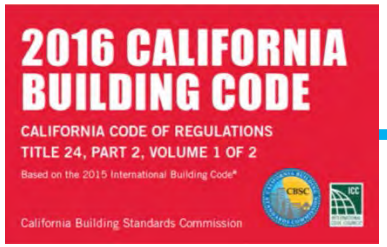

EV Charging Stations

CBC 11B-812 Technical (7 of 11)

EV Charger requirements

Operable parts and charging cord storage shall comply with requirements for:

- Clear floor space at EV charger
- Reach range requirements
- Operable parts requirements (EV connectors are not required to meet 5-pound activating force requirements)

Point-of-sale devices must comply with the required accessibility features.

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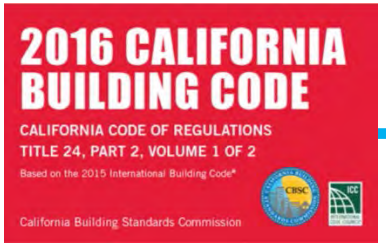

EV Charging Stations

CBC 11B-812 Technical (8 of 11)

EV Charger requirements

Location requirements:

- Adjacent to, and within the projected width of, the EV space it serves (if EV charger has one EV connector)
- Within the combined projected width of the EV spaces it serves (if EV charger has multiple EV connectors)
- Where EV space is parallel to vehicular way, EV charger shall be adjacent to, and 48" maximum from the head end or foot end of the EV space it serves

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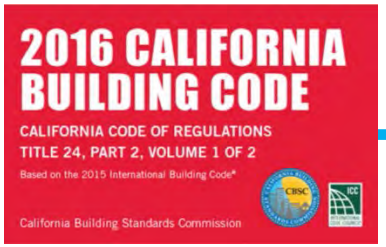

EV Charging Stations

CBC 11B-812 Technical (9 of 11)

Identification for accessibility

Installations of 1-4 EVCS

- No identification signs required
- While an accessible EV space is designed for accessibility, its use is available to everyone and not limited to those with access license plates or placards

Installations of 5-25 EVCS

- One van accessible EV space shall be identified with an ISA; the standard accessible EV space shall not be required to be identified with an ISA

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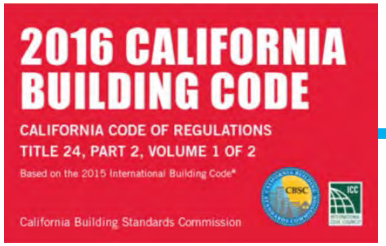

EV Charging Stations

CBC 11B-812 Technical (10 of 11)

Identification for accessibility

Installations of 26 or more EVCS

- All required van accessible and all required standard accessible shall be identified by an ISA

Ambulatory EVCS

- Not required to be identified with an ISA

Drive-up EVCS

- Not required to be identified with an ISA

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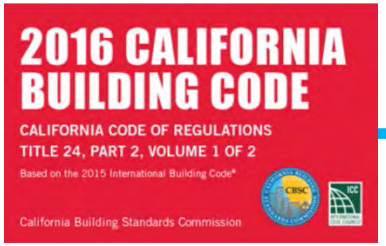

EV Charging Stations

CBC 11B-812 Technical (11 of 11)

Identification for accessibility

- ISA sign shall be reflectorized with a minimum area of 70 square inches
- Location of sign adjacent to EV space or at head end of EV space, mounted 60" AFF to bottom of sign, may be mounted on wall, or mounted 80" AFF if in accessible route
- When signs are required, and if EV space is van accessible, then a sign stating “van accessible” shall be provided

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EV Charging Stations

Time Limits for Charging

If properly signed per local ordinance, EV charging time limits can be applied to **all** users:

- Per the California Department of Motor Vehicles, EVCS are "zones reserved for special types of vehicles," in which right to park for unlimited periods of time does not apply.
- Vehicles displaying accessible license plates or placards may **not** park for unlimited periods of time in an accessible EVCS identified by an ISA where the length of time is restricted or metered.

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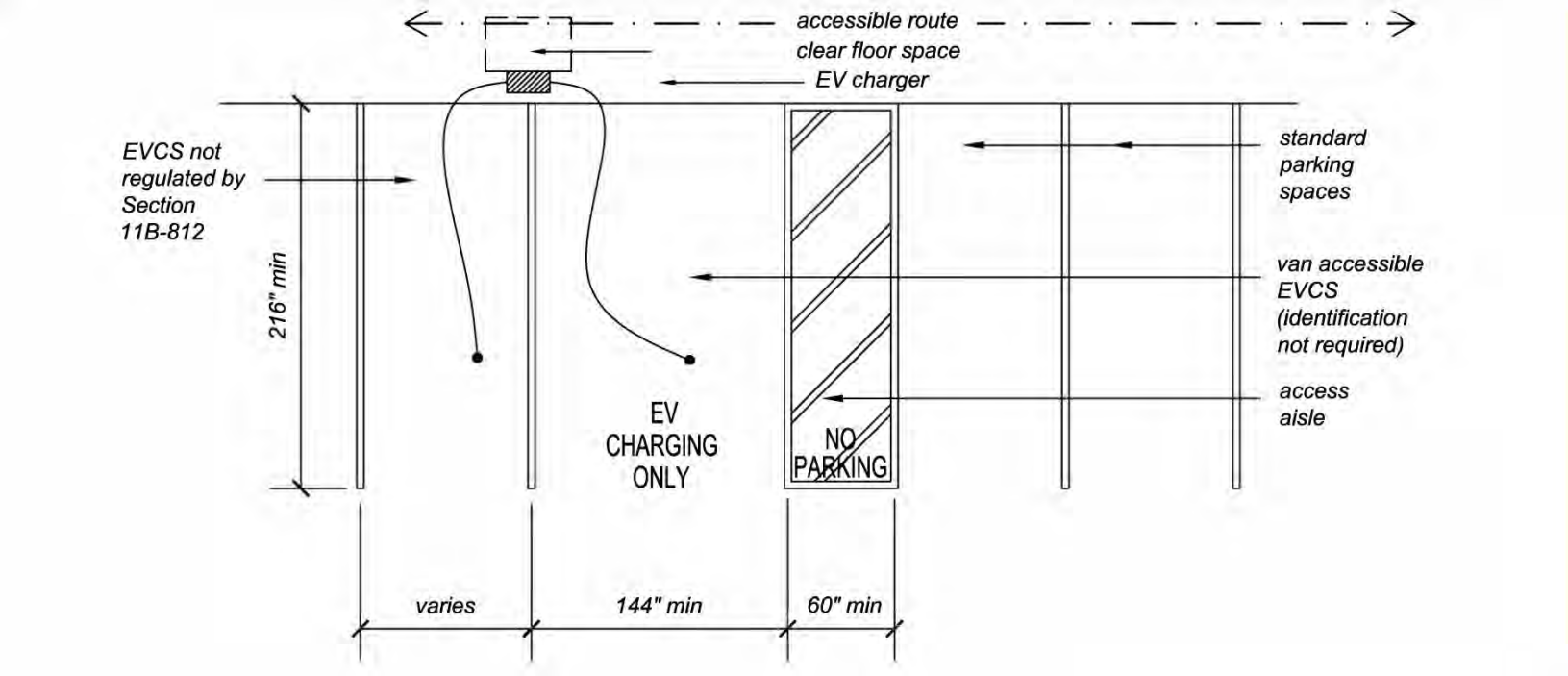
EV Charging Stations

Sample Layout (1 of 3)



Two EVCS: one van accessible EV spaces required

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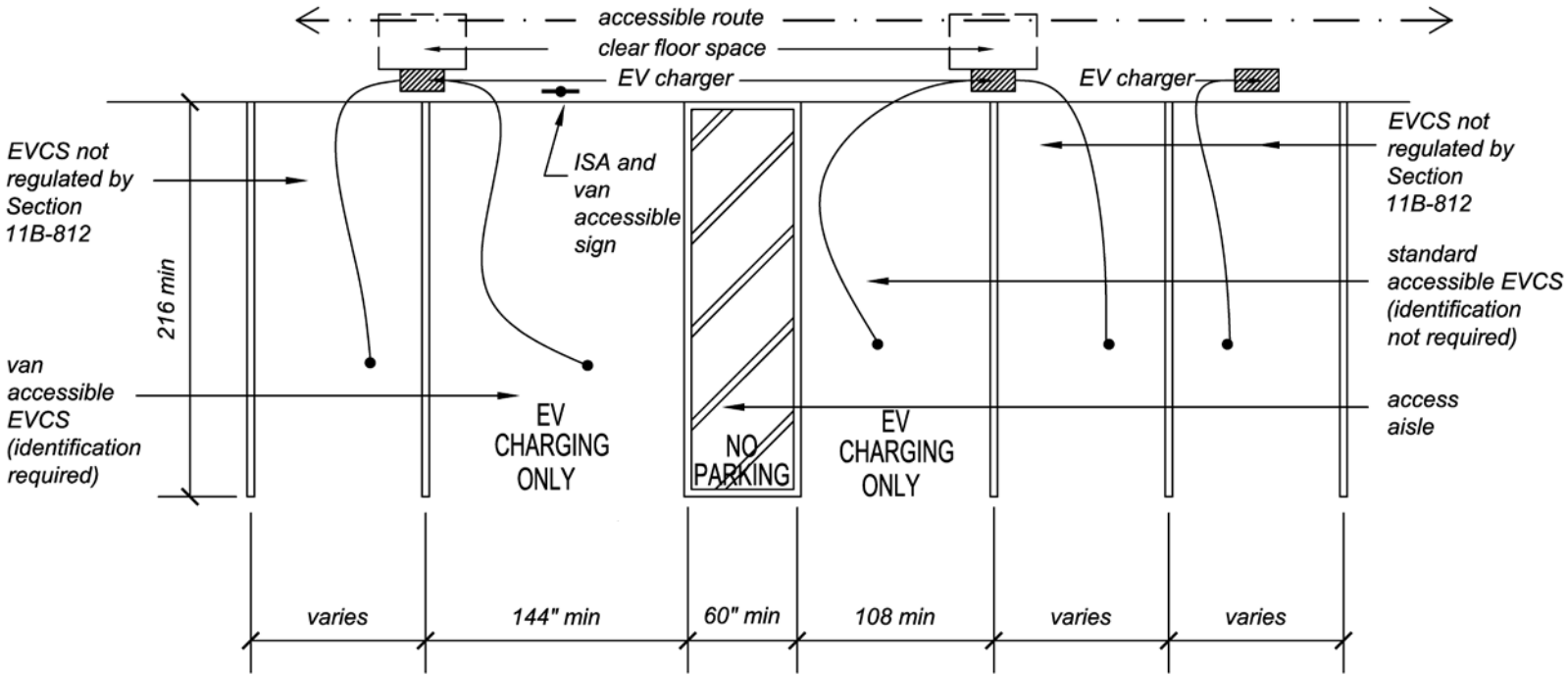
EV Charging Stations

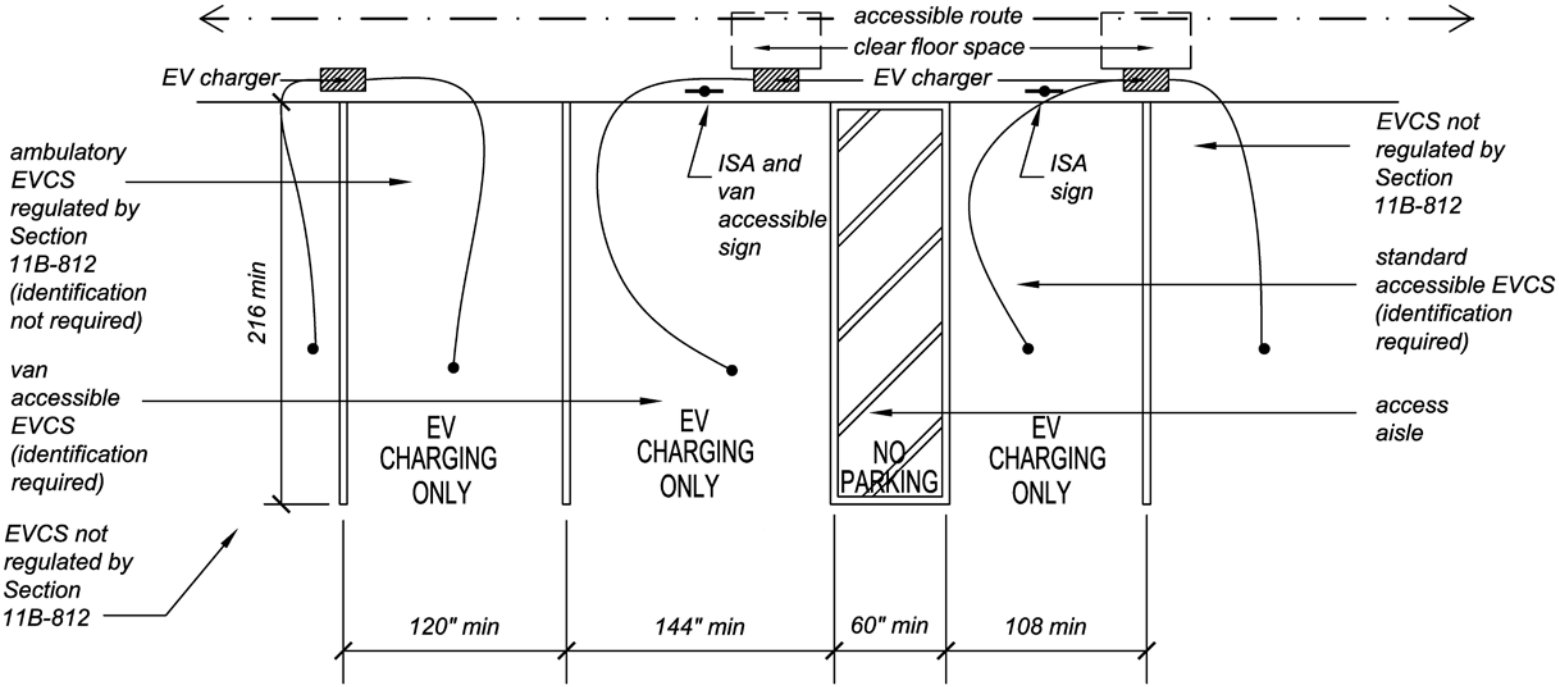
Sample Layout (2 of 3)



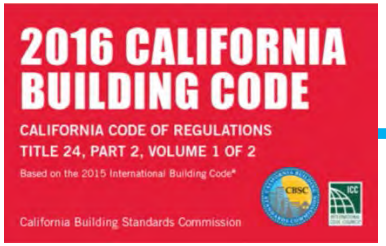
Five EVCS: two accessible EV spaces required

EV Charging Stations

Sample Layout (3 of 3)



26 EVCS: three accessible EV spaces required



EV Charging Stations

Alterations

An alteration, by definition in the CBC, is a change, addition or modification in construction, change in occupancy or use, or structural repair to an existing building or facility.

According to CBC 11B-202.4, when alterations or additions are made to existing buildings or facilities, an accessible "*path of travel*" to the specific area of alteration or addition shall be provided.

While installing EVCS is an electrical project, it is **not** considered exempt from *path-of-travel* requirements, because EVCS affect the "usability" of the facility.

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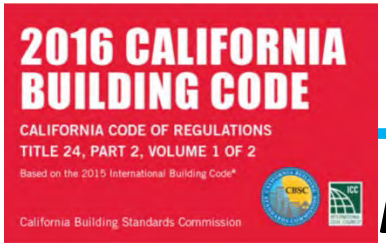

EV Charging Stations

Path of Travel Improvements (1 of 3)

The primary accessible *path of travel* (POT) includes the following elements serving the area of alteration:

- A primary entrance to the building or facility (including from site arrival points, by definition)
- Toilet and bathing facilities
- Drinking fountains
- Public telephones
- Signs (California requirement)

If POT is compliant, no additional work required.

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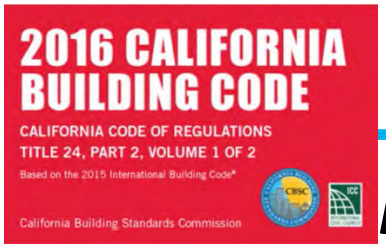

EV Charging Stations

Path of Travel Improvements (2 of 3)

CBC 11B-202.4 Exception 10:

- When installing new EVCS at existing facilities where vehicle fueling, charging, parking or storage is a primary function, POT improvements are limited to 20% of cost of work directly associated with the installation of EVCS. (example: EVCS in a parking structure when the parking structure does not serve a specific building)
- Alterations where installing new EVCS at existing facilities where vehicle fueling, charging, parking or storage is **not** a primary function; POT improvements are not required. (example: EVCS serving a specific building)

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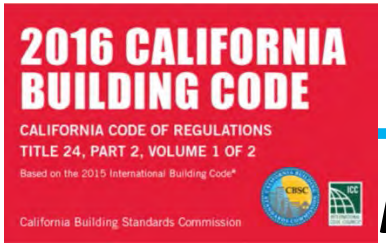

EV Charging Stations

Path of Travel Improvements (3 of 3)

CBC Scoping provisions are consistent with the following guidance provided by the United States Access Board:

- While an EV needs to be in a parked state to recharge; charging is the primary purpose of an EVCS. EVCS are not parking spaces; therefore, EVCS are not considered a "site arrival point."
- Other alteration projects on a site do not trigger an improvement to existing EVCS under CBC 11B-202.4 as a *path of travel* element.

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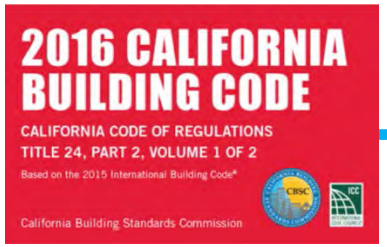

EV Charging Stations

EVCS Installations

Installations of EVCS in existing facilities may be affected by technical infeasibility, when applicable.

Unreasonable hardship does not apply to *path of travel* improvements triggered by EVCS installations in existing facilities, because *path of travel* improvements, when applicable, are already limited to 20% of the adjusted construction cost.

It can only be a *technically infeasible* to provide the required access to EVCS, when applicable. *Unreasonable hardship* can never be applied to providing the required access to EVCS.

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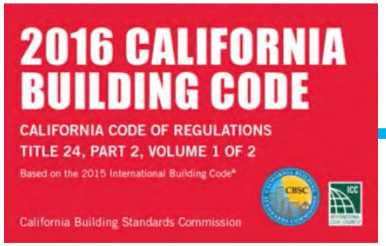

EV Charging Stations

Technical Infeasibility (1 of 2)

Technical infeasibility may apply to a new EVCS installation in an existing facility on a case-by-case basis.

Technically infeasible means an alteration of a building or a facility, that has little likelihood of being accomplished because the existing structural conditions require the removal or alteration of a load-bearing member that is an essential part of the structural frame, or because other existing physical or site constraints prohibit modification or addition of elements, spaces or features that are in full and strict compliance with the minimum requirements necessary to provide accessibility.

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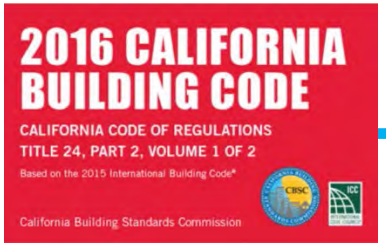

EV Charging Stations

Technical Infeasibility (2 of 2)

Providing the necessary accessibility to EVCS installations in existing facilities may be *technically infeasible* on a case-by-case basis. A finding of technical infeasibility requires a site-specific assessment of constraints or complications regarding the planned scope of work.

When *technically infeasible* to provide full compliance, the alteration shall provide equivalent facilitation or comply with the requirements to the maximum extent feasible.

Details of any finding of technical infeasibility shall be recorded and entered into the files of the enforcing agency.

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Please direct questions regarding this presentation to:

Division of the State Architect

Ida A. Clair AIA LEED AP CASp
Principal Architect
916.322.2490
ida.clair@dgs.ca.gov

DSA – Access Housing Regulations

University of California – Access Compliance Training

September 25 and 28th, 2017

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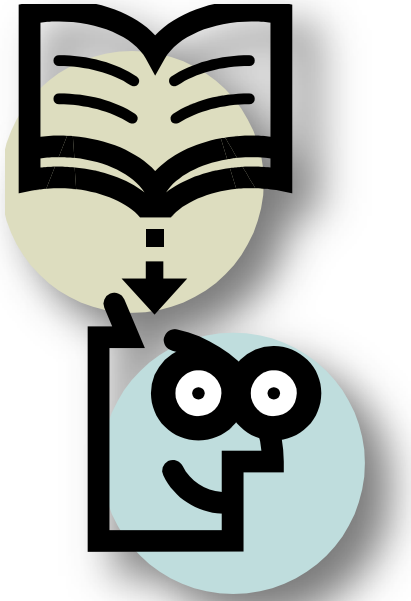
DSA ACADEMY

ACCESSIBLE HOUSING REGULATIONS, STANDARDS AND GUIDELINES

"Try not to have a good time… this is supposed to be educational."

-Charles Schulz



LEARNING OBJECTIVES

- Overview of Federal and State regulations, guidelines and standards for accessible housing.
- Understand how to analyze and apply the regulations for accessible public housing projects.
- Compare the various regulations for accessible housing facilities and assess the impact on design and construction.

Reference Materials

- HUD and DOJ Joint Statements and Resources
- Unruh Act
- Enlarged Flowcharts
- California Tax Credit Allocation Committee Projects – Chapter 11B Compliance
- Useful Website Addresses

Development of CBC for Public Housing

How did we get here?

- DSA is responsible by statute for developing regulations for accessible Public Housing
- Prior to 2013, DSA adopted all of Chapter 11A for access compliance with one exception for carriage units
- During the 2012 rulemaking cycle for the 2013 CBC, the decision was made by DSA to use the 2010 ADAS as model code

Development of CBC for Public Housing

How did we get here?, continued

- The 2010 ADAS regulates housing subject to HUD Section 504 regulations and housing not subject to HUD Section 504 regulations
- The 2010 ADAS clarified the regulations for housing at a place of education
- To align the 2013 CBC with the 2010 ADAS and the prior adoption of Chapter 11A, DSA took the following action …

Development of CBC for Public Housing

How did we get here?, continued

- DSA carried forward the scoping from Chapter 11A for the number of ground floor units required to provide accessibility and included the provisions in Chapter 11B
- DSA adopts Division IV in Chapter 11A for the characteristics of accessible dwelling units with adaptable features
- DSA adopts Division V in Chapter 11A for the Site Impracticality Test

Development of CBC for Public Housing

How did we get here?, continued

- Chapter 11B now includes the scoping for the number of mobility units, communication units and ground floor accessible units with adaptable features
- Additional amendments were adopted to clarify the provisions for public housing and repeal the adoption of sections that reference HUD Section 504

That brings us to today!

Before You Put Pencil to Paper!

Federal Agencies, Regulations and Guidelines

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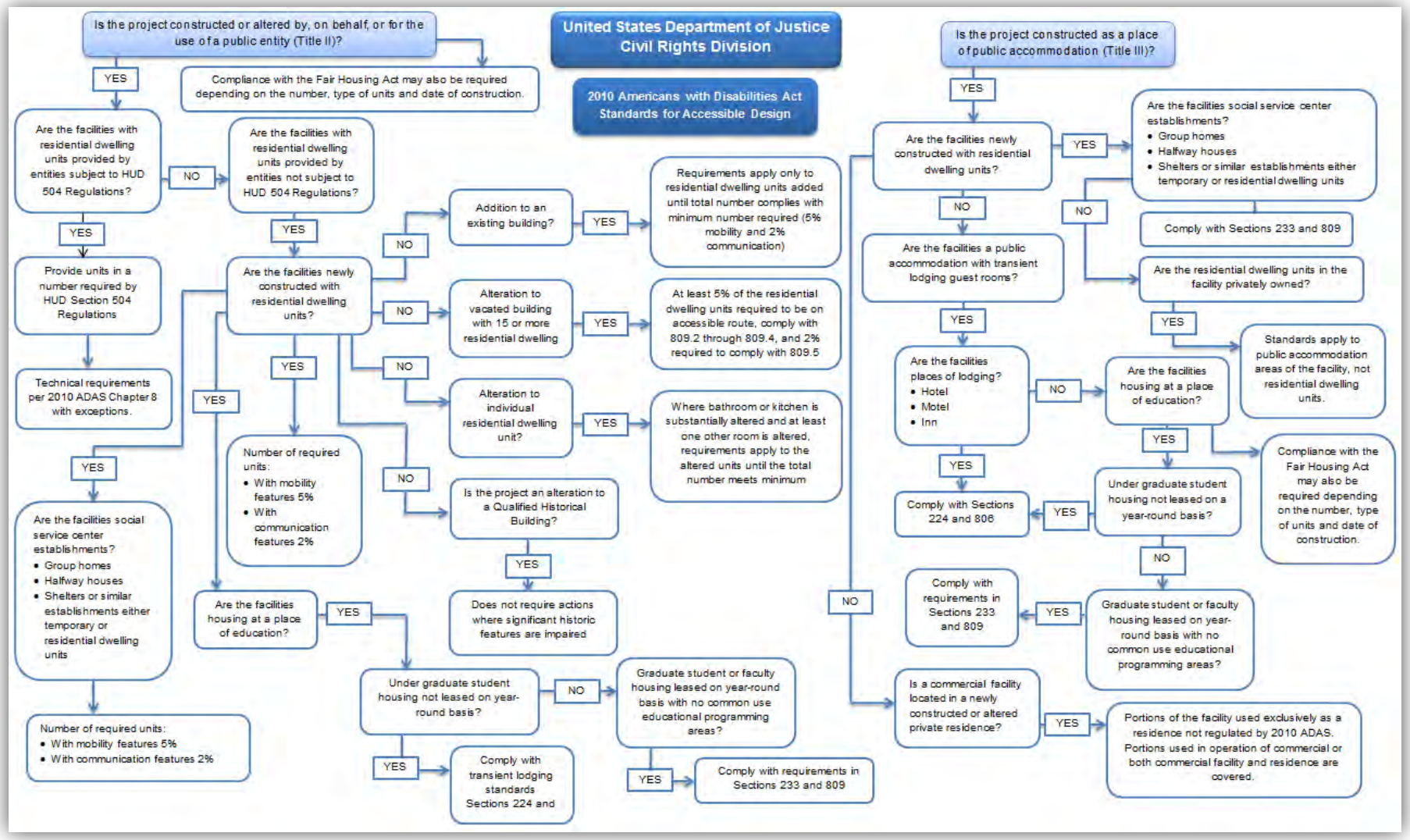
Federal Agencies

Technical Assistance & Training

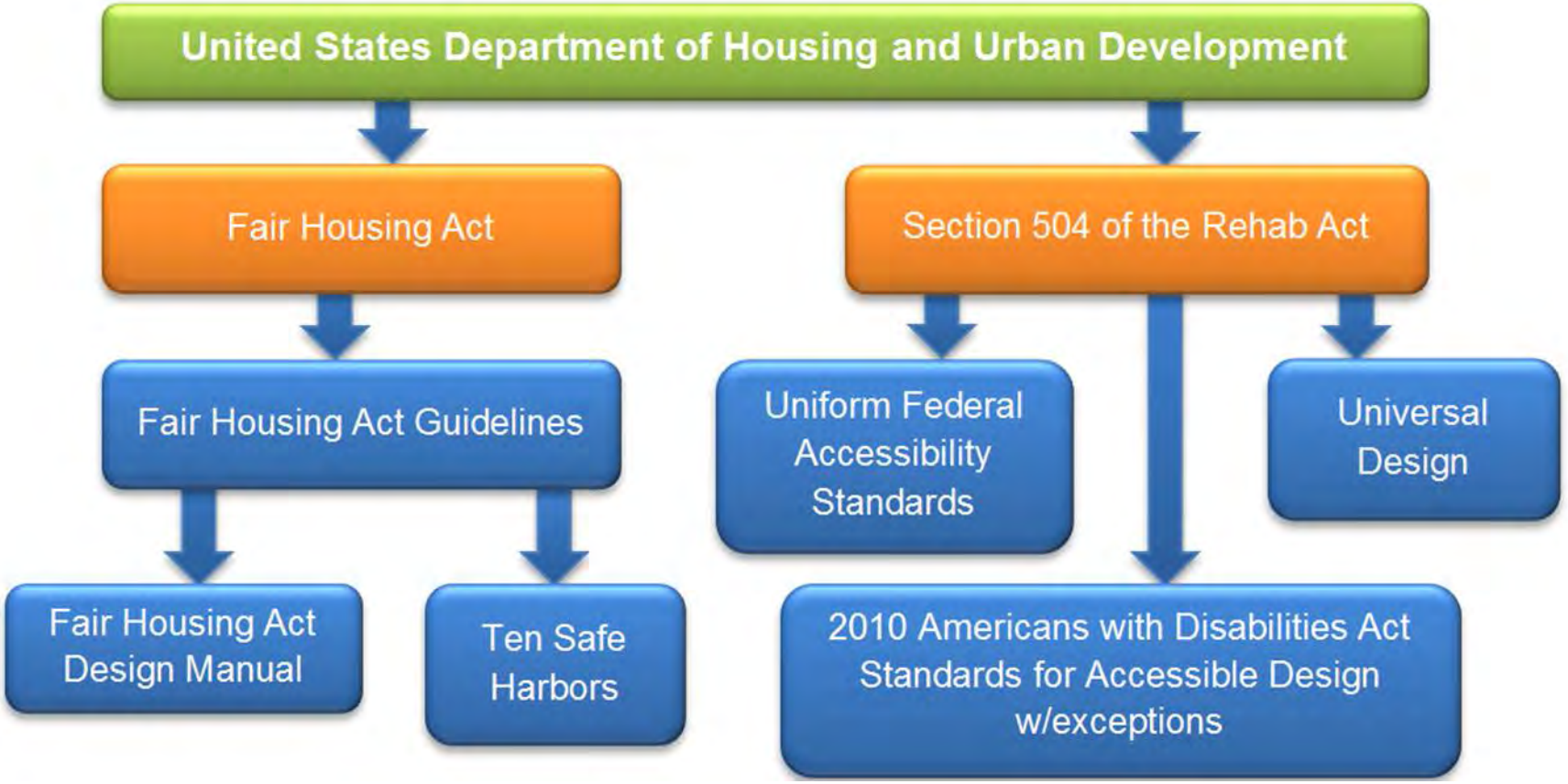
Fair Housing Accessibility FIRST is an initiative designed to promote compliance with the Fair Housing Act design and construction requirements. The program offers comprehensive and detailed instruction programs, useful online web resources, and a toll-free information line for technical guidance and support.

DOJ Civil Rights Division - Standards

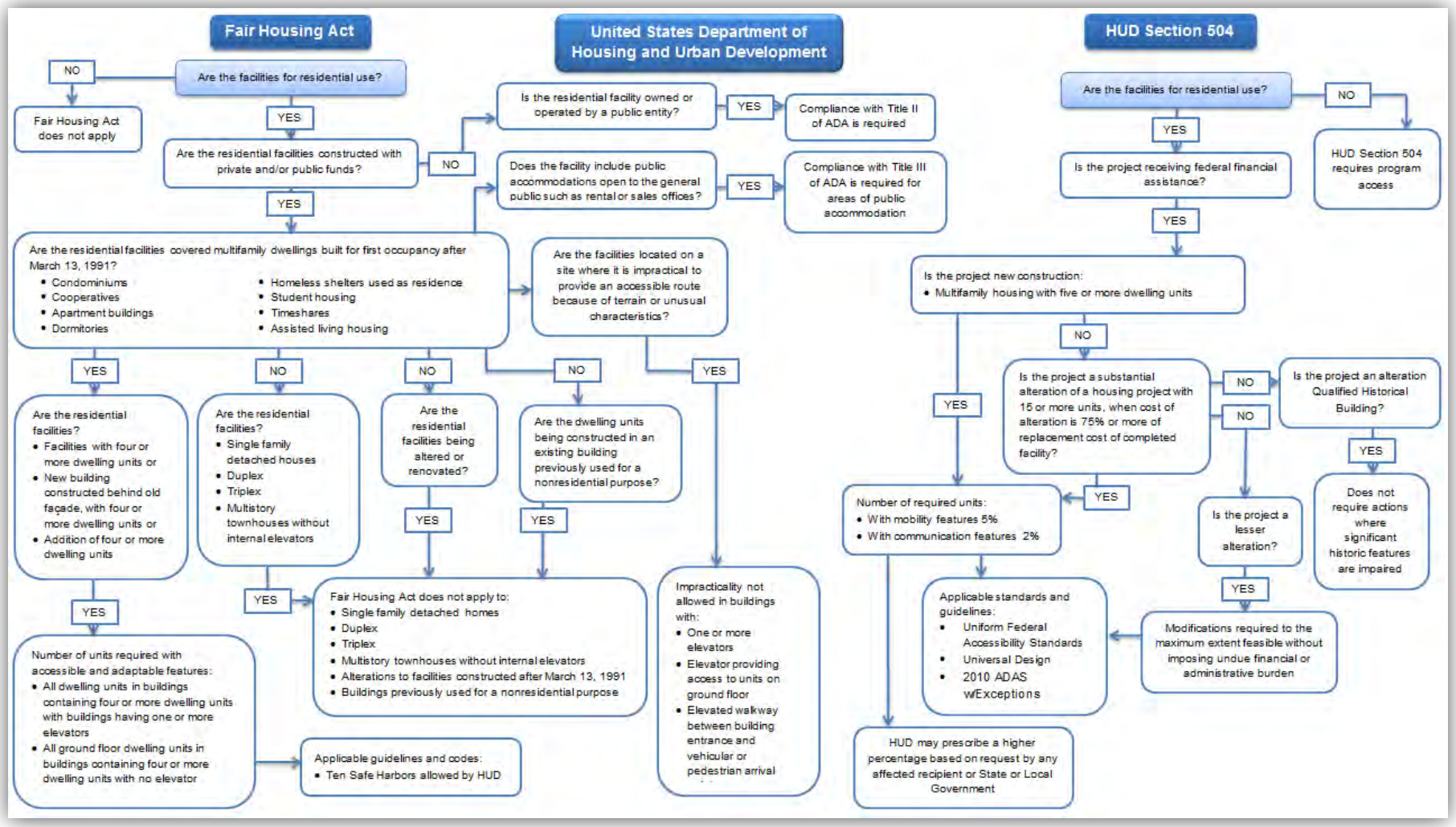
DOJ Civil Rights Division - Standards



HUD – Guidelines & Standards



HUD – Guidelines & Standards



Who must comply?

Key Concepts

- It is incumbent on the design professional to ascertain which regulations are applicable, and then design to the provision that provides the greatest degree of accessibility
- State and local government agencies that have jurisdiction for enforcing the California Building Code are not granted the authority to enforce federal standards
- Should modifications to provide access to a qualified historical property threaten or destroy the historic significance (historic fabric or character defining features) of the building or the facility, alternative methods of access are provided.

Key Concepts, continued

- Compliance with Federal disability laws for housing is enforced by complaint submitted to HUD and/or DOJ
- Should the funding source change during design or construction, modifications are required to meet the applicable standard triggered by the funding source

As of May 23, 2014, HUD allows use of the 2010 ADAS, with exceptions, rather than UFAS

Document included in Resources Materials

State Agencies, Regulations and California Civil Code

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State Agencies

California State Treasurer

California Tax Credit Allocation Committee

- Key Concepts
  - Tax credit recipient projects shall adhere to the provisions of CBC Chapter 11B for privately owned housing available for public use
  - Tax credits invoke requirements, as applicable, including the requirements for a minimum of ten percent of the units with mobility features and four percent with communication features

California State Treasurer

California Tax Credit Allocation Committee

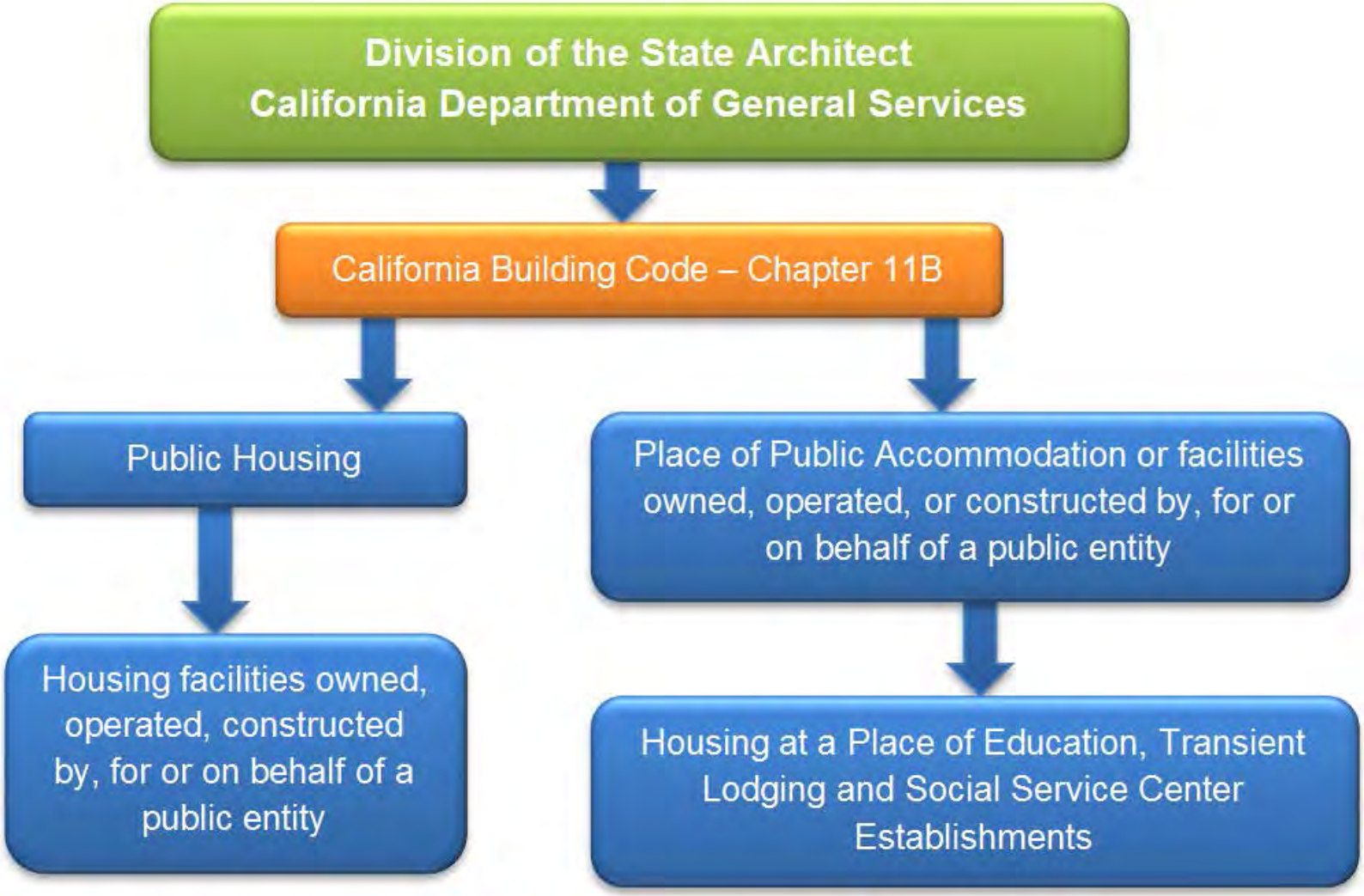
- Key Concepts
  - Enhanced Accessibility and Visitability
  - Project design incorporates CBC 11B and Universal Design in at least half of the projects units by including:
    - Accessible routes of travel to the dwelling units, 34 inch clear opening width at doors
    - Interior doors with lever hardware
    - Fully accessible bathrooms complying with CBC Chapters 11A and 11B.

California State Treasurer

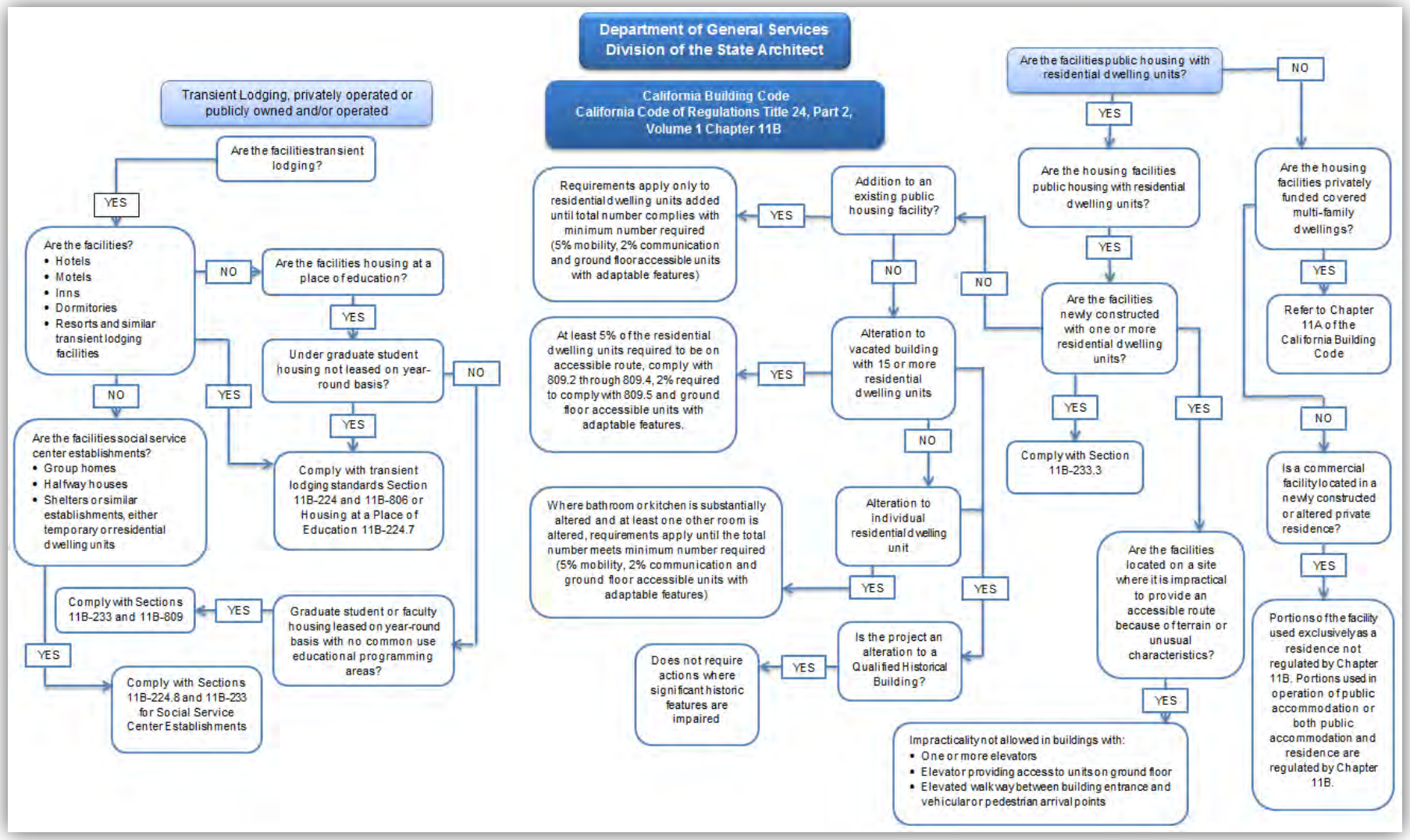
California Tax Credit Allocation Committee

- Project design incorporates CBC 11B and Universal Design in at least half of the projects units by including:
  - Accessible kitchens
  - Master bedroom size at least 120 square feet to accommodate queen size bed with 36 inch clearance around three sides of bed
  - Wiring for audio and visual doorbell notification
  - Closets and balconies on accessible route
  - Confirmation from a Certified Access Specialist that requirements have been met

DSA – CBC Chapter 11B

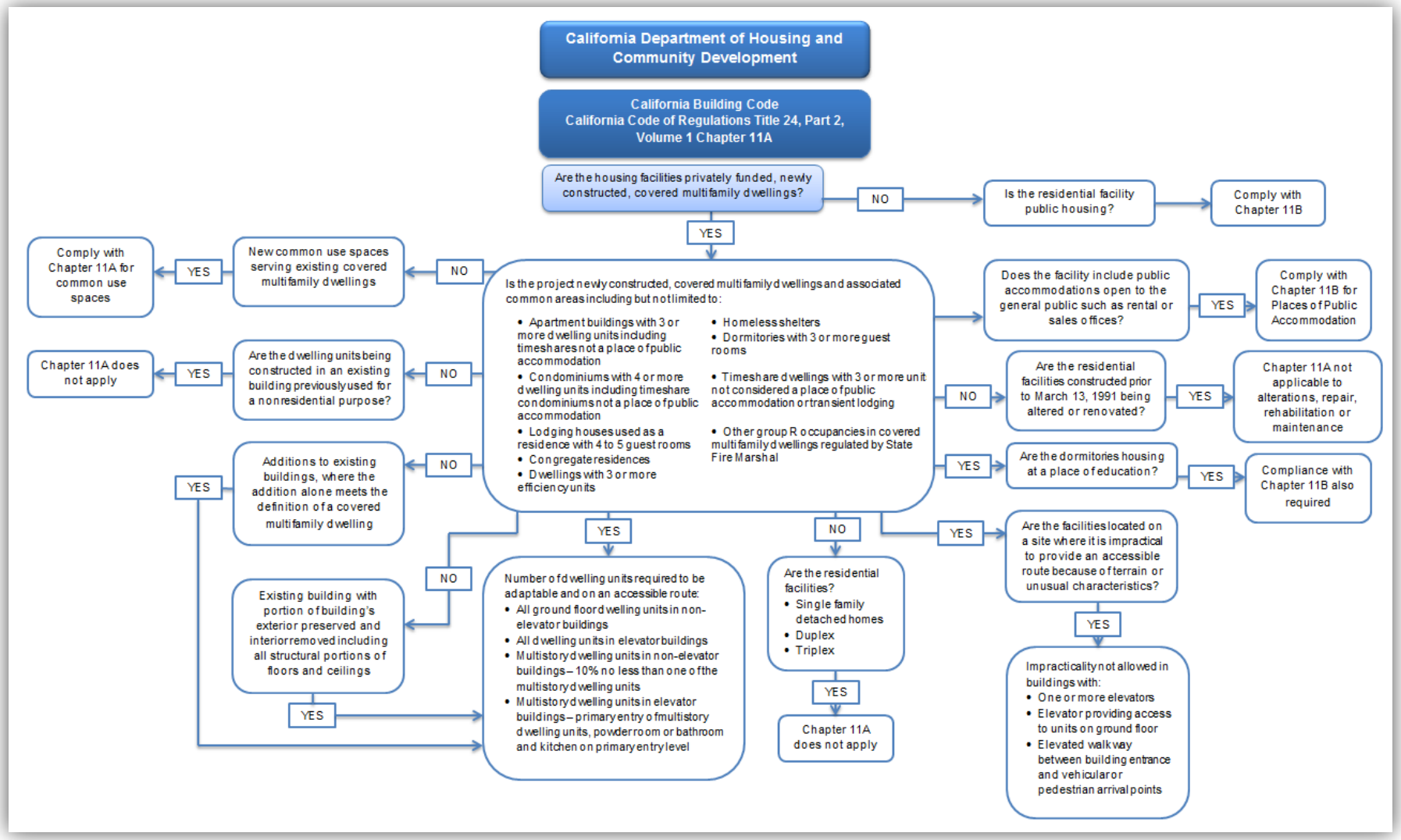


DSA – CBC Chapter 11B



HCD – CBC Chapter 11A

HCD – CBC Chapter 11A



Who must comply?

Key Concepts

- DSA promulgates Chapter 11B of the CBC.
- HCD promulgates Chapter 11A of the CBC
- Plan review and enforcement of the CBC for privately funded covered multifamily dwellings, is under the jurisdiction of the local building department
- Public housing and housing at a place of education that is **not** state owned, is under the jurisdiction of the local building department
- Plan review and enforcement of the CBC for public housing and housing at a place of education that is state owned is under the jurisdiction of DSA

Key Concepts

- Facilities must be maintained to remain in compliance with accessibility regulations
- State and local government agencies that have jurisdiction for enforcing the CBC are not granted the authority to enforce federal standards
- Should modifications to provide access to a qualified historical property threaten or destroy the historic significance (historic fabric or character defining features) of the building or the facility, alternative methods of access are required.

Unruh Act – Senior Housing

California Civil Code – Section 51.2(d)

- "Senior citizen housing development" means a residential development, substantially rehabilitated, or substantially renovated for, senior citizens that has at least 35 dwelling units.

- "Dwelling unit" or "housing" means any residential accommodation other than a mobile home.

Unruh Act – Senior Housing

California Civil Code – Section 51.2 (d), continued

Housing developments for senior citizens constructed on or after January 1, 2001, require the following elements:

- Accessible route in the common areas, and to and within the dwelling units as required by current laws applicable to new multifamily housing construction for accessibility
- Walkways and hallways in the common areas equipped with standard height railings or grab bars to assist persons who have difficulty with walking

Unruh Act – Senior Housing

California Civil Code – Section 51.2(d), continued

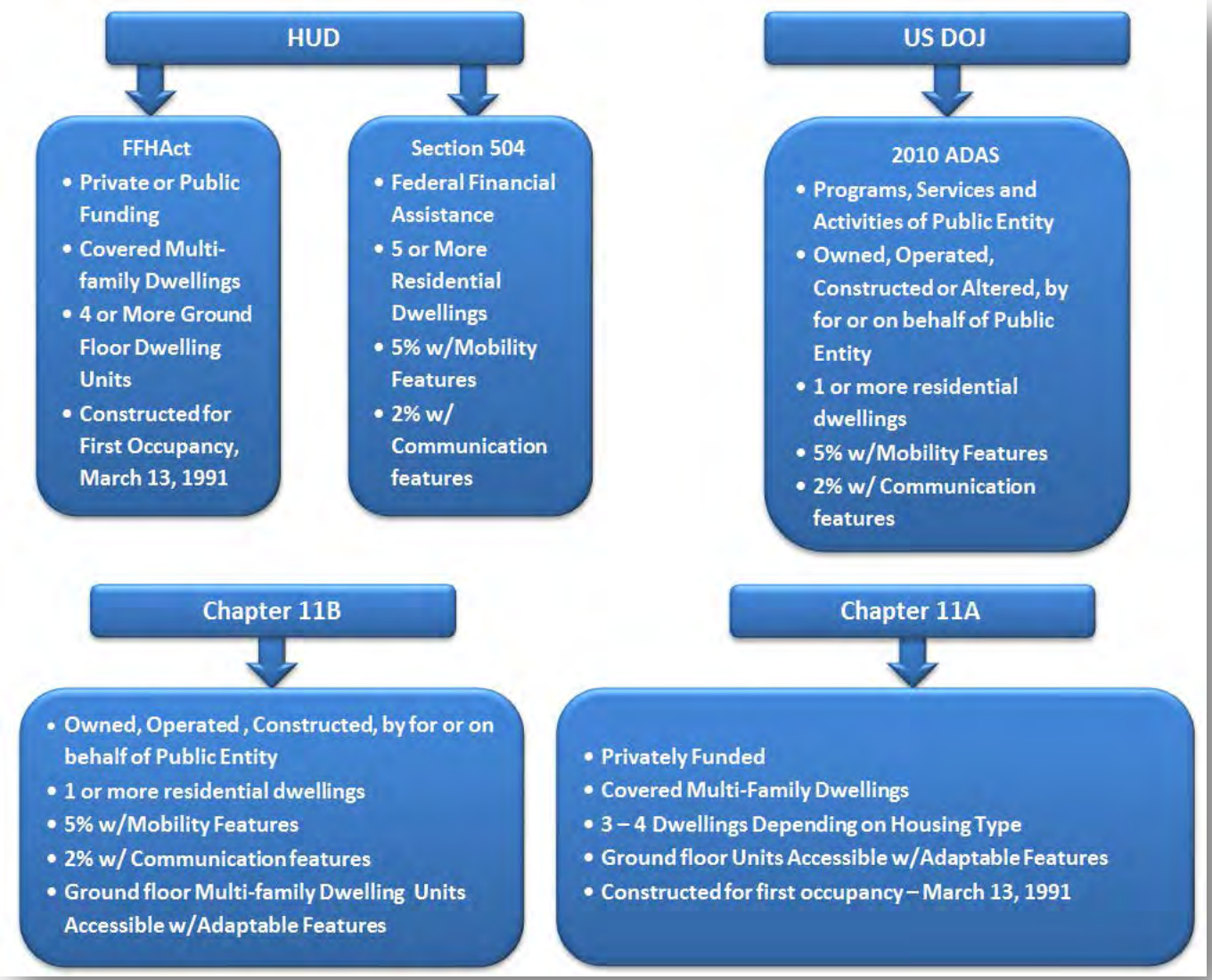
- Walkways and hallways in the common areas with lighting of sufficient brightness to assist persons who have difficulty seeing
- Access to all common areas and housing units provided without use of stairs, either by means of an elevator or sloped walking ramps
- The development shall be designed to encourage social contact by providing at least one common room and at least some common open space

Unruh Act – Senior Housing

California Civil Code – Section 51.2(d), continued

- Refuse collection shall be provided in a manner that requires a minimum of physical exertion by residents
- The development shall comply with all other applicable requirements for access including, but not limited to:
    - Fair Housing Act
    - Americans with Disabilities Act
    - Title 24 of the California Code of Regulations that relate to access for persons with disabilities

To Summarize



How would you respond?

Housing Question
From: xxxx@gmail.com
Sent: Wednesday, December 14, 2016 3:42 PM
To: You@gmail.com
Subject: California Apartments- Application of Fair Housing Act

Dear You,
Per our conversation today we are requesting a memorandum from you regarding your expert opinion on the following:

Subject: ADA requirements for 79 new housing units at *California Apartments* in Any town, CA.

1. The existing property consists of 401 existing apartments in 13 existing buildings.
2. The 79 new apartment units are being created by altering existing interior spaces (formerly parking garages) within the existing footprint and within the existing volume of existing buildings. These existing interior spaces were originally built in the year 1973.
3. The 79 units are not an addition to the building, as defined by the California Building Code (CBC) Section 1101.A.1.
4. Because the buildings in question were built prior to March 13, 1991, ADA requirements do not apply, according to the Federal Fair Housing Act.
5. Therefore, accessible paths of travel are not required to the new apartment units.

Yours truly, Architect

California Building Code Analysis for Residential Facilities

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Main Focus of Today's Training

New Construction, Additions and Alterations

- Projects owned, operated, constructed or altered by, for or on behalf of a public entity
- Sections of Chapter 11A adopted by DSA

Main Focus of Today's Training

New Construction, Additions and Alterations, continued

- Comparison of site elements and dwelling unit features – Chapter 11A & Chapter 11B
  - Mobility Units
  - Communication Units
  - Adaptable Units

CBC Code Analysis Process

Scoping

- Projects owned, operated, constructed or altered by, for or on behalf of a public entity
  - Comply with Chapter 11B
- Projects funded only with private resources
  - Comply with Chapter 11A
- Projects with a combination of conditions
  - Comply with Chapter 11A and Chapter 11B, apply the regulations that provide the greater level of accessibility

CBC Code Analysis Process

Scoping – New Construction and Additions

- Funding source
- Ownership, operation by, for, or on behalf of Title II entity
- Number of Units
- Type of Units
  - Single story
  - Multi-level

CBC Code Analysis Process

Scoping - Alterations

- Funding source
- Ownership, operation by, for or on behalf of Title II entity
- Date of first occupancy – for purposes of Chapter 11A
  - March 13, 1991

Scoping - Residential Dwelling Units

143

What is adaptability?

Ability of certain elements in a dwelling unit, such as kitchen counters, sinks and grab bars, to be raised, lowered, added, or otherwise altered to meet the needs of persons with different types or degrees of disabilities.

Example – in a unit, adaptable for persons with hearing impairments, the wiring for visible emergency alarms may be installed but the alarms need not be installed until the unit is adapted for occupancy by persons with hearing impairments.

Scoping - Residential Dwelling Units

Type and Quantity – Single Story Units	
Residential Dwelling Units with Mobility Features	5%, no fewer than one
Residential Dwelling Units with Communication Features	2%, no fewer than one
Residential Dwelling Units with Adaptable Features	All ground floor units

Scoping - Residential Dwelling Units

Type and Quantity – Multi-story Units	
Residential Dwelling Units with Mobility Features – one story with equivalent spaces and amenities may be substituted	5%, no fewer than one
Residential Dwelling Units with Communication Features	2%, no fewer than one

Scoping - Residential Dwelling Units

Type and Quantity – Multi-story Units	
Residential Dwelling Units with Adaptable Features - in elevator buildings	All ground floor units*
Residential Dwelling Units with Adaptable Features - in non-elevator buildings	10%, not less than one ground floor unit*

** Primary entry of the unit on accessible route and at least one powder room or bathroom on the primary entry level, Chapter 11A requires kitchen on primary entry level in buildings with an elevator*

How would you respond?

Housing Question
From: xxxx@gmail.com
Sent: Wednesday, December 14, 2016 3:42 PM
To: You@gmail.com
Subject: Single Family Affordable Housing

Dear You,
Our county redevelopment agency administers a program that provides federal and state tax credits to developers in order to increase the number of affordable homes within our jurisdiction.

Our largest project has a total of 124 detached single family residences, 30 of which are below market rate. Our redevelopment agency is not the owner, builder, or developer. These are single family for sale homes.

Our questions are:
1. What are the regulations and codes that are applicable to this project for access compliance?
2. All of the homes are multi-level. Depending on the applicable regulations are elevators required in any of the homes?
3. Are the model homes required to be accessible?
4. Is the sales office required to be accessible?

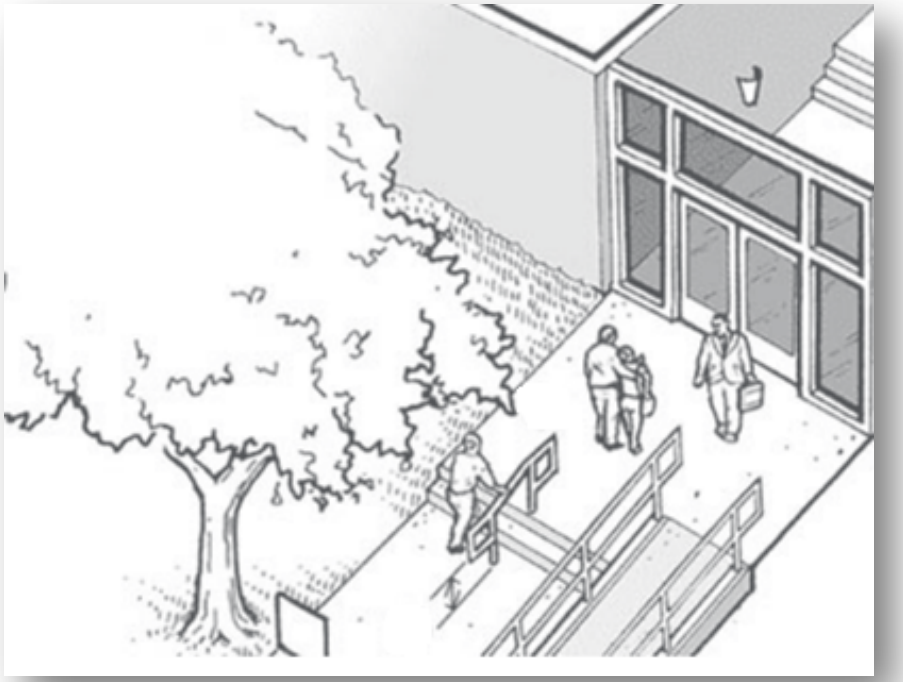
Thank you in advance for any information you can provide.

Yours truly, County Redevelopment Agency Staff

Scoping – Site Elements

Accessible Route from Site Arrival Points

- Accessible route connects
  - Buildings
  - Facilities
  - Elements
  - Spaces
- Circulation path
  - Includes stairs, allowed in close proximity to accessible route



Section 11B-206.2.1, Exception 3

Scoping – Site Elements

Curb Ramps		
	Chapter 11B	Chapter 11A
Grooved Border		✓
Parallel Curb Ramp & Islands	✓	
Depth of Counter Slope at Gutter	2’- 0”	4’- 0”
Detectable Warnings	✓	See Chapter 11B

Scoping – Site Elements

Marked Crosswalk within Parking Facility

- When practical, accessible route shall not cross lanes for vehicular route
- When crossing vehicular lanes is necessary, route shall be marked as crosswalk

Section 1109A.7

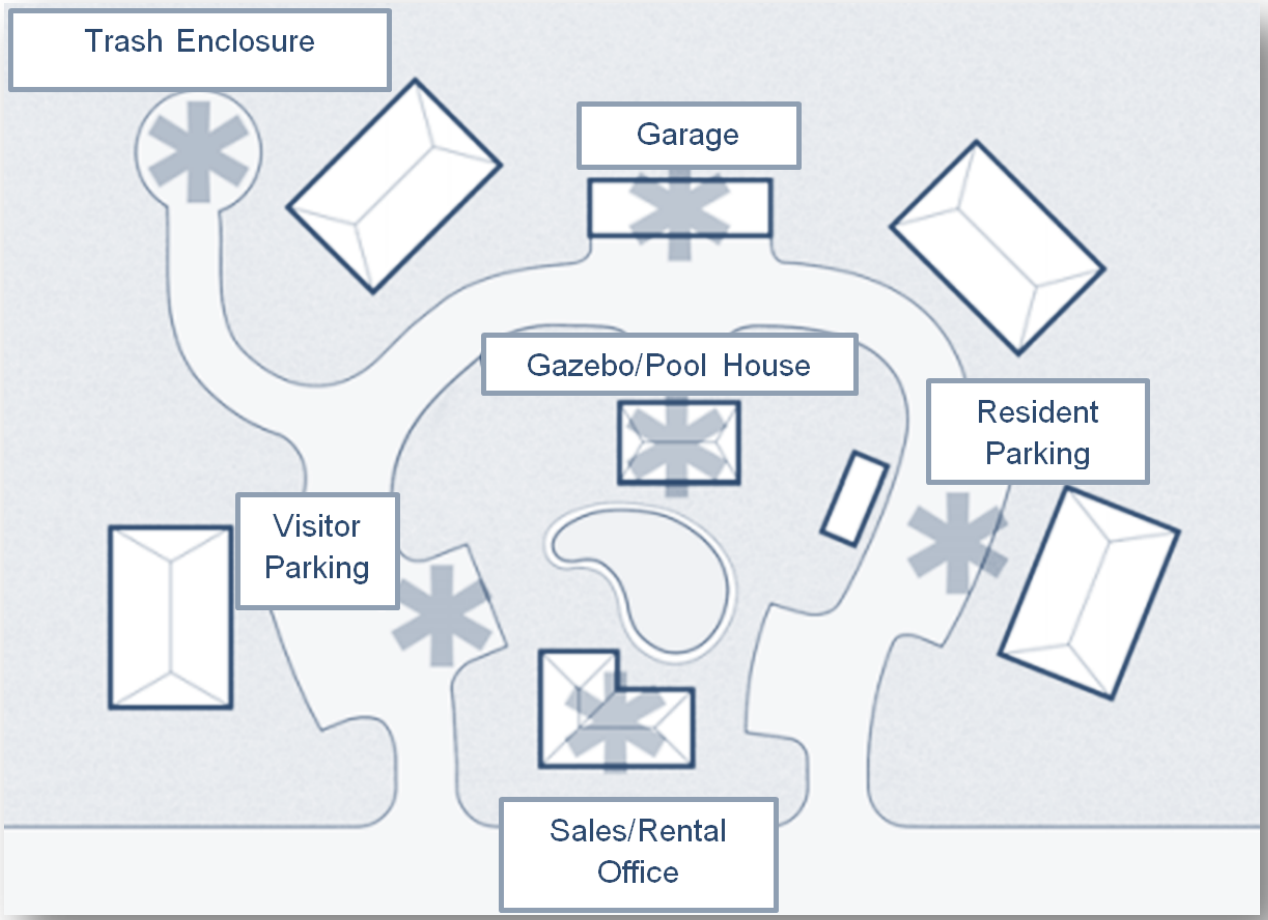
Scoping – Site Elements

- **Sidewalks and walks**
  - Sidewalk – running slope, not to exceed general grade established for adjacent street or highway
  - Walks - running slope 1:20 or 5% maximum
  - Sidewalk & Walks - Cross slope, 1: 48 or 2.083 % maximum

Section 11B-403

Scoping – Site Facilities

Which facilities are required to be accessible?



Scoping – Site Facilities

Common Use Facilities		
	Chapter 11B	Chapter 11A
Sales/Rental Office	✓	
Visitor Parking	✓	✓
Resident Parking	✓	✓
Garage	✓	✓
Mail Boxes	✓	✓
Storage	✓	✓

Scoping – Site Elements

Number of Accessible Parking Spaces		
Number of Spaces	Chapter 11B	Chapter 11A
Number of Spaces for residential dwelling units	Where at least one provided for each unit, one for each mobility unit. When less than one use Table 11B-208.2	2% of the covered multifamily dwelling units; or 2% of the assigned parking spaces, the greater number is required

Scoping – Site Elements

Number of Accessible Parking Spaces		
	Chapter 11B	Chapter 11A
Visitor parking	Per Table 11B-208.2	Unassigned parking, visitor parking or unassigned to dwelling units
Van Spaces	1 per 6 accessible spaces	1 per 8 accessible spaces
Common Use Facilities	Per Table 11B-208.2	5% of the parking spaces

Scoping – Site Elements

Parking Space and Access Aisle Dimensions		
	Chapter 11B	Chapter 11A
Van Space	12’-0” wide x 18’-0” deep	12’-0” wide x 18’-0” deep
Access Aisle	5’-0” wide full length of space, 8’-0” for 9’-0” wide van space	5’-0” wide full length of space, 8’-0” for 9’-0” wide van space
Car Space	9’-0” wide x 18’-0” deep	9’-0” wide x 18’-0” deep

Scoping – Site Elements

Parking Identification – Chapters 11A & 11B

Be sure to fill in the blanks

Minimum Fine not required by Chapter 11A

Scoping – Site Elements

Parking Identification – Chapters 11A & 11B

- Chapter 11A - accessible parking spaces assigned to residents are exempt from parking identification sign and pavement marking provisions

  Section 1109A.4

- Chapter 11B - identification of accessible parking spaces assigned to residents is not required

  Section 11B-216.5.1, Exception 2

Scoping – Site Elements

Electric Vehicle Charging Stations

New Construction or Alterations

- Regulations currently do not require the construction or build-out of EVCS, just the EV infrastructure for newly constructed facilities.
- **When** EVCSs are installed, accessible EVCSs complying with Table 11B-228.3.2.1 **shall** be provided.
- Exception: EVCSs not available to general public or for the owner of a residence in public housing need not comply. However, there may be future obligation for "reasonable modification" request.

Section 11B-2228.3.2, Exception 2

Scoping – Site Elements

Electric Vehicle Charging Stations

Infrastructure Residential Requirements
Multi-Family Residential mandatory Measures:

- Scoping Threshold - 17 or more units on a building site.
- Terminology clarified – EV Space is not an EVCS.
- Provide panel capacity, 40A, and conduit to box in close proximity to EV Space.

Scoping – Site Facilities

Common Use Facilities		
	Chapter 11B	Chapter 11A
Mail Boxes	✓	✓
Play Areas	✓	✓
Court Sports	✓	✓
Swimming Pools, Wading Pools, Spas	✓	✓
Trash Enclosure	✓	✓

Scoping – Site Elements

Mail Boxes

- What are the requirements for accessible mailboxes?
  - At interior location, 5 percent, no fewer than one of each type shall comply

    Section 11B-309
  - One for each residential dwelling unit with mobility or adaptable features

    Section 11B-228.2

Scoping – Site Elements

Play Areas

- Scoping – Section 11B-240
- Technical – Section 11B-1008

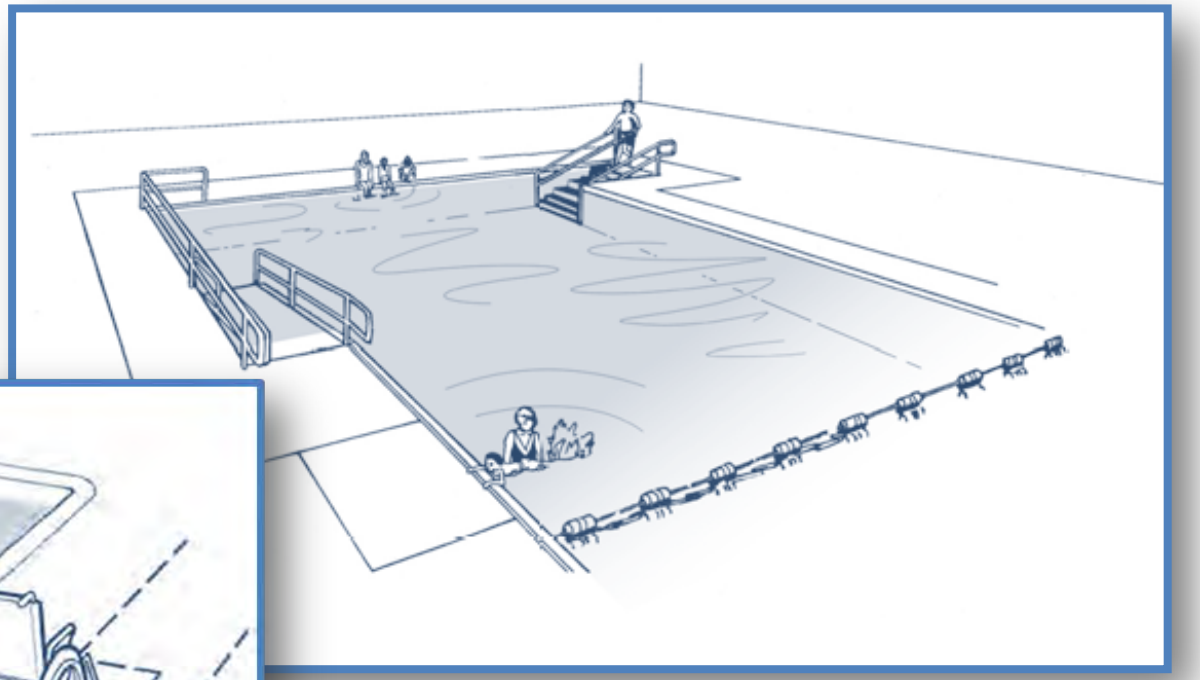
Means of Entry at Swimming Pools

Types of Entry at Swimming Pools and Spas					
Pool Type	Sloped Entry	Lift	Transfer Walls	Transfer Systems	Stairs
Swimming pools with less than 300 LF of pool wall	✓	✓			
Swimming pools with more than 300 LF of pool wall – two means of entry required	✓*	✓*	✓	✓	✓
Wave action, Leisure River, other pools where user entry limited to one area	✓	✓		✓	
Wading pools	✓				
Spas		✓	✓	✓	

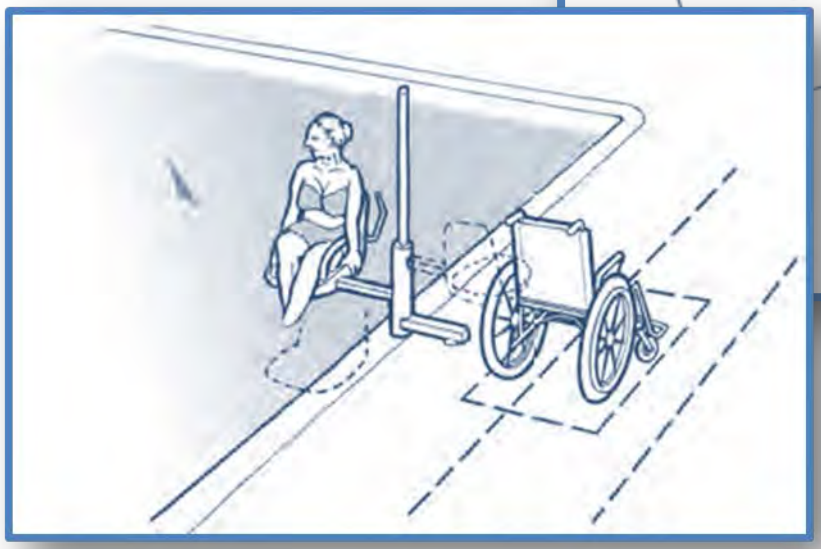
** Requires two means of access. Primary means must be by sloped entry or pool lift, secondary means can be any of the permitted types.*

Scoping – Site Facilities

Means of Entry at Swimming Pools, Wading Pools and Spas



Pool Lift



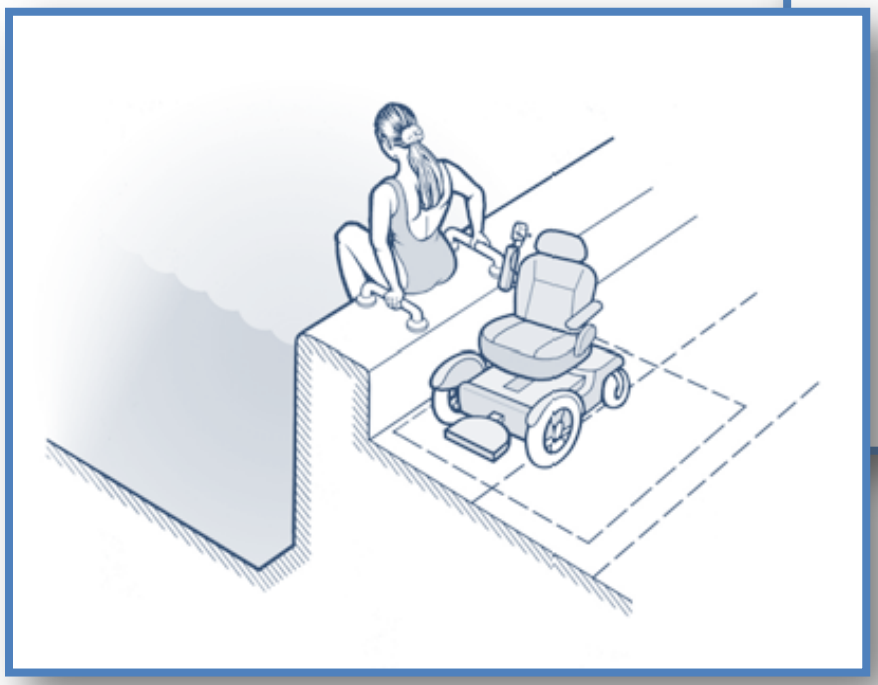
Sloped Entry
& Pool Stairs

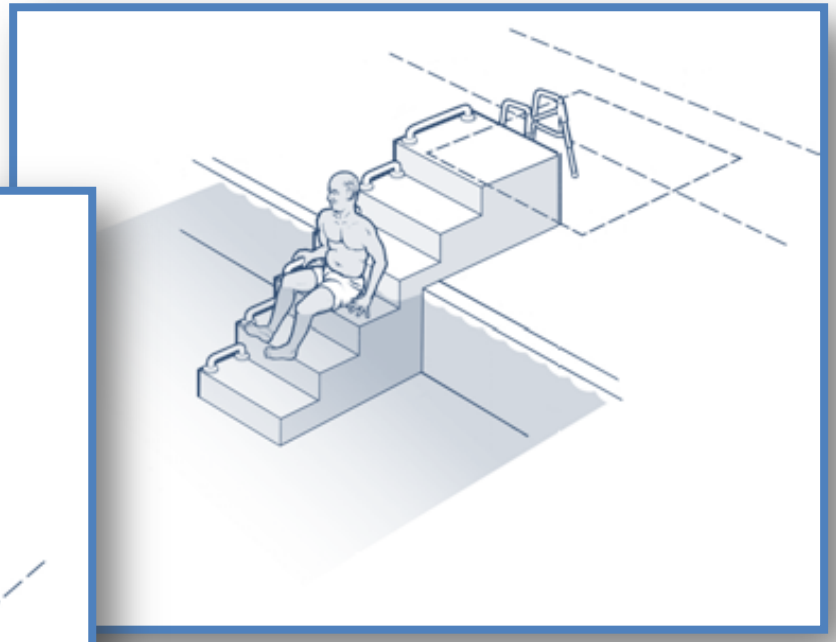
166

Scoping – Site Facilities

Means of Entry at Swimming Pools, Wading Pools and Spas

Transfer Wall

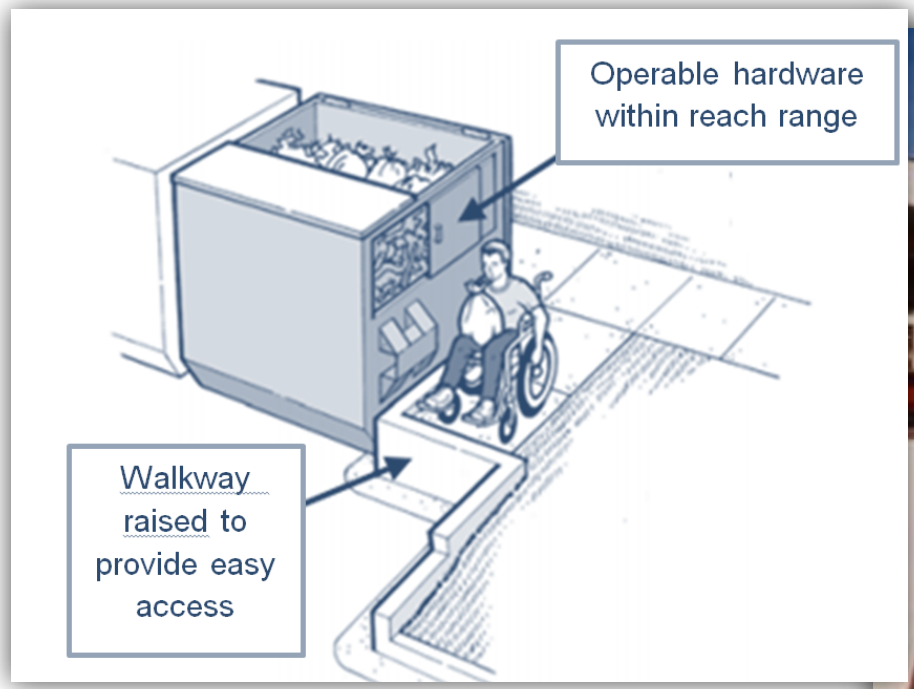




Transfer System

Scoping – Site Facilities

Trash Enclosures



Scoping – Site Elements

Handrails at Ramps and Stairs

- Chapter 11B
  - Handrails required at both sides of stairs and ramps

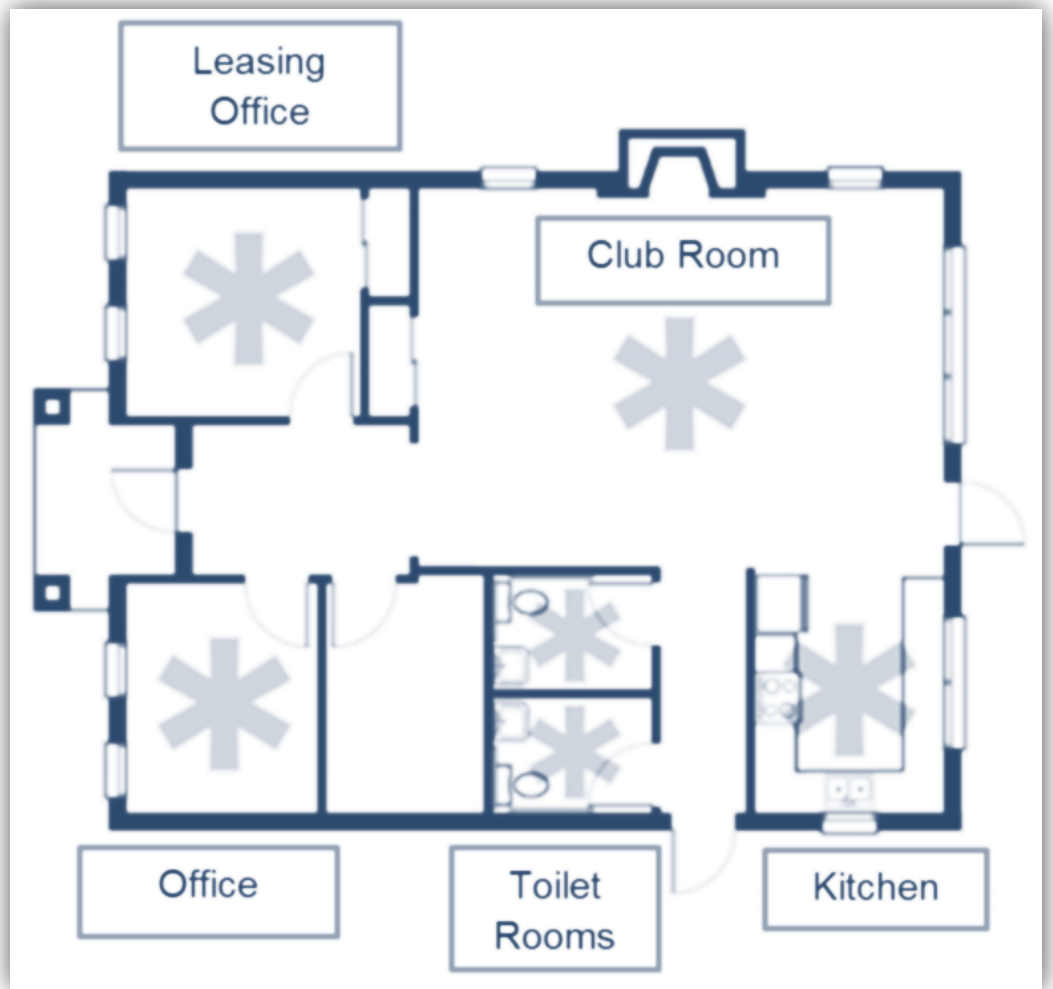
    Section 11B-505.2

- Chapter 11A
  - Ramps and stairs that serve individual dwelling units require handrail at one side

    Section 1123A.6.1, Exception

Scoping – Building Common Areas

Which spaces are required to be accessible?



170

Scoping – Building Common Areas

Common Use Areas		
	Chapter 11B	Chapter 11A
Lobby	✓	✓
Sales/Rental Offices	✓	Refers to Chapter 11B
Exercise Facilities	✓	✓
Laundry Facilities	✓	✓
Kitchens	✓	✓
Toilet and Bathing Rooms	✓	✓

Scoping – Building Common Areas

Sales and Rental Offices – Chapter 2 Definitions

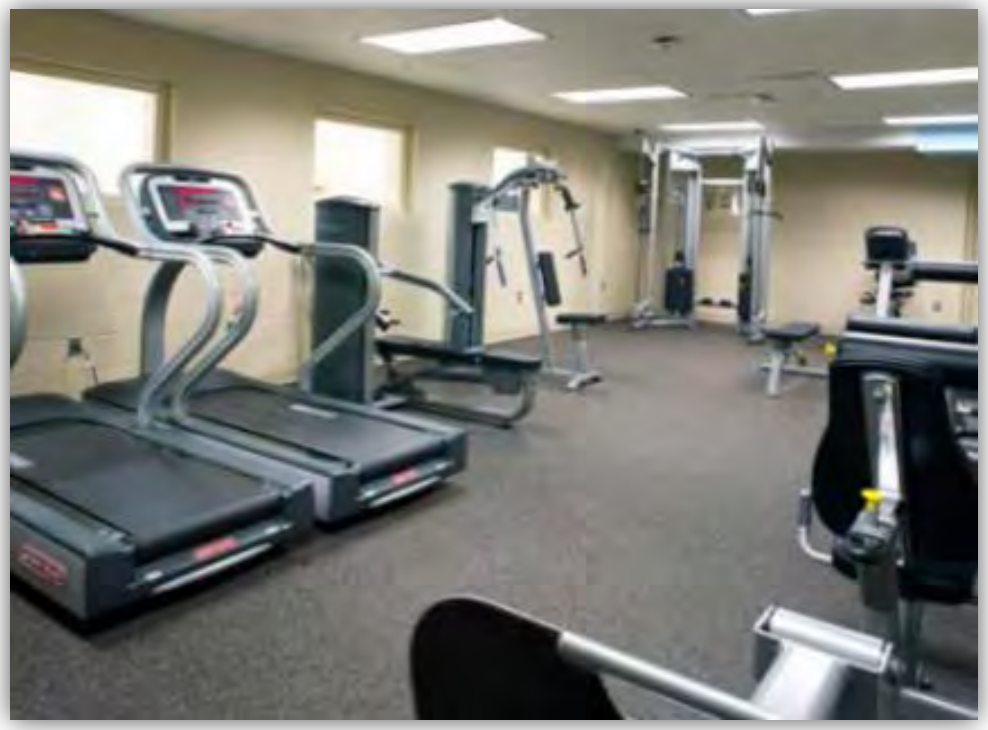
PLACE OF PUBLIC ACCOMMODATION. *A facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories:*

> *5. A bakery, grocery store, clothing store, hardware store, shopping center, or other* ***sales or rental establishment****;*

Scoping - Building Common Areas

Exercise Facilities – Exercise Machines & Equipment

- Required to be on accessible route
- At least one of each type requires a clear floor space positioned for transfer or use



- Section 11B-1004.1

Scoping - Building Common Areas

Laundry Facilities – Washers & Dryers

- Clear floor space required for parallel approach
- Operable parts shall be within reach range with no tight grasping, pinching or twisting of the wrist

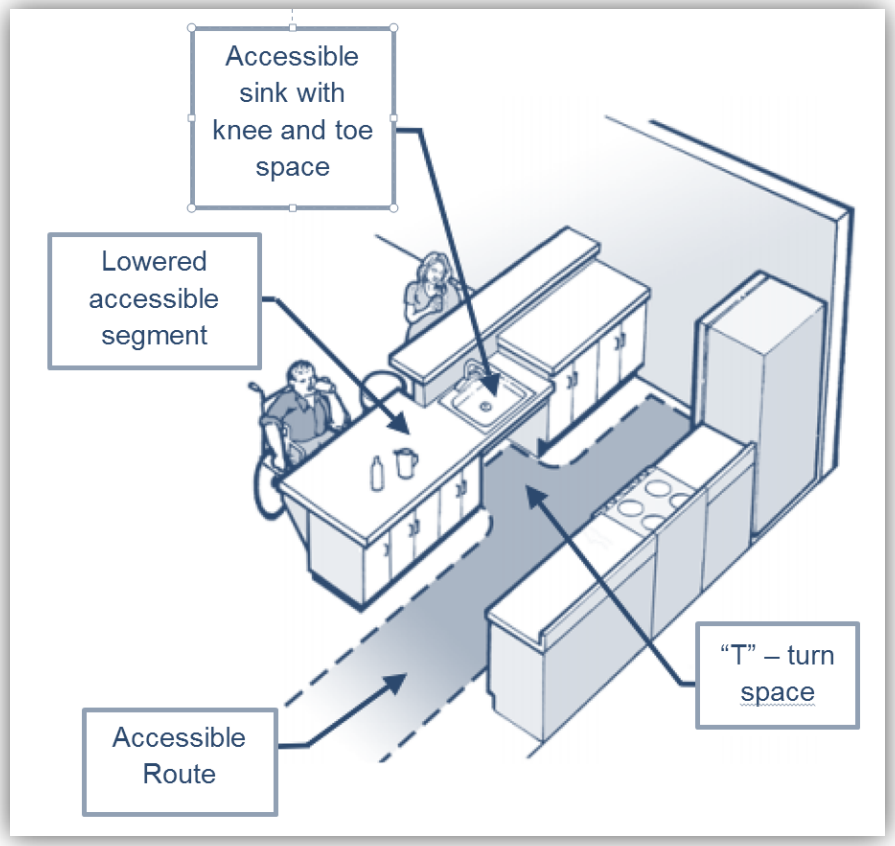
Section 11B-611

Scoping - Building Common Areas

Kitchens, Kitchenettes and Wet Bars

- Chapter 11B
  - Provisions for kitchens in common areas and residential dwelling units

Sections 11B-212 & 11B-804

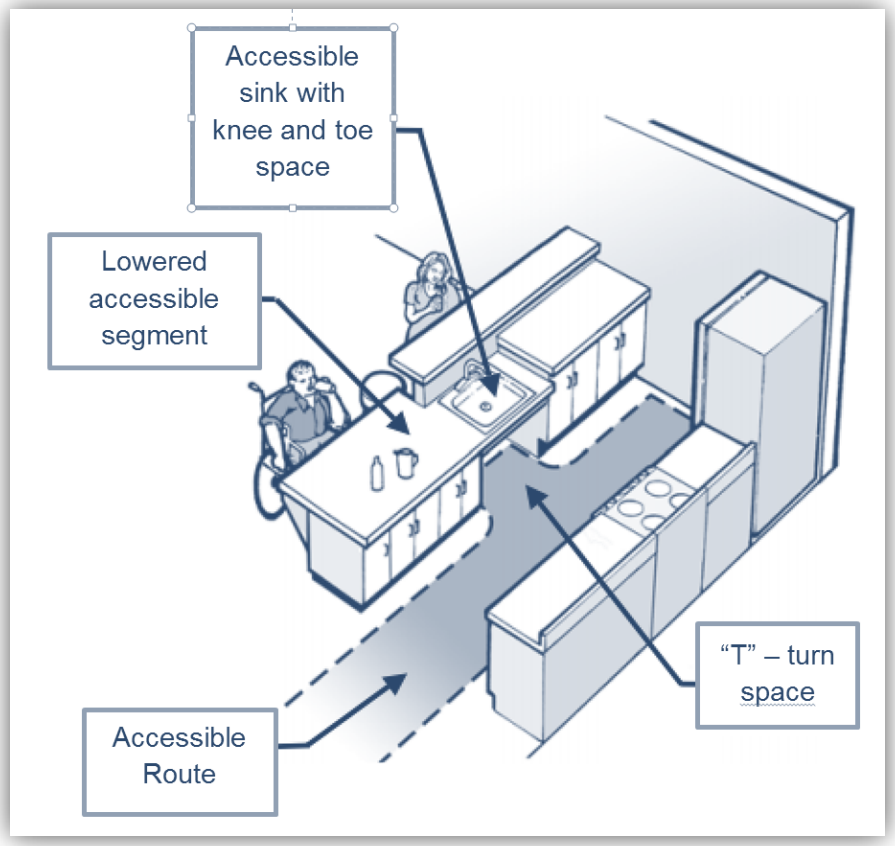


Scoping - Building Common Areas

Kitchens in Common Areas

- Chapter 11A
  - For kitchens in common areas use, Chapter 11A or 11B

    Sections 1133A, 1127A or 11B-212 and 11B-804

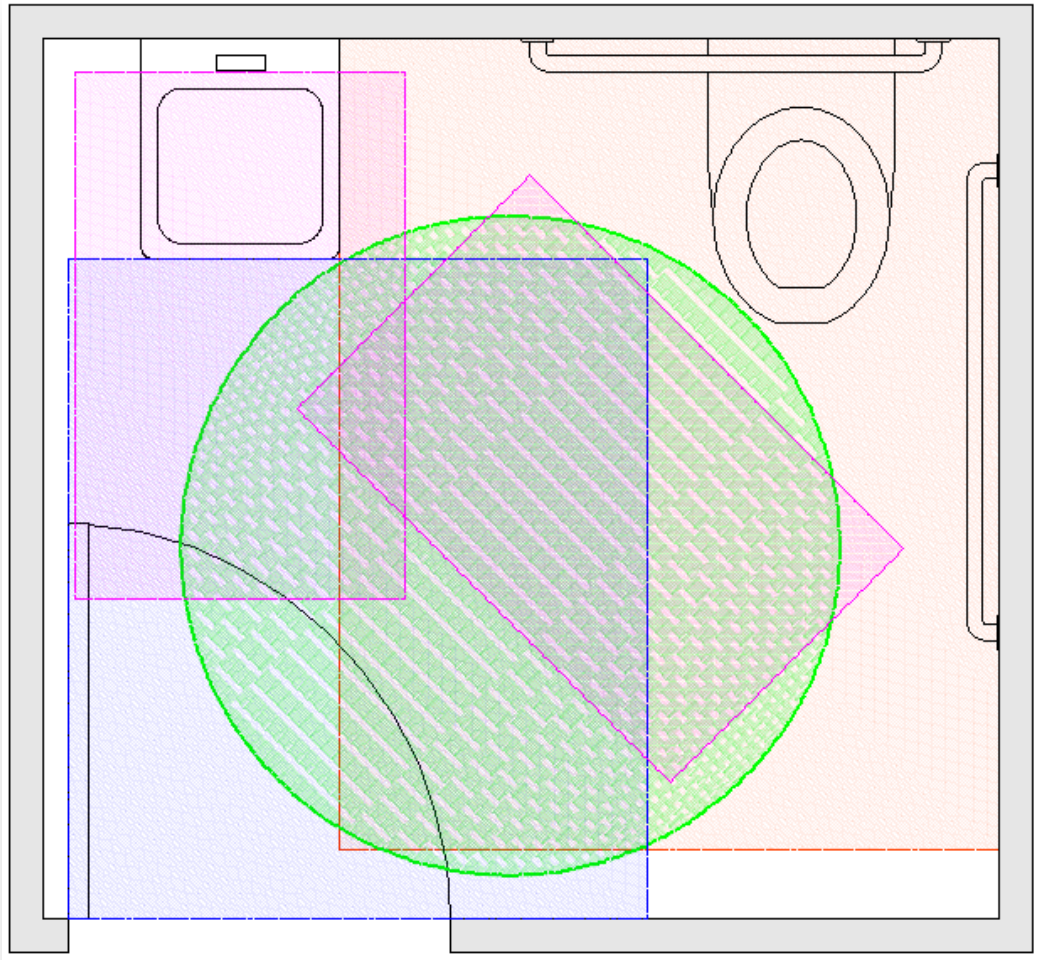


Scoping - Building Common Areas

Toilet and Bathing Facilities

- Where toilet and bathing facilities are provided each must comply

Section 11B-603



177

Comparison of Dwelling Units

DSA ACADEMY

DSA
DIVISION OF THE STATE ARCHITECT
DEPARTMENT OF GENERAL SERVICES

Exercise One – New Construction

179

Exercise One

Program – Affordable Housing

- A city's redevelopment agency administers a program to increase the number of affordable residential dwellings.
- This project will be constructed by an agreement with the redevelopment agency and a developer under this program.
- The redevelopment agency is offering a density bonus and a low-interest loan.

Exercise One

Program – Affordable Housing

- The developer will provide a portion of private funds as well
- No federal financial assistance or tax credits are included in the agreement
- When complete the residential dwelling units will be offered for rent
- Ten of the residential dwelling units will offered at or below market rate

Exercise One

Project Scope – Affordable Housing

- Seven story building with an elevator serving all floors
- Floors two through seven have fifteen single story residential dwelling units on each floor for a total of ninety residential dwelling units
- There are three different types of residential dwelling units; one, two and three bedroom, dispersed throughout the building

Exercise One

Project Scope – Affordable Housing

- The entire first floor is designated for retail use
- A sales/rental office is located on the first floor
- Underground parking is provided and assigned with one space for each residential dwelling unit
- There are additional parking spaces, ten visitor and five employee parking spaces

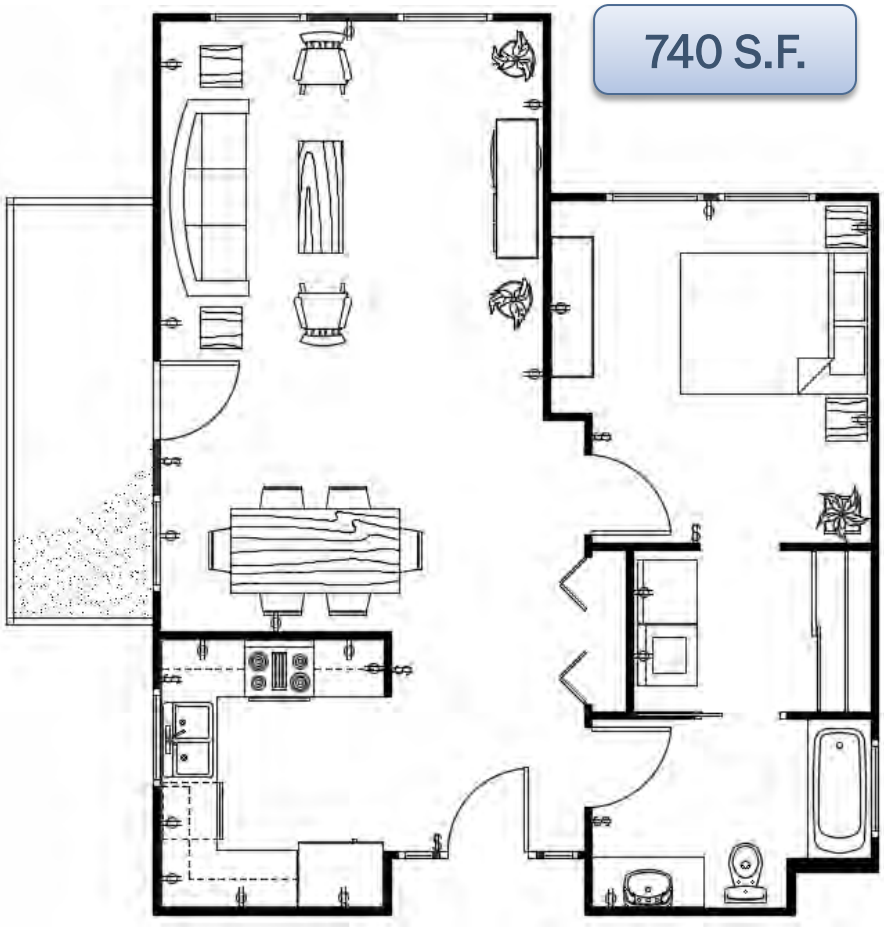
Exercise One

Project Scope – Affordable Housing

- Common use areas in the building for the sole use of tenants and their guests include:
  - Mail boxes
  - Laundry room
  - Exercise facility
  - Swimming Pool

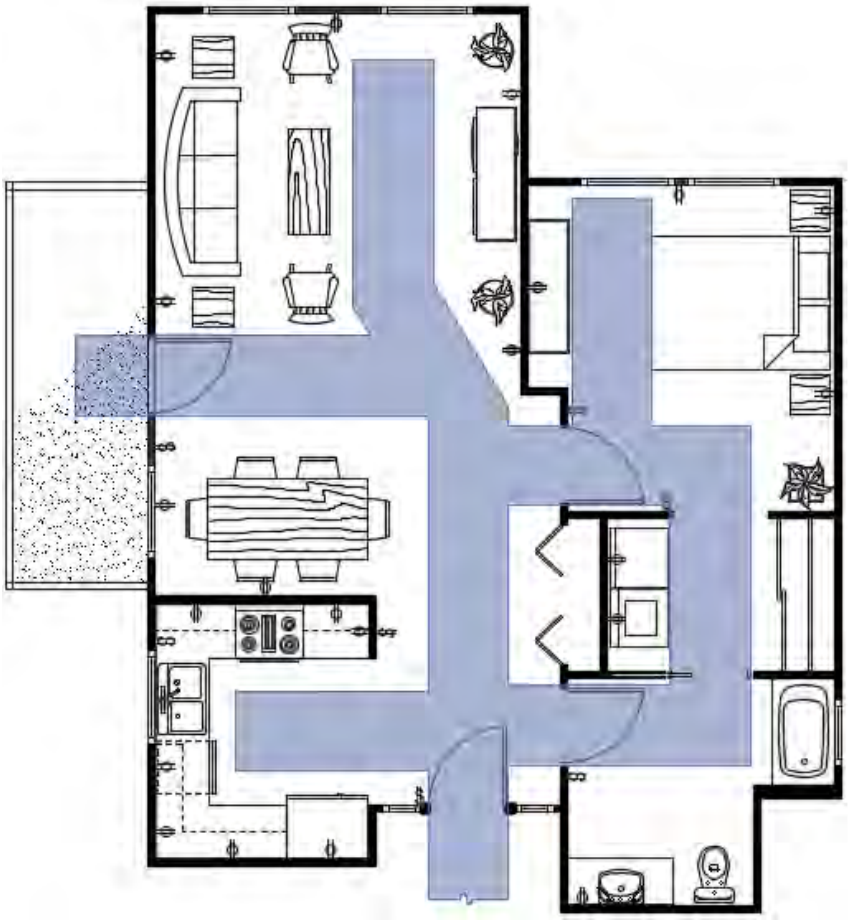
Comparison of Dwelling Units

Unit with Mobility Features

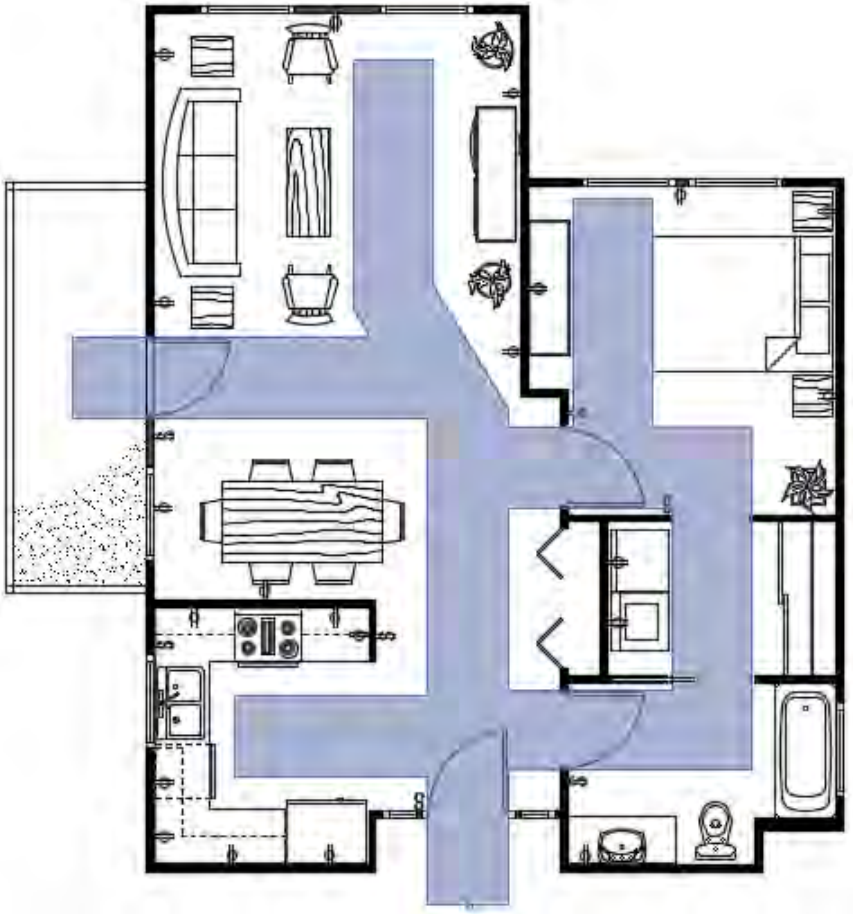


Unit with Adaptable Features

Comparison of Accessible Route



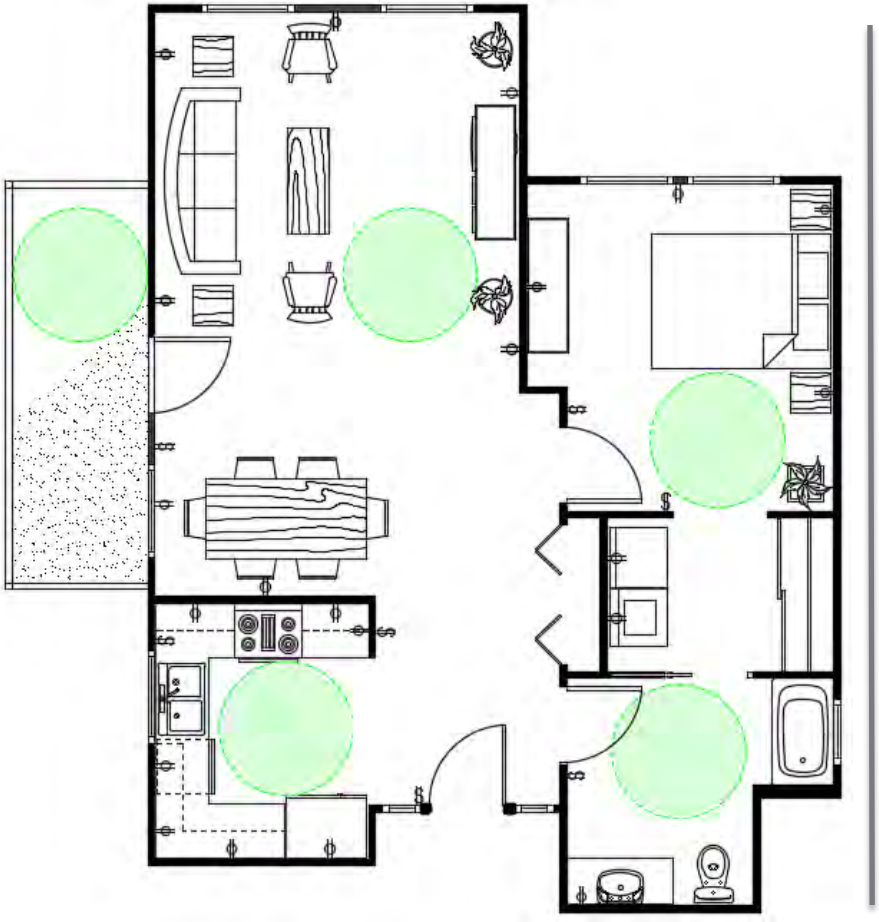
Unit with Mobility Features



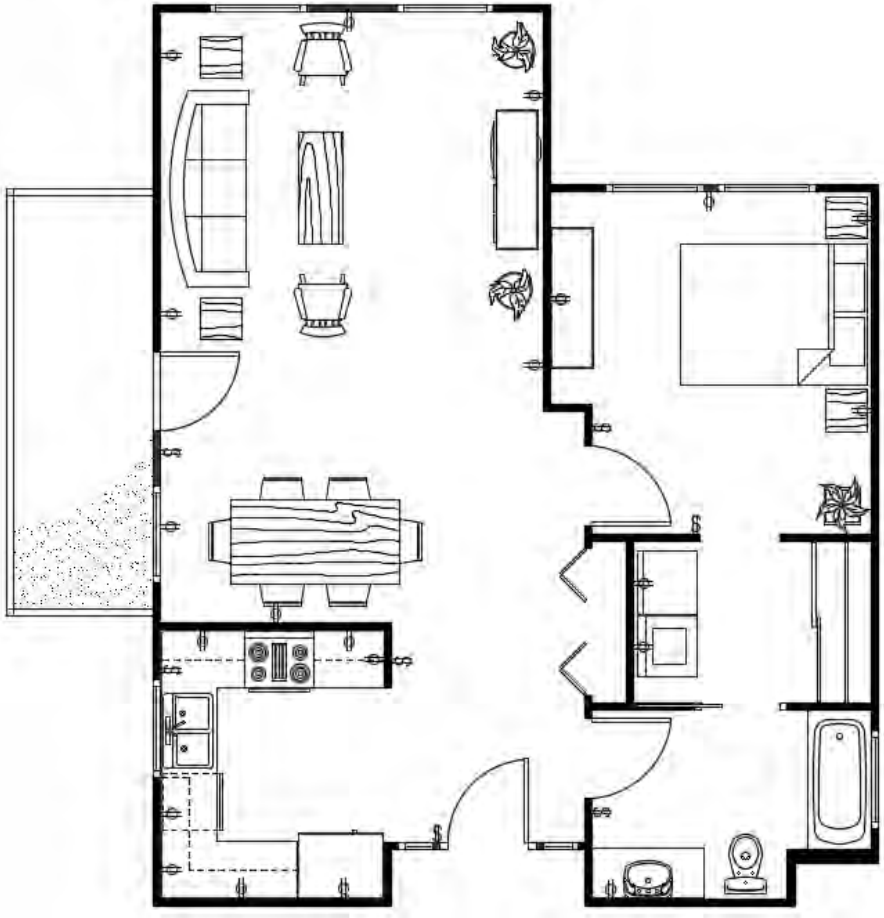
Unit with Adaptable Features

186

Comparison of Turning Space



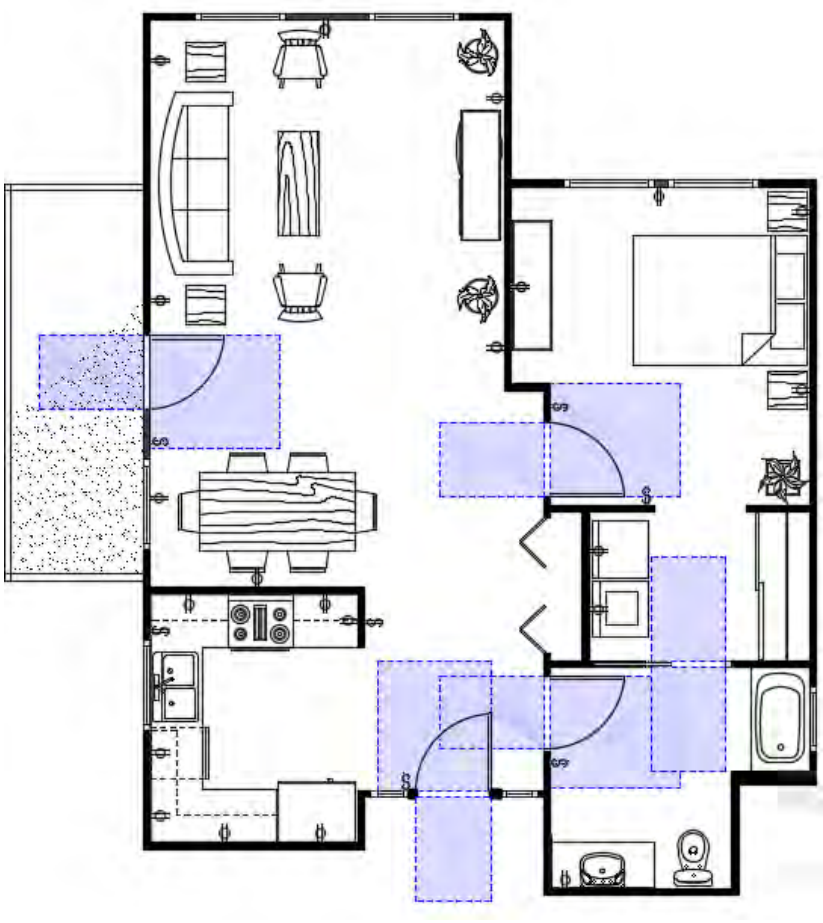
Unit with Mobility Features



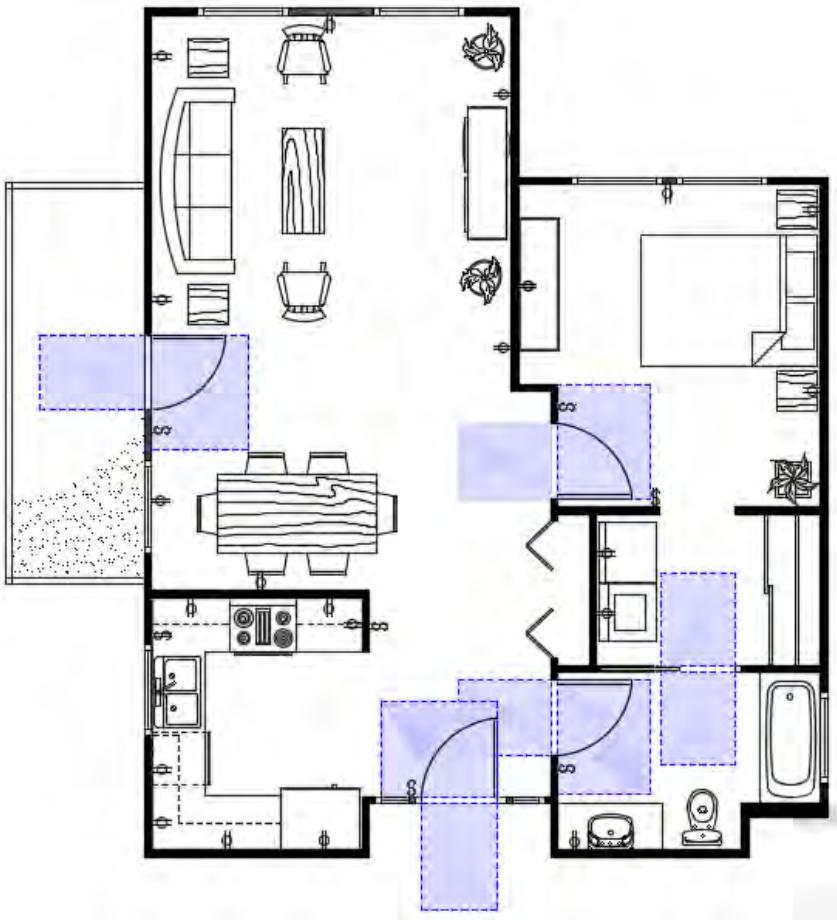
Unit with Adaptable Features

187

Comparison of Maneuvering Clearance @ Doors



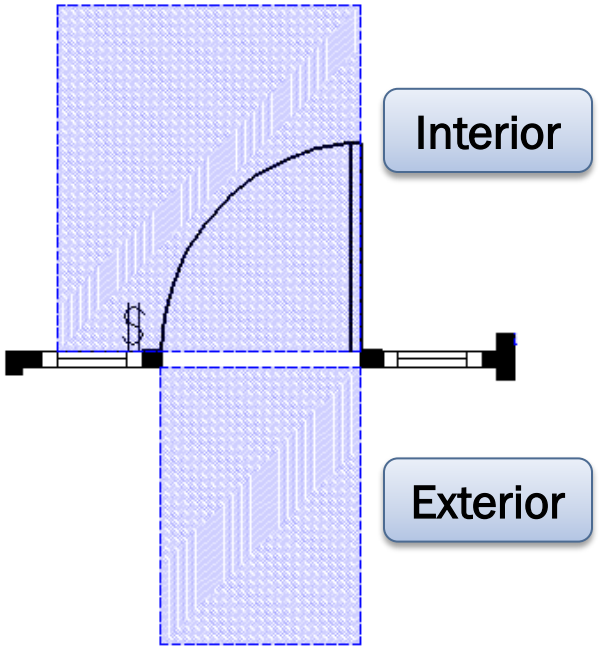
Unit with Mobility Features



Unit with Adaptable Features

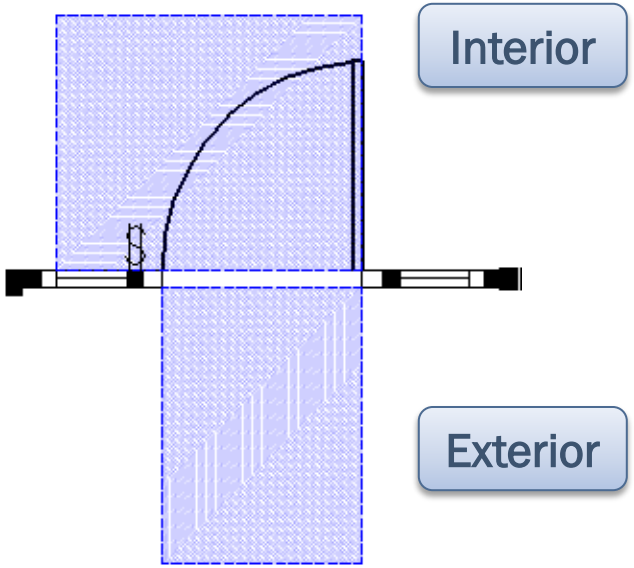
188

Comparison of Primary Entry Door



Maneuvering Clearance
Exterior – Full width of door x 48”
Interior – Full width + 18” x 60“

Unit with Mobility Features



Maneuvering Clearance
Exterior – Full width of door x 48”
Interior – Full width + 18” x 44“

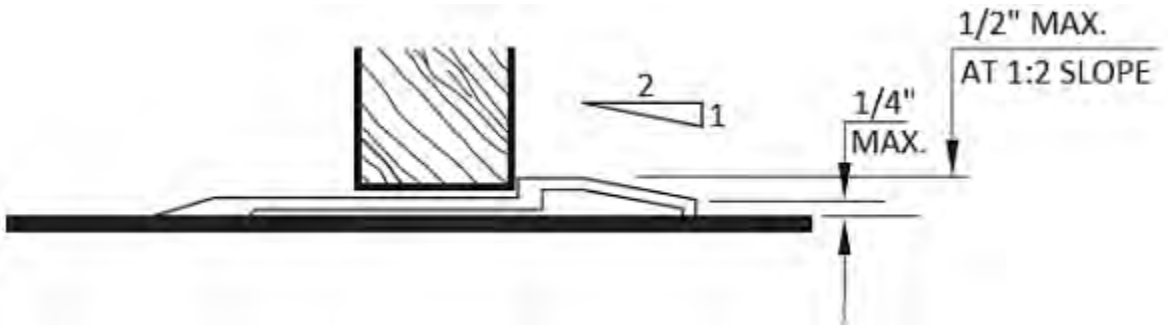
Unit with Adaptable Features

Primary Entry Door

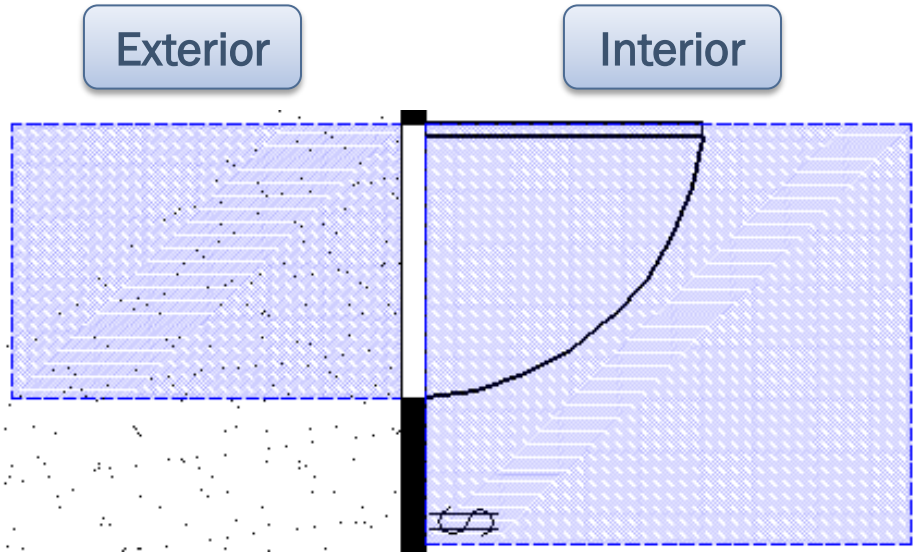
Door Threshold

Unit with Mobility Features and Unit with Adaptable Features:

- Changes in level between ¼ inch (6.4 mm) high minimum and ½ inch (12.7 mm) high maximum shall be beveled with a slope not steeper than 1:2.

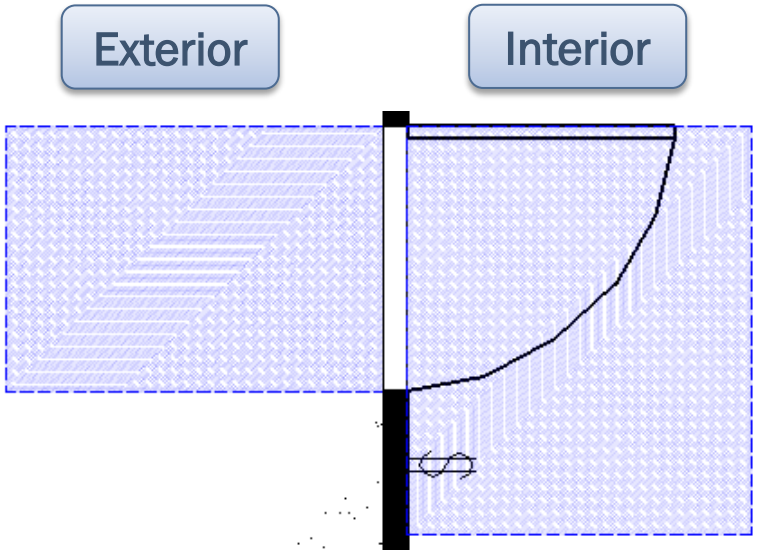


Comparison of Secondary Exit Door



Maneuvering Clearance
Exterior – Full width of door x 48”
Interior – Full width + 18” x 60“

Unit with Mobility Features



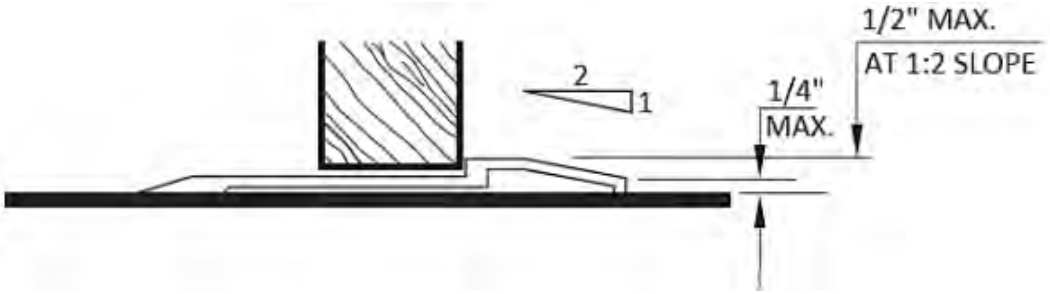
Maneuvering Clearance
Exterior – Full width of door x 48”
Interior – Full width + 18” x 44“

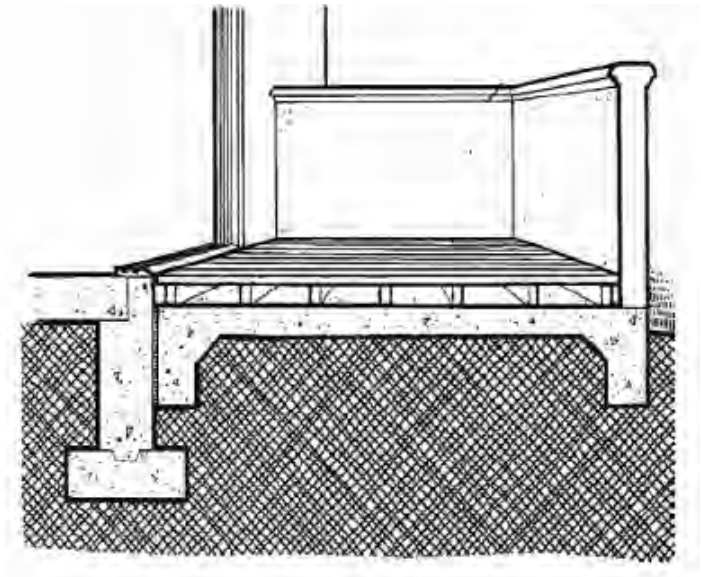
Unit with Adaptable Features

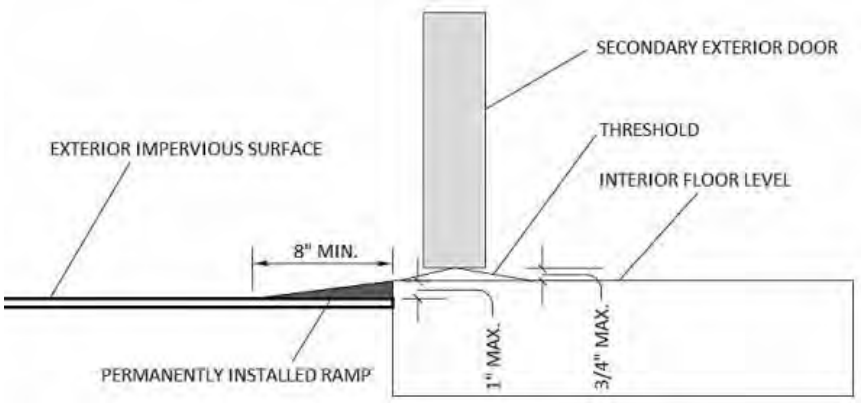
Comparison of Secondary Exit Door

Door Threshold

Unit with Mobility Features



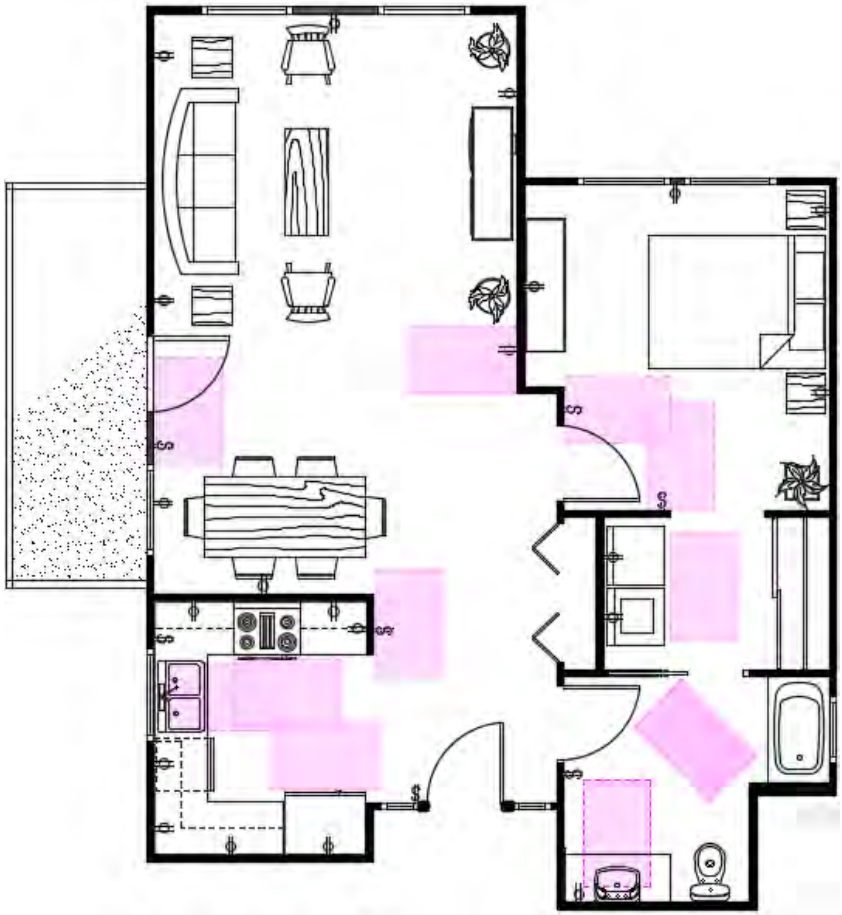




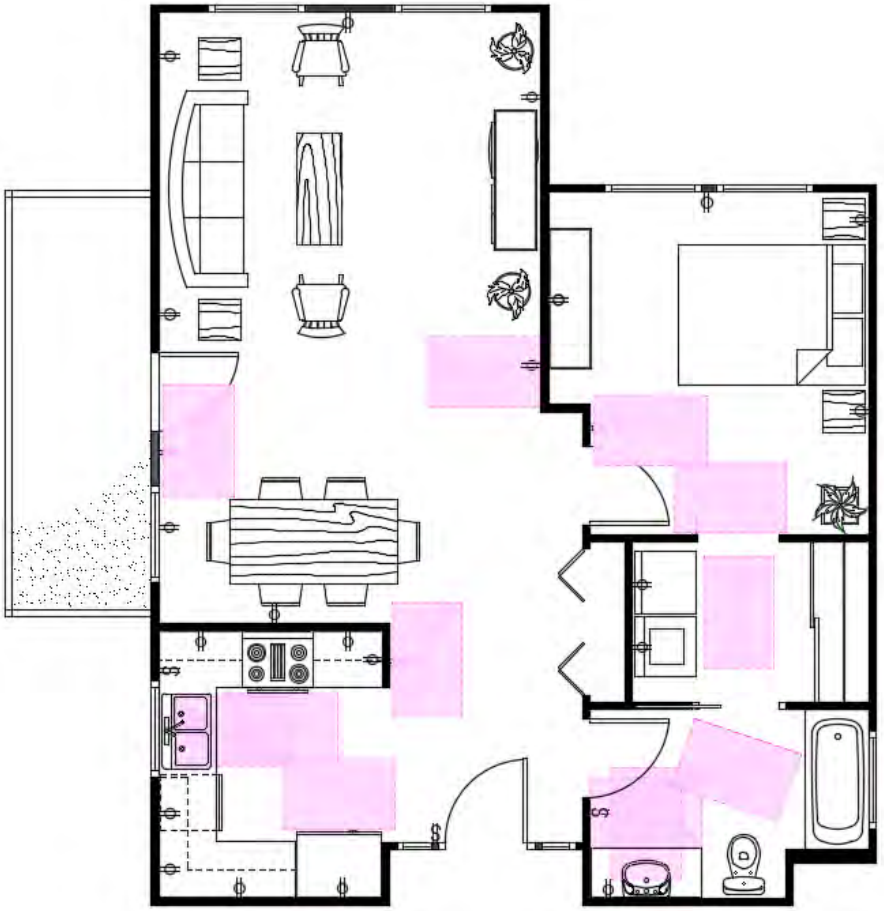
Unit with Adaptable Features

192

Comparison of Clear Floor Space



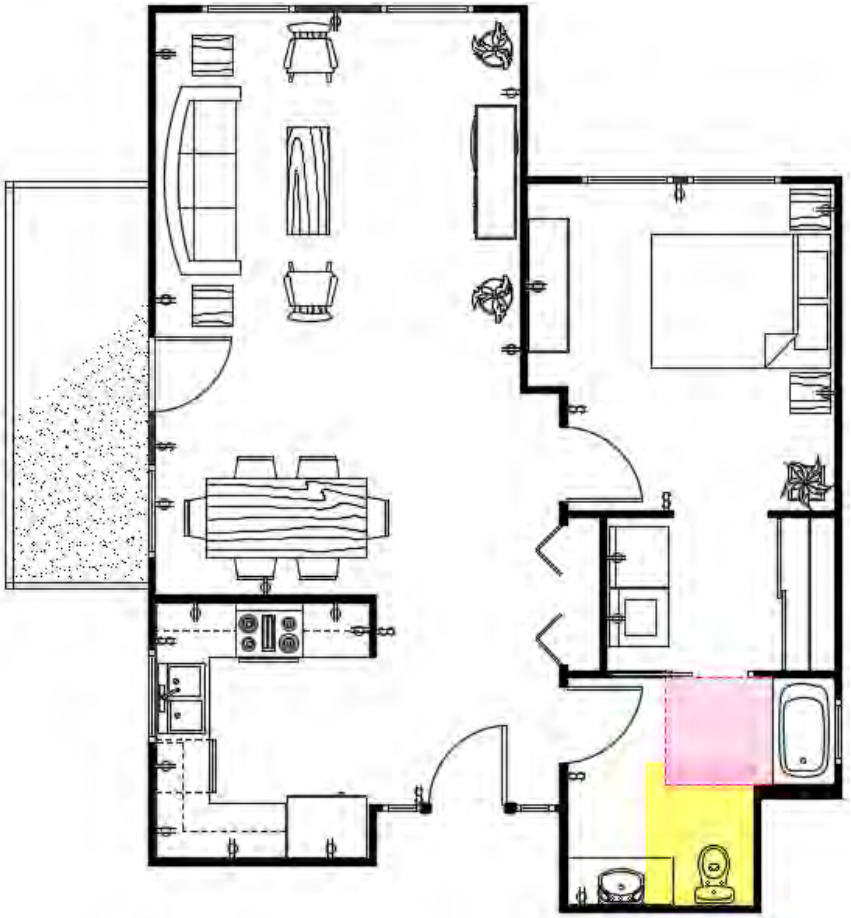
Unit with Mobility Features



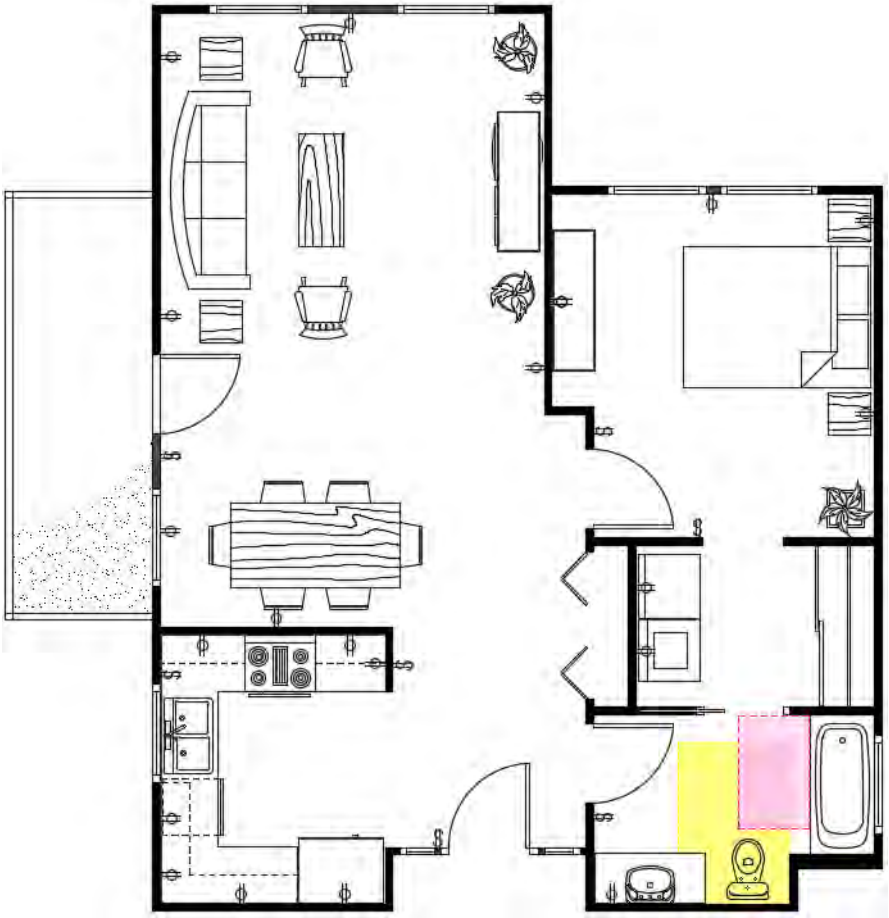
Unit with Adaptable Features

193

Comparison of Clearance @ Plumbing Fixtures



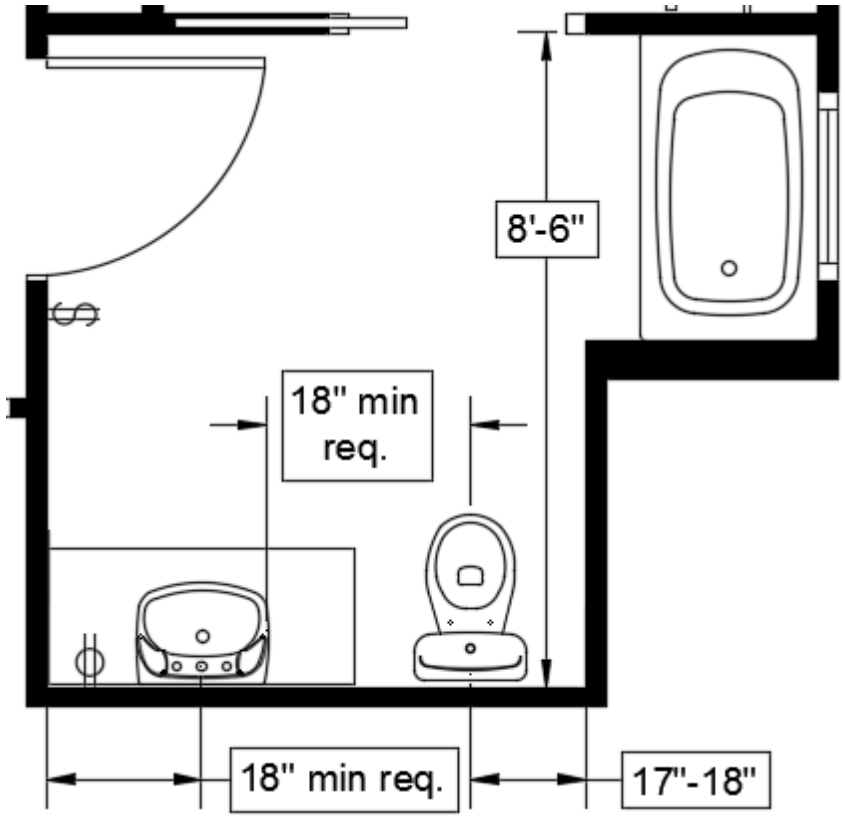
Unit with Mobility Features



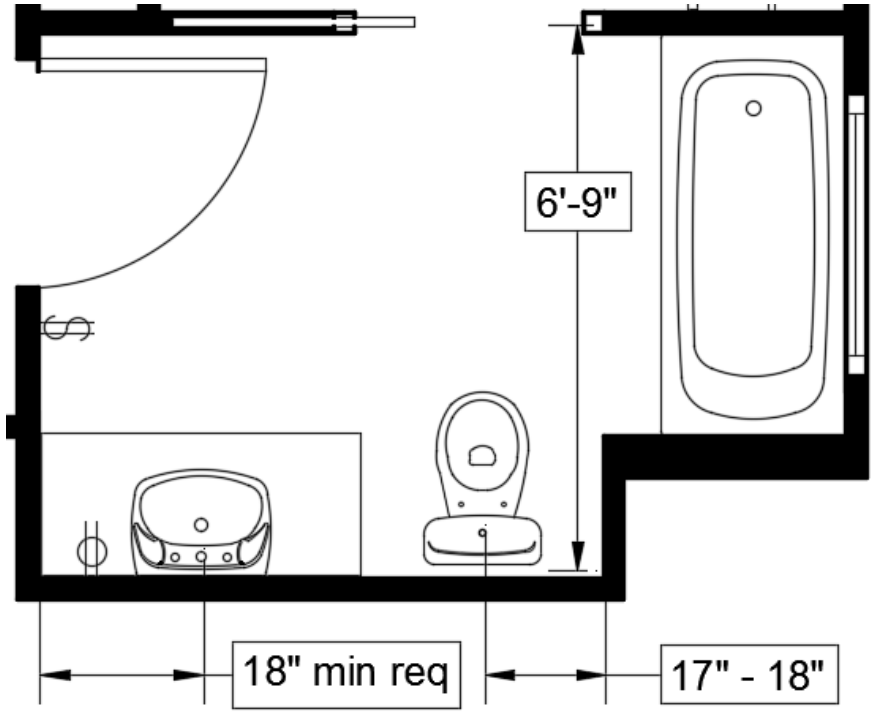
Unit with Adaptable Features

194

Comparison of Bathroom



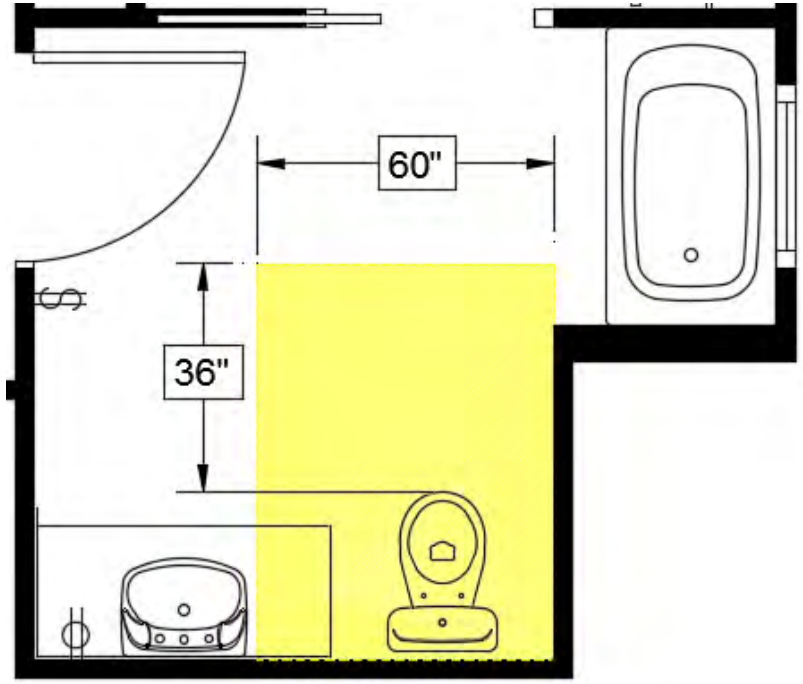
Unit with Mobility Features



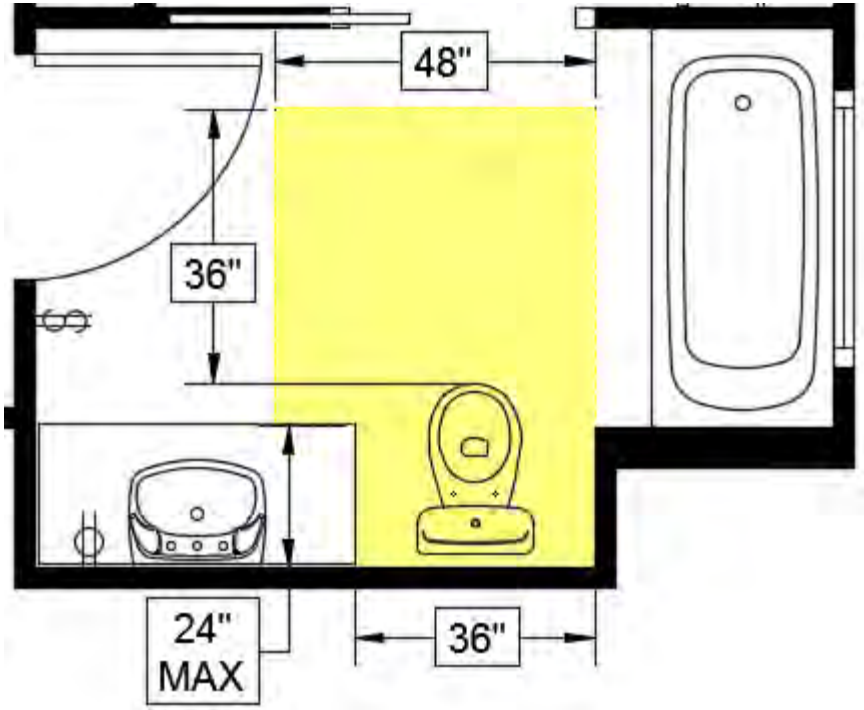
Clearance at lavatory for parallel approach requires 24” min to centerline of lavatory

Unit with Adaptable Features

Comparison of Clearance @ Water Closet

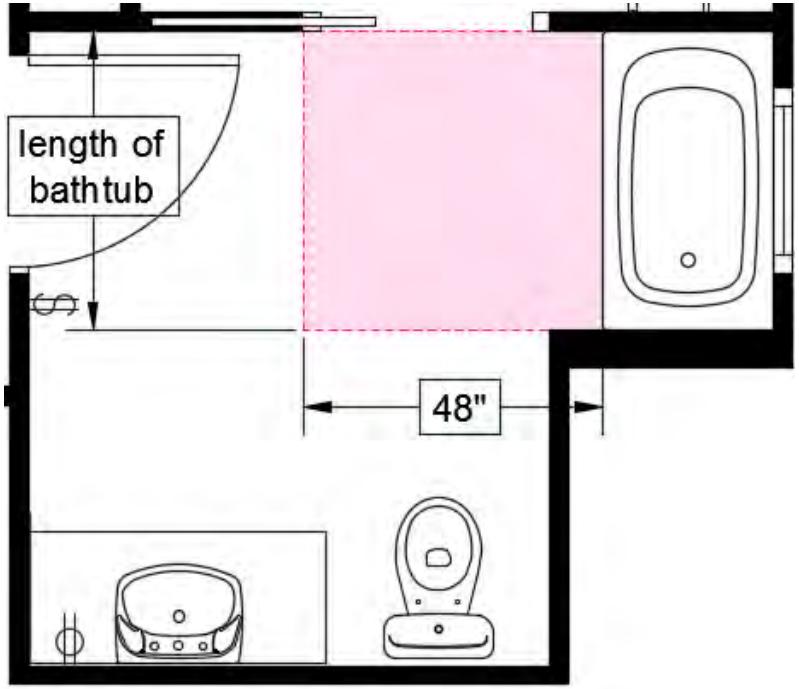


Unit with Mobility Features

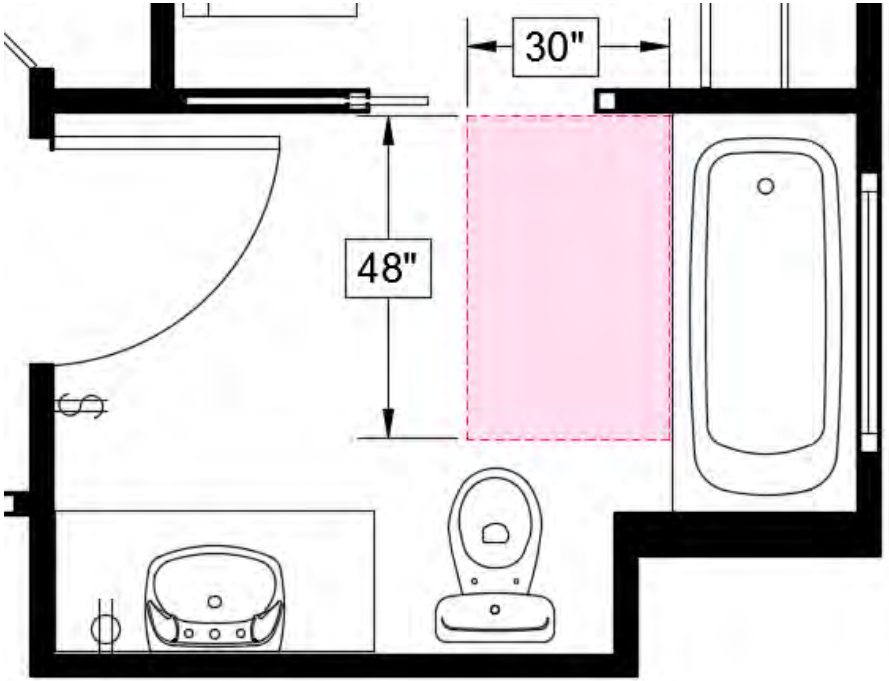


Unit with Adaptable Features

Comparison of Clearance @ Bathtub

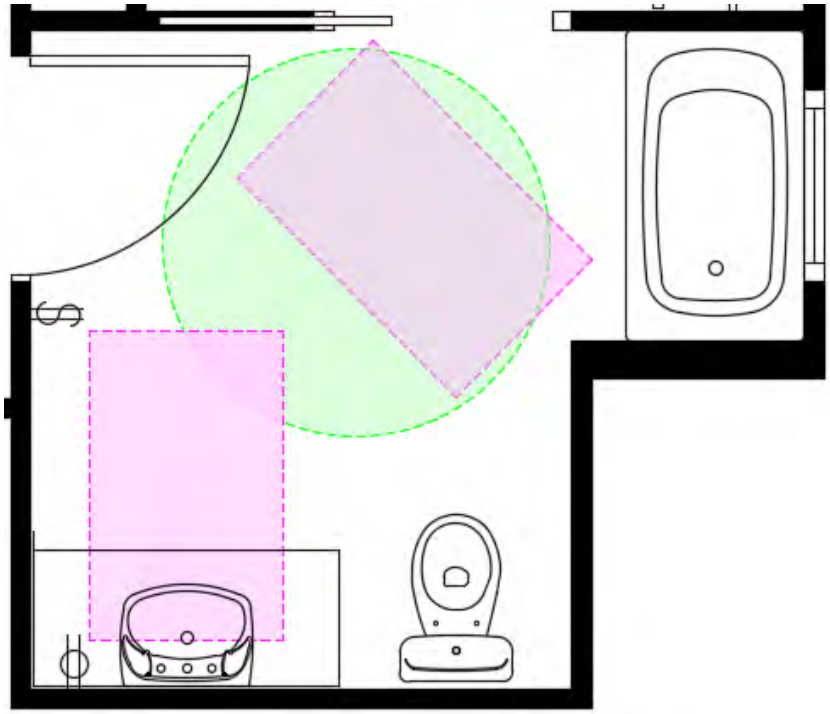


Unit with Mobility Features

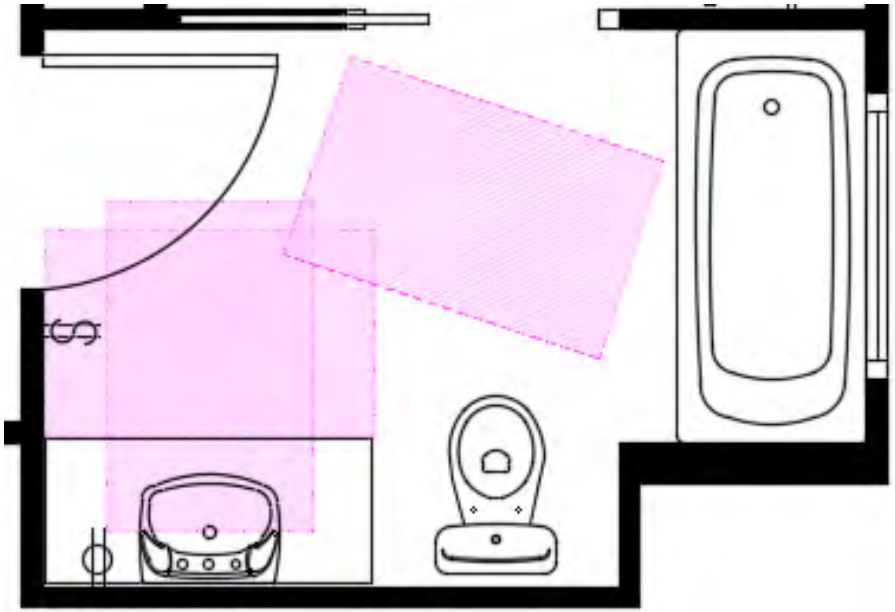


Unit with Adaptable Features

Comparison of Turning Space & Clear Floor Space



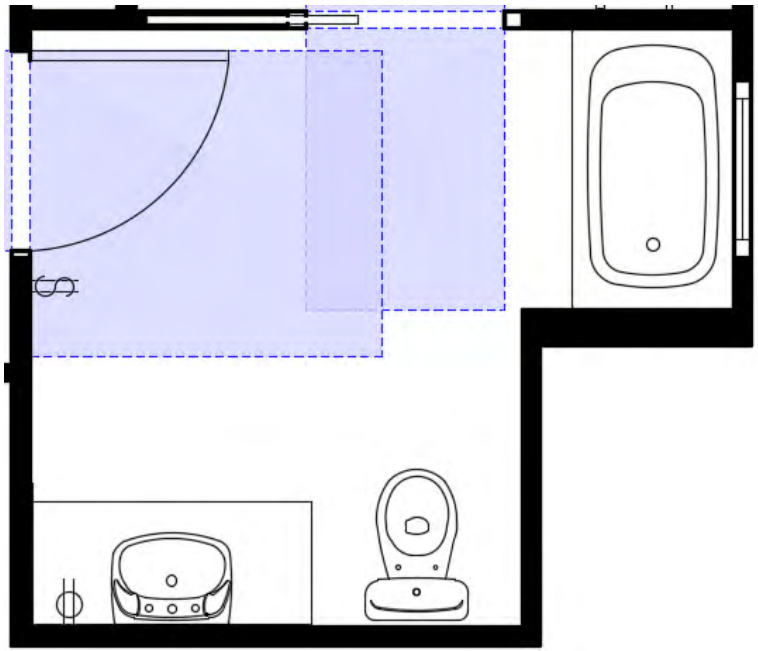
Unit with Mobility Features



Unit with Adaptable Features

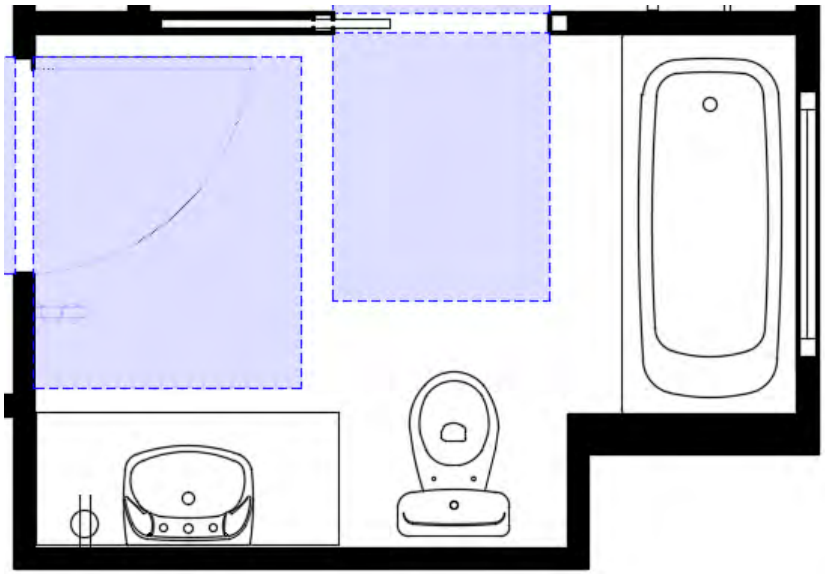
198

Comparison of Maneuvering Clearance @ Doors



Maneuvering Clearance
Pull Side – Full width + 18” x 60”
Push Side – Full width + 48”

Unit with Mobility Features



Maneuvering Clearance
Pull Side – Full width + 18” x 42”
Push Side – Full width + 42”

Unit with Adaptable Features

Comparison of Bathroom Elements

Bathroom Elements		
	Chapter 11B	Chapter 11A
Height to Top of Lavatory Rim	34 inches max	34 inches max
Approach @ Lavatory	Forward	Forward or Parallel*
Depth of Countertops w/Cabinet Below	24 inches max	24 inches max
Removable Cabinet under Lavatory	Allowed	Allowed

* *Requires knee and toe clearance for either approach at lavatory.*

Comparison of Bathroom Elements

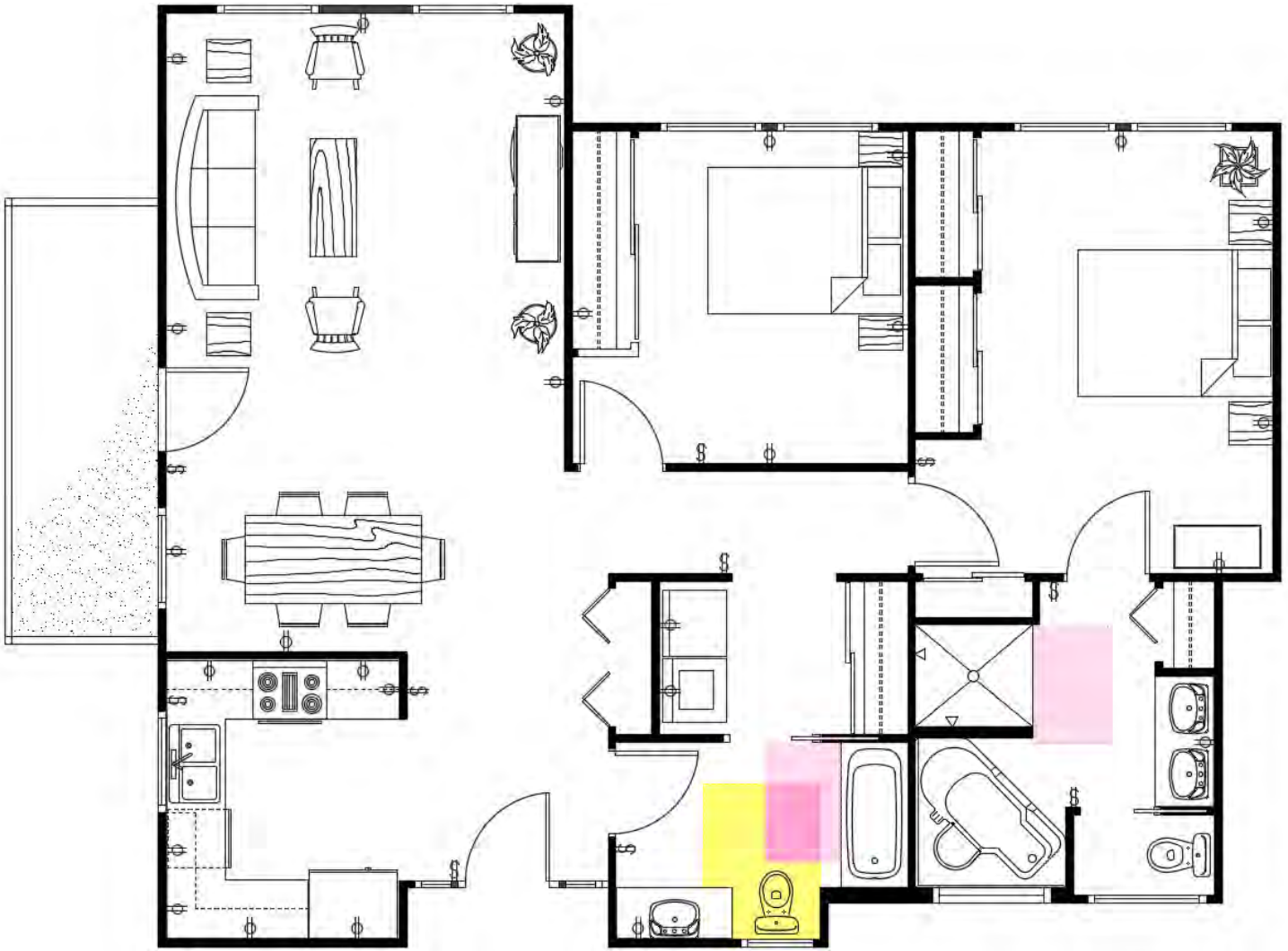
Bathroom Elements		
	Chapter 11B	Chapter 11A
Backing Required for Grab Bars at Bathtub, Showers and Water Closet	✓	✓
Approach @ Lavatory	Forward	Forward or Parallel
Centerline of Water Closet	17-18 inches	17-18 inches
Seat Height @ Water Closet	15-19 inches	15 inches minimum

201

Mobility Unit w/Second Bathroom

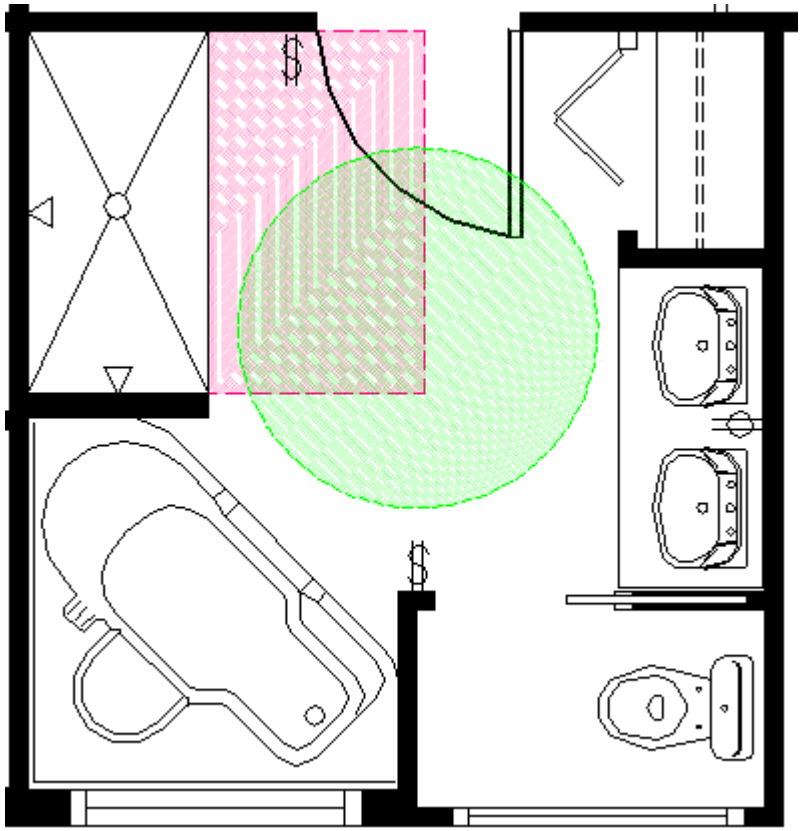
202

Adaptable Unit w/Second Bathroom

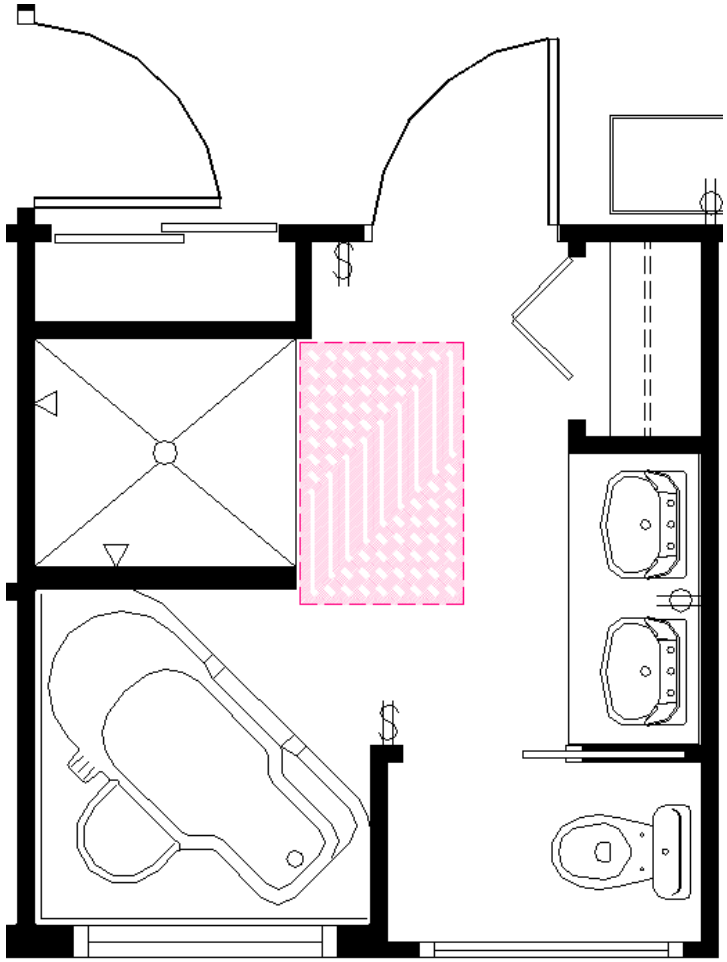


203

Comparison of Clearance @ Plumbing Fixtures - Second Bathroom



Unit with Mobility Features

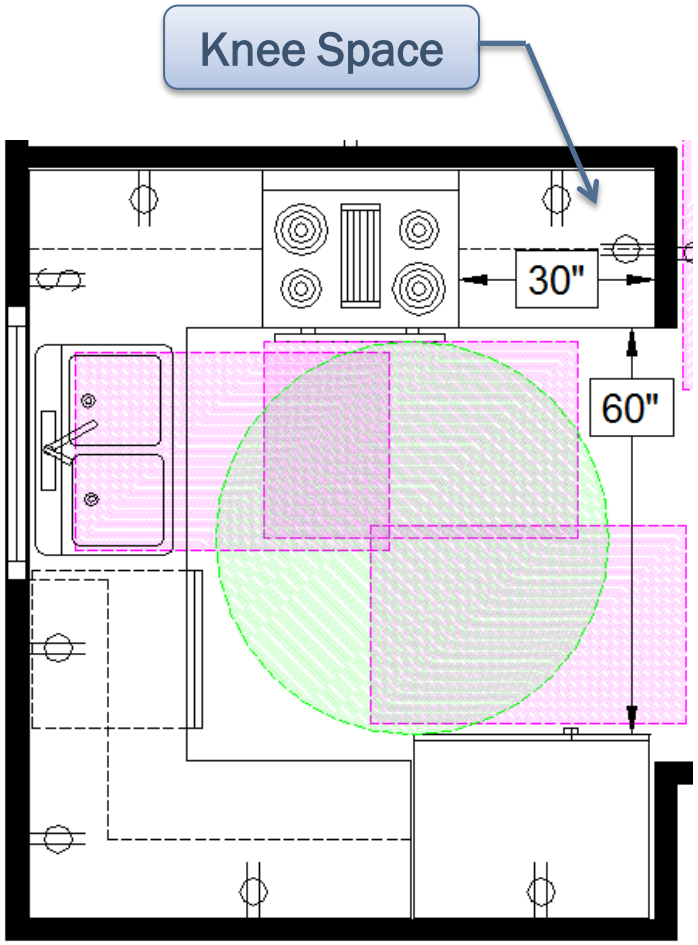


Unit with Adaptable Features

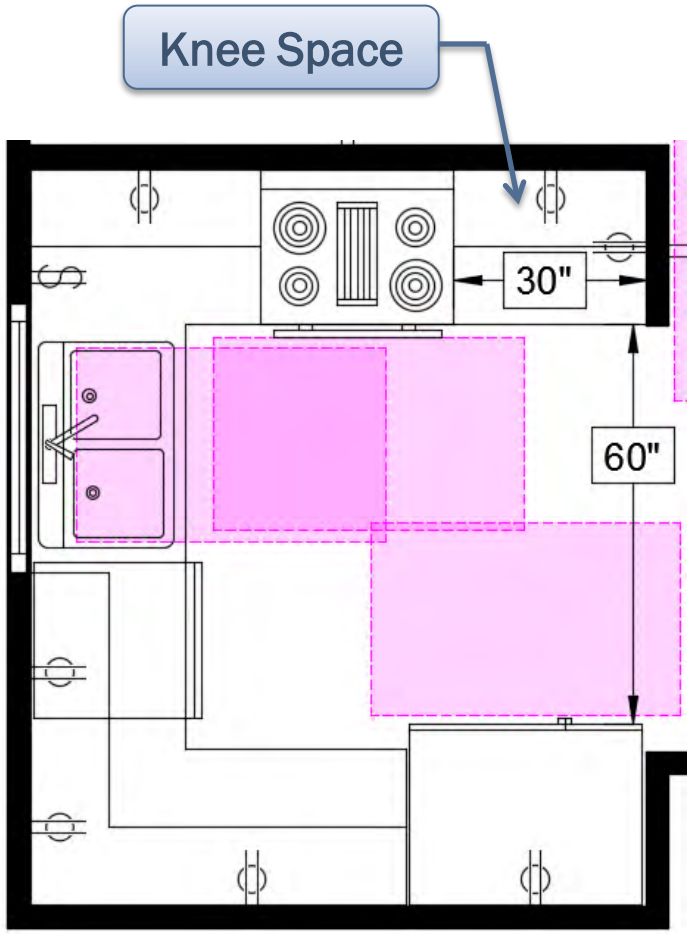
Accessible Kitchens

205

Comparison of Kitchen

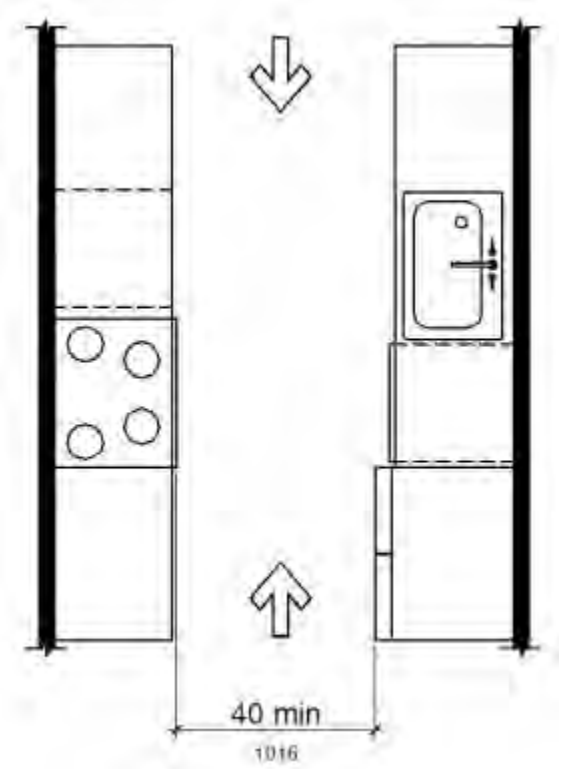


Unit with Mobility Features

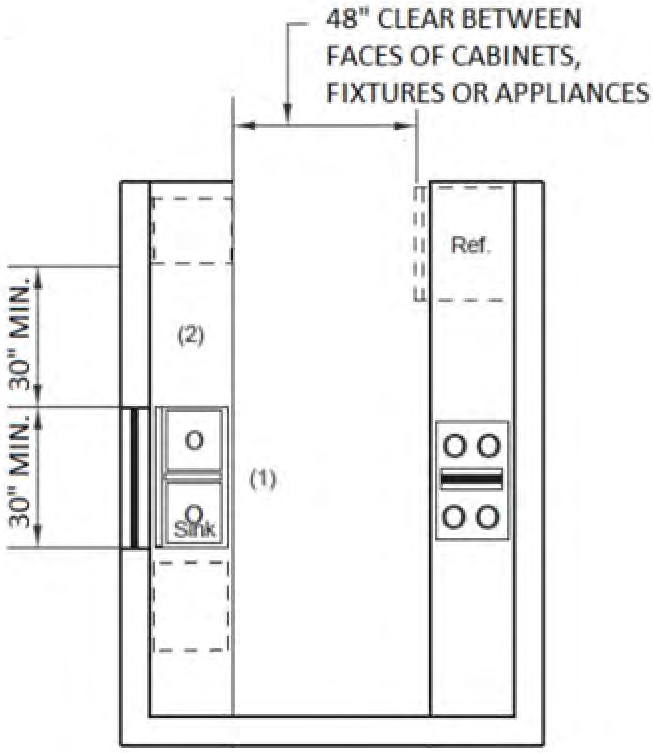


Unit with Adaptable Features

Alternate Kitchen Designs



Unit with Mobility Features



Unit with Adaptable Features

Comparison of Kitchen Elements

Kitchen Elements		
	Chapter 11B	Chapter 11A
Height of Countertops	34 inches max where reaching over obstruction	36 inches max where reaching over obstruction
Depth of Countertops w/Cabinet Below	24 inches max	24 inches max

Comparison of Kitchen Elements

Kitchen Elements		
	Chapter 11B	Chapter 11A
Repositionable Countertops	Allowed, Breadboard exception not allowed	Required in 5% of the units, breadboard allowed in lieu of repositionable countertop

Comparison of Kitchen Elements

Kitchen Elements		
	Chapter 11B	Chapter 11A
Repositionable Countertops	Exception not allowed	Exempted when stone, cultured stone and tile countertops are installed
Storage	50% of shelf space within reach range	Lower shelving and/or drawers within 48 inches

Calculation of Kitchen Storage

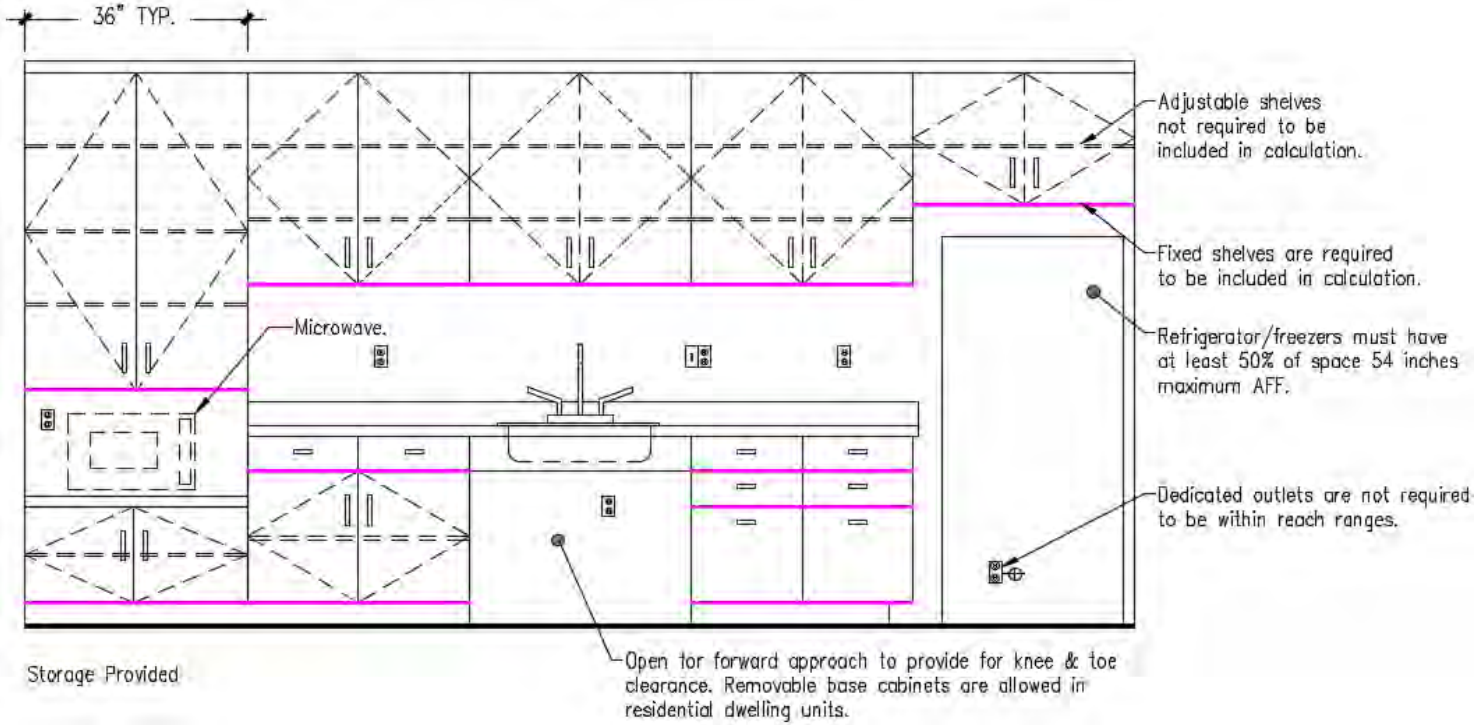
Calculation of storage provided.

Determine surface area of upper and lower fixed shelves. Drawers are considered pull-out shelves.

Area of fixed storage in upper cabinets: 10” deep x 36” wide shelves x 5 = 1,800 sq. in

Area of fixed storage in base cabinets: 23” deep x 36” wide shelves & drawers x 6 = 4,968 sq. in

Total square inches of fixed storage provided = **6,768**



Calculation of Kitchen Storage

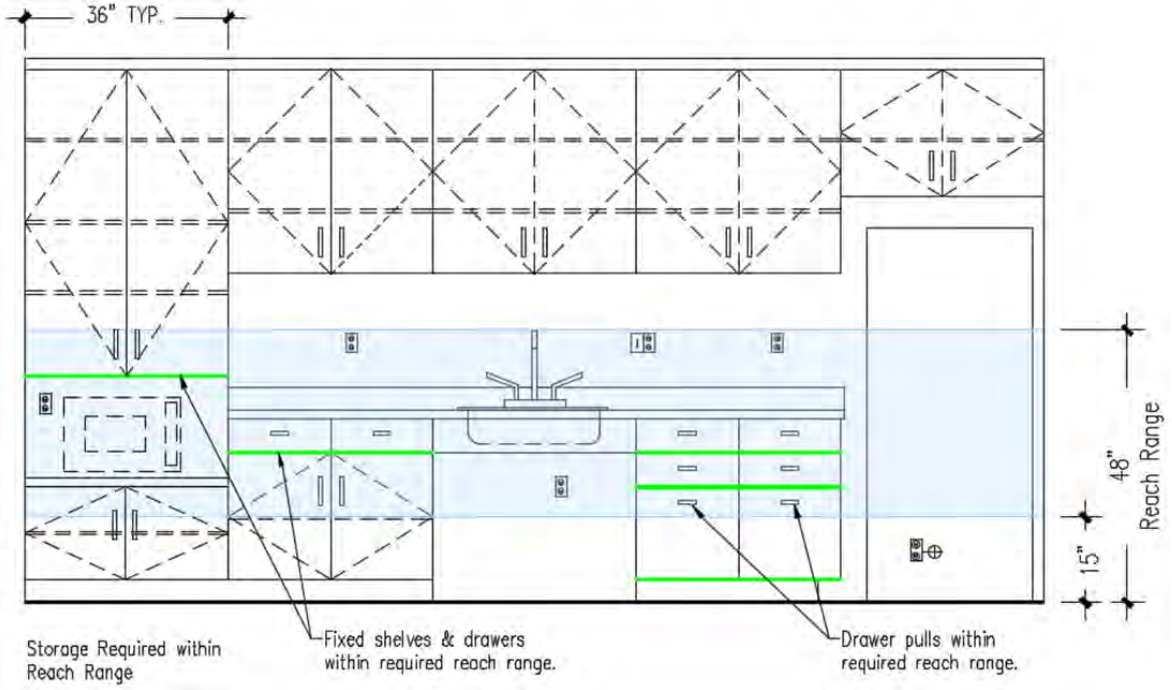
Calculation of storage within reach range.

Determine surface area of upper and lower fixed shelves. Drawers are considered pull-out shelves.

Area of fixed storage in upper cabinets: 10” deep x 36” wide shelves x 1 = 360 sq. in

Area of fixed storage in base cabinets: 23” deep x 36” wide shelves & drawers x 4 = 3,312 sq. in

Total square inches of fixed storage provided within reach range = **3,672**



Calculation of Kitchen Storage

Does this design meet the code requirements?

- Provided fixed storage: 6,768 sq. in.
- Storage required within reach range:

  6,768 sq. in x 50% = 3,384 sq. in.
- Storage provided within reach range: 3,672 sq. in.

Storage provided within reach range exceeds amount required.

This design complies!

Comparison of Kitchen Elements

Kitchen Elements		
	Chapter 11B	Chapter 11A
Approach at sink	Forward	Forward or parallel
Removable Cabinet under Sink	Allowed	Allowed
Appliance controls	At front of range or cooktop	Not regulated
Freezer Space	50% within reach range	Not regulated

Units w/Communication Features

- Requirements for Units with Communication Features
  - Building fire alarm system with wiring extended to a point in the vicinity of the smoke detection system
  - Alarm appliances comply with Chapter 9, Section 907.5.2.3.4 including smoke and carbon monoxide detection
  - Primary entrance –
    - Hardwired electric doorbell required with audible and visible signal
    - Means for visually identifying a visitor without opening entry door

Exercise Two – New Construction

Exercise Two

Program – Detached Single Family Residences

- A county's redevelopment agency administers a program to increase the number of affordable detached single family residences for sale to private owners
- This project will be constructed by an agreement with the redevelopment agency and a developer
- Federal and state tax credits are included as part of the agreement
- The developer will invest private funds as well

Exercise Two

Program – Detached Single Family Residences

- The development consists of 250 detached single family residences
- All the residences are two story with attached garages
- Of the 250 single family residential dwellings, three are model homes
- A sales office is on site

Exercise Two

Program – Detached Single Family Residences

There are ten parking spaces for visitors at the sales office and five employee parking spaces

Common areas for the exclusive use of residents and their guests include:

- Exercise Facility
- Playground
- Swimming Pool
- Community Building

Additions, Alterations & Path of Travel

DSA ACADEMY

DSA
DIVISION OF THE STATE ARCHITECT
DEPARTMENT OF GENERAL SERVICES

Additions – Chapter 11B

- An addition resulting in an increase in the number of residential dwelling units applies only to the residential dwelling units that are added until the total number of required mobility, adaptable and communication units is met

  Section 11B-233.3.3

- Path of Travel -
  - When alterations or **additions** are made to existing buildings or facilities an accessible path of travel shall be provided to the area of alteration or addition

    Section 11B-202.4

Alterations – FHA & Chapter 11A

- The Fair Housing Act and Chapter 11A regulate covered multi-family dwellings constructed for first occupancy after March 13, 1991
- The residential facilities regulated by the Fair Housing Act must be maintained in compliance with the guidelines
- The Fair Housing Act and Chapter 11A do not regulate alterations in facilities constructed for first occupancy prior to March 13, 1991
- Chapter 11A requires covered multifamily dwellings to be maintained in compliance with accessibility standards at the time of construction - Section 1102A.2

Alterations – Chapter 11B

- Path of Travel -
  - Requirements apply for Path of Travel upgrades to area of alteration or addition
  - Exception for alterations to individual residential dwelling unit in compliance with Section 11B-233.3.4.2

Section 11B-202.4

Alterations – Chapter 11B

- Alterations -
  - Technical infeasibility allows for alteration or construction of a comparable unit.
  - What factors should be considered when determining if a unit is comparable?
    - Number of bedrooms
    - Amenities within the unit
    - Common spaces within the facility
    - Location with respect to community resources and services

      Section 11B-233.3.4

Alterations – Chapter 11B

- Vacated Buildings –
  - Where a building is vacated for purposes of alteration for use as public housing with more than 15 residential dwelling units, 5% shall have mobility features, 2% communication features and the ground floor units shall be adaptable
  - Where building's exterior is preserved, and the interior removed, with a new building intended for use as public housing constructed behind the existing exterior, the building is considered new construction

Section 11B-233.3.4.1 and Exception

Alterations – Chapter 11B

- Residential dwelling units for sale –
  - Residential dwelling units designed and constructed or altered by public entities, that will be offered for sale to individuals, shall be accessible
  - Exception for residential dwelling units acquired by public entities, offered for resale without additions or alterations

Section 11B-233.3.2 and Exception

Alterations – Chapter 11B

- Alterations -
  - To individual residential dwelling units
    - Where a bathroom or kitchen and at least one other room is substantially altered
    - Requirements apply to the number of altered units until the total number of required mobility, adaptable and communication units is met

Section 11B-233.3.4.2

Exercise Three - Addition

228

Exercise Three

Affordable Housing

An addition is planned to an existing three story apartment building constructed in 1986. The project will be constructed, with no Federal financial assistance, by a non-profit organization on behalf of a public entity that will operate the facility.

- There are sixty residential dwelling units in the existing building and an elevator serving all floors.
- The addition provides another sixty, one story residential dwelling units.

Exercise Three

Affordable Housing

- The main entry is at the existing building and the route connects through the existing building to the new addition via a walkway.
- There is an existing on-site rental office that is not being renovated.
- There are no public restrooms, drinking fountains or telephones.

Exercise Three

Affordable Housing

Parking is provided in three separate facilities for a total of 125 spaces. The parking facilities are being resurfaced and restriped.

- The number of spaces per facility are:
  - 15 for visitors
  - 10 for employees
  - 100 for residents

Exercise Four - Alteration

Exercise Four – Alteration

Program - Affordable Housing

Alterations to residential dwelling units in an apartment building constructed in 1995 are in the planning stages. The construction project agreement is between the city's redevelopment agency and a non-profit organization to renovate a limited number of apartments in order to provide affordable housing.

Exercise Four - Alteration

Program - Affordable Housing

- The building is two stories with sixty units on each floor.
- Kitchens, bedrooms and living rooms are being substantially altered in 20 of the first floor residential dwelling units.
- The dwelling units all have the same floor plan.
- There are no public restrooms, drinking fountains or telephones.

Exercise Four - Alteration

Program - Affordable Housing

- The rental office is off-site.
- The parking was recently resurfaced, restriped and is compliant.
- There are no common use areas on-site.

DIVISION OF THE STATE ARCHITECT
DEPARTMENT OF GENERAL SERVICES

DSA ACADEMY

THANK YOU FOR PARTICIPATING!

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Visit DSA's Web page at www.dgs.ca.gov/dsa

DSA – Access Housing Regulations

University of California – Access Compliance Training

September 25 and 28th, 2017

TABLE OF CONTENTS

Accessible Housing Regulations, Standards and Guidelines

TABLE OF CONTENTS

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
29-May-14	CQ	Rota Island	Benjamin Taisacan Manglona Intl.	4/9439	4/22/14	RNAV (GPS) RWY 9, Amdt 1.
29-May-14	GA	Butler	Butler Muni	4/9568	4/16/14	RNAV (GPS) RWY 36, Amdt 1.
29-May-14	KS	Topeka	Forbes Field	4/9593	4/15/14	NDB RWY 13, Amdt 7.
29-May-14	KS	Topeka	Forbes Field	4/9594	4/15/14	RNAV (GPS) RWY 21, Amdt 1.
29-May-14	KS	Topeka	Forbes Field	4/9595	4/15/14	RNAV (GPS) RWY 3, Amdt 1.
29-May-14	KS	Topeka	Forbes Field	4/9596	4/15/14	VOR/DME OR TACAN RWY 3, Amdt 6.
29-May-14	WI	Park Falls	Park Falls Muni	4/9636	4/11/14	NDB RWY 36, Amdt 1.
29-May-14	WI	Park Falls	Park Falls Muni	4/9637	4/11/14	RNAV (GPS) RWY 18, Orig-A.
29-May-14	WI	Park Falls	Park Falls Muni	4/9638	4/11/14	RNAV (GPS) RWY 36, Orig-A.
29-May-14	AZ	Flagstaff	Flagstaff Pulliam	4/9661	4/17/14	ILS OR LOC/DME RWY 21, Orig-F.
29-May-14	WI	Sheboygan	Sheboygan County Memorial ..	4/9683	4/17/14	ILS OR LOC/DME RWY 22, Amdt 5.
29-May-14	WA	Seattle	Seattle-Tacoma Intl	4/9693	4/17/14	ILS OR LOC RWY 16C, Amdt 14.
29-May-14	WA	Seattle	Seattle-Tacoma Intl	4/9698	4/17/14	RNAV (GPS) Y RWY 34R, Amdt 2A.

[FR Doc. 2014–11556 Filed 5–22–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 8

[Docket No. FR–5784–N–01]

Nondiscrimination on the Basis of Disability in Federally Assisted Programs and Activities

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Instructions for use of alternative accessibility standard.

SUMMARY: HUD is issuing this document to permit recipients of Federal financial assistance from HUD (HUD recipients) to use an alternative accessibility standard for purposes of complying with Section 504 of the Rehabilitation Act of 1973 (Section 504) and HUD's implementing regulation at 24 CFR part 8 (Section 504 regulation) until HUD formally revises its Section 504 regulation to adopt an updated accessibility standard. In March 2011, the Department of Justice (DOJ), pursuant to its coordination authority under Section 504, advised Federal agencies that they may permit covered entities to use the 2010 ADA Standards for Accessible Design (2010 Standards) as an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS) until such time as they update their agency's regulation implementing the Federally assisted provisions of Section 504. Consistent with DOJ's advice, this document provides HUD recipients the option of using the 2010 Standards under title II of the ADA, except for certain specific provisions identified in this document, as an alternative accessibility standard to UFAS for purposes of complying with Section 504 and HUD's Section 504 regulation for new construction and alterations commenced on or after May 23, 2014. This document is in effect until HUD formally revises its Section 504 regulation to adopt an updated accessibility standard.

DATES: *Effective Date:* May 23, 2014.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Program Compliance and Disability Rights, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone 202–402–7058 (this is not a toll-free number). Individuals who are deaf, are hard of hearing, or have speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Overview

HUD's Section 504 regulation requires that programs or activities receiving Federal financial assistance be readily accessible to and usable by persons with disabilities. HUD's Section 504 regulation provides that the design, construction, or alteration of buildings and facilities in conformance with UFAS is deemed to be in compliance with the accessibility requirements of Section 504 (24 CFR 8.32). Many of the programs or activities that are subject to HUD's Section 504 regulation, however, are also subject to title II of the ADA, which applies to public entities, or title III of the ADA, which covers certain private entities, including public accommodations, and are therefore required to comply with the 2010 Standards. When more than one law and accessibility standard applies, it is currently necessary for the recipient to determine on a section-by-section basis which standard affords greater accessibility.

In March 2011, DOJ advised Federal agencies that they may provide covered entities the option of using the 2010 Standards as an acceptable alternative to UFAS (*www.ada.gov/504_memo_standards.htm*) until such time as they update their agency's regulation implementing the Federally assisted provisions of Section 504. Because many recipients of Federal financial assistance are also subject to the Americans with Disabilities Act (ADA), Federal agencies requested this authority to minimize the number of accessibility standards with which recipients of Federal financial assistance must comply.

HUD has identified certain provisions in the 2010 Standards that provide less accessibility than is currently required by UFAS and/or HUD's Section 504 regulation. As a result, HUD is not deeming use of those specific provisions of the 2010 Standards as a means of providing accessibility under Section 504 because HUD cannot decrease the level of accessibility currently required by its Section 504 regulation without engaging in notice and comment rulemaking. Those provisions are summarized in the Appendix of this document.

The option to utilize the 2010 Standards under title II of the ADA, except for certain provisions identified in this document, is available to all HUD recipients for purposes of complying with HUD's Section 504 regulation whether they are private or

public entities, including HUD recipients covered by Section 504 but not title II or III of the ADA. For purposes of complying with Section 504, a HUD recipient must designate the accessibility standard it is using: The 2010 Standards with identified exceptions outlined in this document or UFAS. Recipients that prefer to use UFAS as the accessibility standard under Section 504 may continue to do so. If a recipient subject to both Section 504 and the ADA decides to continue to use UFAS to comply with HUD's Section 504 requirements, it must determine, section-by-section, which standard (2010 Standards or UFAS) affords greater accessibility and comply with that provision. If choosing the 2010 Standards for purposes of compliance with Section 504, the recipient need only comply with the 2010 Standards except that it must not apply those provisions not deemed as compliant in this document and must continue to apply those provisions of UFAS or the HUD regulation that are specifically identified in this document. HUD also reminds recipients that the design and construction requirements of the Fair Housing Act (FHAct) continue to apply to new construction of covered multifamily dwellings. These requirements are not affected by this document. However, some of these requirements impose greater accessibility requirements than the 2010 Standards.

II. Definitions of Standards and Guidelines Referenced in This Document

1991 Standards means the requirements in the ADA Standards for Accessible Design published as Appendix A to 28 CFR part 36 on July 26, 1991, and republished as Appendix D to 28 CFR part 36 on September 15, 2010. For purposes of compliance with title II of the ADA, covered entities were not permitted to use the elevator exemption contained at sections 4.1.3(5) and 4.1.6(1)(j) of the 1991 Standards.

2004 ADA and ABA Accessibility Guidelines means the minimum accessibility guidelines published by the United States Access Board in 2004 for both the ADA and the Architectural Barriers Act (ABA).[1]

2004 ADAAG means the requirements set forth in Appendices B and D to 36 CFR 1191 which are the ADA scoping chapters and the common technical requirements in the ADA and ABA Accessibility Guidelines.

2004 ABAAG means the requirements set forth in Appendices C and D to 36 CFR 1191 which are the ABA scoping chapters and the common technical requirements in the ADA and ABA Accessibility Guidelines.

UFAS means the Uniform Federal Accessibility Standards. HUD's Section 504 regulation references sections 3 through 8 of UFAS for purposes of compliance with Section 504.[2]

2010 Standards means the 2010 ADA Standards for Accessible Design as defined in the regulation implementing title II of the ADA and consists of the 2004 ADAAG as applied to entities covered by title II of the ADA (*i.e.,* public entities) and the requirements contained in 28 CFR 35.151.

III. Background

A. Section 504

Section 504 and HUD's Section 504 regulation prohibit discrimination on the basis of disability in any program or activity that receives Federal financial assistance from the Department.[3] HUD's Section 504 regulation specifically prohibits the denial of benefits of, exclusion from participation in, or other discrimination against qualified individuals with disabilities in Federally assisted programs or activities because a recipient's facilities are inaccessible to or unusable by individuals with disabilities.[4] Among other things, the regulation requires that the design, construction, and alteration of projects meet physical accessibility requirements.[5]

Currently, pursuant to HUD's Section 504 regulation, the design, construction, or alteration of buildings in conformance with UFAS is deemed to be in compliance with the accessibility requirements of Section 504.[6] UFAS is based on the minimum accessibility guidelines developed by the United States Access Board (Access Board) that were adopted as enforceable standards by the General Services Administration, the Department of Defense, the Department of Housing and Urban Development, and the United States Postal Service for purposes of compliance with the ABA. Subsequently, UFAS was also adopted as the referenced accessibility standard in HUD's Section 504 regulation. HUD's Section 504 regulation provides that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided (24 CFR 8.32).

B. 2004 ADA and ABA Accessibility Guidelines

On July 23, 2004, the Access Board published updated minimum accessibility guidelines for both the ADA and the ABA known as the Americans with Disabilities Act and Architectural Barriers Act Accessibility Guidelines (2004 ADA and ABA Accessibility Guidelines). The 2004 ADA and ABA Accessibility Guidelines updated the accessibility provisions contained in UFAS and the 1991 ADA Accessibility Guidelines. The 2004 ADA and ABA Accessibility Guidelines contain three parts: application and scoping requirements for facilities covered by the ADA (ADA Chapters 1 and 2); application and scoping requirements for facilities covered by the ABA (ABA Chapters 1 and 2); and a common set of technical provisions (Chapters 3 through 10). The 2004 ABAAG refers to ABA scoping Chapters 1 and 2 and technical provisions in Chapters 3 through 10, and the 2004 ADAAG refers to ADA scoping Chapters 1 and 2 and technical provisions in Chapters 3 through 10.

HUD will engage in the rulemaking process in order to replace UFAS with a new accessibility standard based on the updated guidelines for purposes of both Section 504 and ABA compliance. Until HUD adopts a new accessibility standard, HUD recipients who undertake alterations or new construction of a project may continue to utilize UFAS and HUD's Section 504 or ABA regulations.

C. Title II of the ADA

Title II of the ADA prohibits discrimination on the basis of disability by state and local government entities, including by requiring facilities designed, constructed, or altered by or on behalf of a public entity, or as part of a public entity's program, to be readily accessible to and usable by individuals with disabilities.[7] Except for transportation facilities, DOJ is the Federal agency responsible for adopting accessibility standards under title II of the ADA.[8] The Department of

[1] 36 CFR part 1191. The full text of the 2004 ADA and ABA Accessibility Guidelines is available at the U.S. Access Board's Web site, *http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/ada-aba-accessibility-guidelines-2004.*

[2] 24 CFR 8.32.

[3] 29 U.S.C. 794.

[4] 24 CFR 8.20.

[5] 24 CFR 8.21, 8.22, 8.23, 8.24, 8.25.

[6] 24 CFR 8.32.

[7] 42 U.S.C. 12131 *et. seq.*

[8] The Department of Justice (DOJ) is also the Federal agency responsible for adopting accessibility standards under title III of the ADA, which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in

Transportation establishes accessibility standards for transportation facilities subject to title II of the ADA. In 1991, DOJ issued a regulation establishing the 1991 Standards or UFAS as legally enforceable accessibility standards under title II.

On September 15, 2010, DOJ published a final rule revising its title II regulation at 28 CFR part 35. Among other requirements, the revised regulation adopted a new accessibility standard referred to as the 2010 ADA Standards for Accessible Design (2010 Standards).[9] For new construction and alterations that commence on or after March 15, 2012, entities covered by title II must comply with the 2010 Standards.[10] The 2010 Standards can be found at *http://www.ada.gov/2010ADAstandards_index.htm.*

For title II entities, the 2010 Standards consist of the 2004 ADAAG and requirements contained in 28 CFR 35.151. Section 35.151 sets forth requirements that have the effect of modifying provisions in 2004 ADAAG and include scoping and technical requirements for social service center establishments, housing at places of education, assembly areas, medical care facilities, residential dwelling units for sale to individuals, and detention and correctional facilities. For example, social service center establishments, which include group homes, halfway houses, shelters, and similar facilities providing temporary sleeping accommodations, must comply with the 2010 Standards applicable to residential facilities including certain requirements specified at 28 CFR 35.151(e). Most housing at a place of education (defined in the title II and title III regulations) must comply with the 2010 Standards applicable to transient lodging including certain requirements specified at 28 CFR 35.151(f).

IV. Deeming 2010 Standards as an Alternative Accessibility Standard for Section 504 Compliance

In March 2011, pursuant to its coordination authority under Section 504, DOJ advised Federal agencies that until such time as they update their agency's regulation implementing the Federally assisted provisions of Section 504, they may notify covered entities that they may use the 2010 Standards as an acceptable alternative to UFAS. Consistent with this guidance, HUD will permit, but not require HUD recipients to use the 2010 Standards under title II of the ADA, except for those provisions identified in this document, as an alternative accessibility standard to UFAS until HUD revises its Section 504 regulation to formally adopt an updated accessibility standard.[11] HUD is not permitting use of certain identified provisions in the 2010 Standards because those provisions provide a lower level of accessibility than is currently required under UFAS and/or HUD's Section 504 regulation and HUD cannot reduce the level of accessibility provided under its Section 504 regulation without engaging in notice and comment rulemaking.

It is important to emphasize that HUD recipients electing to use the 2010 Standards must use the 2010 Standards applicable to public entities under title II of the ADA, with the exceptions noted below, to the entire project; they may not rely on some requirements contained in the 2010 Standards and some requirements contained in UFAS. For purposes of Section 504 compliance, this does not mean that existing buildings that are part of a project and which are not being altered must be brought up to the 2010 Standards. Rather, it means that when a HUD recipient undertakes new construction or alterations and chooses to use the 2010 Standards with the exceptions outlined in this document, the recipient must apply the 2010 Standards to all of the new construction or alterations. It should be noted that the 2010 Standards include a safe harbor for portions of a path of travel complying with UFAS or the 1991 Standards (28 CFR 35.151(b)(4)(ii)(C)). This safe harbor does not apply to existing elements that are altered. The 2010 Standards are available at *http://www.ada.gov/2010ADAstandards_index.htm.*

This option applies to all HUD recipients for purposes of compliance with HUD's Section 504 regulation, including private and public entities, and entities covered by Section 504 but not title II or III of the ADA. Most recipients covered by Section 504 based on the receipt of Federal financial assistance from HUD are state or local government entities or private entities covered by the ADA, and are therefore required to comply with ADA accessibility requirements.[12] By issuing this document, HUD is offering covered entities the option of reducing the burden of complying with different accessibility standards under Section 504 and the ADA until HUD issues a rule adopting a new accessibility standard under Section 504. HUD recipients may utilize the 2010 Standards, with the exceptions outlined in this document, for compliance with both statutes.

This document makes no changes for entities that choose to use UFAS for purposes of Section 504 compliance along with HUD's Section 504 regulation when undertaking alterations or new construction. HUD recipients may continue to use HUD's Section 504 regulation and UFAS for Section 504 compliance until HUD formally adopts an updated accessibility standard through rulemaking. However, because UFAS is no longer an option for ensuring compliance with title II of the ADA, HUD recipients subject to both Section 504 and title II of the ADA must take an additional step in order to ensure compliance with the ADA if they use UFAS for purposes of Section 504. Specifically, in addition to complying with each scoping and technical provision of UFAS, they must also comply with each scoping and technical provision of the 2010 Standards that affords greater accessibility than UFAS.[13]

V. Utilizing the 2010 Standards

As stated above, the 2010 Standards under title II consist of the 2004 ADAAG and requirements in 28 CFR 35.151. HUD is permitting use of the 2010 Standards as an alternative accessibility standard with the following exceptions. These exceptions are necessary to ensure that HUD recipients construct or alter buildings and facilities with at least the same degree of accessibility as is currently required under HUD's Section 504 regulation and UFAS. The Department lacks the authority to allow the use of an alternative standard that would reduce accessibility or usability for individuals with disabilities in housing

compliance with established accessibility standards. The DOJ implementing regulation is at 28 CFR part 36.

[9] DOJ's September 15, 2010 final rule also revised its title III regulation. For title III entities, the 2010 Standards consist of the 2004 ADAAG and requirements under 28 CFR Part 36—Subpart D.

[10] See 28 CFR 35.151(c) for accessibility standards and compliance dates prior to March 15, 2012.

[11] Memorandum dated March 29, 2011, from Thomas E. Perez, Assistant Attorney General, Division of Civil Rights, U.S. Department of Justice, to Federal Agency Civil Rights Directors and General Counsels, ''Permitting Entities Covered by the Federally Assisted Provisions of Section 504 of the Rehabilitation Act to Use the 2010 ADA Standards for Accessible Design as an Alternative Accessibility Standard for New Construction and Alterations,'' *http://www.ada.gov/504_standards.htm.*

[12] State or local governments are ''public entities'' covered by title II of the ADA, 42 U.S.C. 12131–12134. ''Public accommodations'' include private for-profit or not-for-profit entities that are subject to the requirements of title III of the ADA, 42 U.S.C. 12181–12189.

[13] HUD's scoping continues to apply regarding the required number of accessible residential dwelling units.

settings below the level required by its Section 504 regulation without engaging in notice and comment rulemaking. As discussed below, these exceptions will also maintain consistency with certain requirements of the FHAct.

Definitions

The 2010 Standards define some terms that are also defined in HUD's Section 504 regulation. In such cases, the definition in HUD's Section 504 regulation shall control.

Scoping for Residential Dwelling Units

The 2010 Standards generally defer to HUD on scoping of *residential dwelling units* provided by entities subject to HUD's Section 504 regulation.[14] Specifically, entities receiving Federal financial assistance from the Department must provide residential dwelling units containing mobility features and residential dwelling units containing communication features complying with the 2010 Standards *in a quantity* identified in HUD's Section 504 regulation. For purposes of this document, HUD is not changing its scoping requirements for residential dwelling units under its part 8 regulation.[15] HUD recipients designing, constructing, altering, or operating residential facilities must utilize HUD's scoping to determine the number of required accessible units and utilize the 2010 Standards, with the identified exceptions noted below, for other scoping requirements as well as for the technical standards. If HUD's Section 504 rule does not provide scoping, a HUD recipient using the 2010 Standards for Section 504 compliance must use the scoping provided in the 2010 Standards. This does not preclude HUD from considering scoping or other changes when it undertakes rulemaking to adopt a new accessibility standard.

Structural Impracticability—28 CFR 35.151

Under § 35.151(a)(2) full compliance with the requirements of the 2010 Standards is not required in new construction where a public entity can demonstrate that it is structurally impracticable to do so. Full compliance is considered structurally impracticable ''only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.'' [16] HUD's Section 504 regulation does not contain a comparable exception from compliance with the applicable accessibility requirements when HUD recipients undertake *new construction* of facilities. HUD's regulation also precludes a HUD recipient from selecting a site or location of a facility which would have the purpose or effect of excluding qualified individuals with disabilities from, denying benefits of, or otherwise subjecting them to discrimination under, any program or activity that receives Federal financial assistance.[17] Under HUD's Section 504 regulation, if a site cannot be made accessible to individuals with disabilities, it must not be selected. As emphasized above, HUD cannot allow the use of an alternative standard which conflicts with HUD's regulatory requirements and may reduce accessibility in housing settings without the opportunity for public input through notice and comment rulemaking. Accordingly, recipients may not apply the structural impracticability exception contained in § 35.151(a)(2) of the 2010 Standards through this document.

Alterations—28 CFR 35.151

The 2010 Standards at 28 CFR 35.151(b) and section 202 contain criteria detailing when alterations of facilities must be made accessible. In certain situations, application of the 2010 Standards may result in fewer units containing accessibility features. Because HUD cannot use this document to permit the use of a lesser requirement than that required by its Section 504 regulation, HUD is not permitting use of § 35.151(b). Therefore, multifamily housing projects must continue to utilize the terms ''substantial alterations'' and ''other alterations'' as defined in HUD's Section 504 regulation to determine accessibility requirements.[18] This does not preclude HUD from considering changes to its alterations criteria for residential dwelling units when it revises its regulation to adopt a new accessibility standard.

Additions—Section 202.2 of the 2010 Standards

Section 202.2 of the 2010 Standards contains scoping requirements which may, in certain situations, afford less accessibility for individuals with disabilities than is currently provided by HUD's rules at 24 CFR part 8 and UFAS. Because the Department is precluded from permitting the use of an alternative standard that might reduce accessibility for individuals with disabilities in housing settings without notice and comment rulemaking, HUD is not permitting use of the scoping requirements for additions at section 202.2 of the 2010 Standards.

Alterations Affecting Primary Function Areas—Exception to Section 202.4 of the 2010 Standards

Section 202.4 of the 2010 Standards includes a path of travel obligation when areas containing a primary function are altered. Under the Exception to Section 202.4, residential dwelling units are exempted from this requirement. Under HUD's Section 504 regulation, when accessible dwelling units are newly constructed or where alterations include the provision of accessible dwelling units, the dwelling units must be on an accessible route. HUD is not permitting use of the Exception to Section 202.4 because this may conflict with HUD's Section 504 regulation.

Common Use Areas in Residential Facilities—Section 203.8 of the 2010 Standards

Section 203.8 of the 2010 Standards provides that, in residential facilities, common use areas that do not serve residential dwelling units required to provide mobility features are not required to be accessible or on an accessible route. By contrast, common use areas in residential facilities subject to the new construction requirements of the FHAct must comply with FHAct accessibility requirements, including the requirement to be on an accessible route, regardless of whether or not the common use areas serve units required to have mobility features pursuant to the ADA or Section 504. The only exception would be common use areas provided on upper stories of a non-elevator building provided the same common use areas are provided on the ground floor. In addition, this general exception for common use areas may result in less accessibility than is currently required under HUD's Section 504 regulation and UFAS. Accordingly, HUD is not permitting use of Section 203.8 under this document.

Employee Work Areas—Section 203.9 of the 2010 Standards, and Similar Sections

The 2010 Standards require a more limited level of access within employee work areas in ADA-covered facilities than UFAS, which requires employee work areas to be fully accessible. As stated above, the Department has no authority to allow the use of an alternative standard that may reduce accessibility for individuals with disabilities without notice and comment rulemaking. Section 203.9, as well as

[14] Section 233.2 Residential Dwelling Units Provided by Entities Subject to HUD Section 504 Regulations.

[15] 24 CFR part 8, subpart C.

[16] 28 CFR 35.151(a)(2)(i).

[17] 24 CFR 8.4(b)(5).

[18] 24 CFR part 8, subpart C.

Section 206.2.8, the Exception to Section 403.5, and the Exception to Section 405.8, all require less accessibility in employee work areas than UFAS. For this reason, HUD is not permitting use of the aforementioned sections of the 2010 Standards for employee work areas.

Vehicular Route Exceptions—Sections 206.2.1 and 206.2.2 of the 2010 Standards

The 2010 Standards contain an exception for accessibility at site arrival points which provides that an ''*accessible* route shall not be required between *site* arrival points and the *building* or *facility entrance* if the only means of access between them is a *vehicular* way not providing pedestrian access'' (Section 206.2.1 Site Arrival Points, Exception 2). The 2010 Standards also contain an exception for accessibility within a site which provides that an ''*accessible* route shall not be required between *accessible buildings, accessible facilities, accessible elements,* and *accessible spaces* if the only means of access between them is a *vehicular way* not providing pedestrian access'' (Section 206.2.2 Within a Site, Exception). Neither exception is in UFAS,[19] which requires pedestrian access routes, and both conflict with HUD's Section 504 regulation, which requires that all programs and activities receiving Federal funds be readily accessible to and usable by persons with disabilities, as well as the requirements of the FHAct and HUD's Fair Housing Accessibility Guidelines. Accordingly, HUD is not permitting the use of Exception 2 to Section 206.2.1 Site Arrival Points, and the Exception to Section 206.2.2 Within a Site.

Elevator Exception 1—Section 206.2.3 of the 2010 Standards

The 2010 Standards contain specific exceptions to the general provision requiring at least one accessible route to connect each story and mezzanine in multi-story buildings or facilities (Section 206.2.3). Exception 1 to Section 206.2.3 of the 2010 Standards contains an elevator exception for private buildings or facilities that are less than three stories or that have less than 3,000 square feet per story (unless the type of building is omitted in the standard from the exception, *e.g.,* a shopping center, a shopping mall, the professional office of a health care provider, *etc.*). HUD's Section 504 regulation does not impose different requirements on recipients that are public entities as compared to recipients that are private entities. In order to ensure that all HUD recipients are subject to the same accessibility requirements, regardless of whether they are public or private entities, HUD is not permitting use of Exception 1 to Section 206.2.3 by private entities subject to its Section 504 regulation.

Washing Machines; Clothes Dryers—Sections 214.2 and 214.3 of the 2010 Standards

UFAS requires front loading washing machines and clothes dryers in common use laundry rooms in facilities serving accessible residential dwelling units.[20] UFAS' requirements for front-loading machines reflect the fact that not all persons with disabilities will be able to use top loading machines. The 2010 Standards, however, permit either top loading or front loading machines in such facilities (Section 214.2 Washing Machines; Section 214.3 Clothes Dryers). Consequently, HUD is not permitting application of the scoping requirements for washing and drying machines found at sections 214.2 and 214.3 of the 2010 Standards. Recipients must continue to comply with section 4.34.7 of UFAS. These requirements apply to each laundry room except that HUD's Section 504 regulation and UFAS would not require a laundry room on an upper story of a non-elevator building to be accessible provided that there is an accessible laundry room serving that same building on the ground floor. HUD recipients should also be aware that, when washing machines and clothes dryers are provided in individual dwelling units, front loading accessible washing machines and clothes dryers may be required in accessible dwelling units as a reasonable accommodation for individuals with disabilities.

Visible Alarms—Exception to Section 215.1 of the 2010 Standards

Section 215.1 includes a new exception for visible alarms in the alteration of existing facilities, providing that visible alarms must be installed only when an existing fire alarm system is upgraded or replaced, or a new fire alarm system is installed. Under this exception, visible alarms would not be required as part of alterations unless the alarm system is upgraded, replaced, or newly installed. HUD is not permitting use of this exception because its application may result in less accessibility than is currently required under HUD's Section 504 regulation. Instead, recipients engaged in alterations must refer to HUD's regulation at 24 CFR 8.22, 8.23, 8.24, and 8.25 to determine whether visible alarms must be installed. For recipients engaged in substantial alterations, the new construction requirements apply (with the exception that building alterations are not required that have little likelihood of being accomplished without removing or altering a load-bearing structural member) and visible alarms would be included in the alterations. For recipients engaged in other alterations not rising to the level of substantial alterations, any alterations (including alterations to dwelling units, common areas, or parts of facilities that affect accessibility of existing housing facilities) must, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with disabilities. ''To the maximum extent feasible'' means recipients are not required to make alterations if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project, but must provide for accessibility up to the point of undue financial and administrative burdens. This is a high threshold to meet. Therefore, HUD recipients must continue to comply with the provisions in HUD's Section 504 regulation, and not utilize the exception in the 2010 Standards. If visible alarms are not provided, there must be an effective means of alerting individuals who are deaf or hard of hearing to fires and other emergencies in order to afford them an equal opportunity to evacuate to safety.

For the convenience of the reader, the Appendix to this document provides a table that lists in column one the exceptions contained in the document and in the second column, the UFAS and/or HUD Section 504 regulation provisions that would need to be complied with because the entity could not use that section of the ADA 2010 Standards. The table is provided so that it can be used by HUD recipients as a stand-alone chart that lists, in a single table, not only what the exceptions are, but what actions recipients must undertake in lieu of using the exceptions.

VI. Relationship to Other Laws

Recipients of HUD funding must be aware of and comply with the accessibility requirements of all

[19] *See, e.g.,* UFAS, Section 4.1.1(1): At least one accessible route complying with 4.3 shall be provided *within the boundary of the site* from public transportation stops, accessible parking spaces, passenger loading zones if provided, and public streets or sidewalks to an accessible building entrance. UFAS, Section 4.1.1(2): At least one accessible route complying with 4.3 shall connect accessible buildings, facilities, elements, and spaces that are on the same site. *See also,* UFAS, Section 4.3 Accessible Route.

[20] UFAS, Section 4.34.7.2.

applicable laws, including Section 504, the ABA, the ADA, and the FHAct. Compliance with one of these statutes does not ensure compliance with other Federal disability nondiscrimination laws. For example, compliance with Section 504, the ABA, or the ADA does not ensure compliance with the FHAct; similarly, compliance with FHAct accessibility requirements does not ensure compliance with the accessibility requirements of Section 504, the ABA, or the ADA. The FHAct prohibits discrimination in housing because of race, color, religion, sex, national origin, familial status, and disability.[21] One type of disability discrimination prohibited by the FHAct is the failure to design and construct covered multifamily dwellings with certain features of accessible design.[22]

The FHAct design and construction requirements apply to ''covered multifamily dwellings'' designed and constructed for first occupancy after March 13, 1991. ''Covered multifamily dwellings'' means all buildings consisting of four or more dwelling units: In buildings without an elevator, all of the ground floor dwelling units are covered; in buildings with one or more elevators, all of the dwelling units are covered. HUD encourages entities to refer to HUD's FHAct regulation and technical guidance issued by HUD to ensure compliance with FHAct accessibility requirements.[23]

Date: May 16, 2014.

David R. Ziaya,

Deputy Assistant Secretary for Operations and Programs.

Appendix to May 23, 2014 Document

Exceptions to the 2010 Standards

This table is provided for HUD recipients that elect to use the 2010 Standards under title II of the Americans with Disabilities Act (ADA) as an alternative accessibility standard to UFAS for purposes of complying with Section 504 until HUD formally revises its Section 504 regulation. Please note that, for purposes of Section 504 compliance, the 2010 Standards may be used with the following exceptions.

Provisions in 2010 standards not deemed as equivalent alternatives to UFAS	Provisions HUD recipients must comply with for purposes of section 504 compliance
1. Section 35.151(a)(2) Exception for structural impracticability	2010 Standards at Section 35.151 without Section 35.151(a)(2) and (b) (see below) and HUD's Section 504 regulation at 24 CFR § 8.4(b)(5).
2. Section 35.151(b) Alterations	HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.6.
3. Section 202.2 Additions	HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, 8.26 and UFAS 4.1.5.
4. Exception to Section 202.4 Alterations Affecting Primary Function Areas.	2010 Standards at Section 202.4 without the Exception and HUD's Section 504 regulation at 24 CFR §§ 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26.
5. Section 203.8 General Exceptions—Residential Facilities	2010 Standards without Section 203.8 and HUD's Section 504 regulation at 24 CFR § § 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26.
6. Employee Work Areas: Sections 203.9 (General exception for employee work areas), 206.2.8 (Circulation paths in employee work areas), and the Exceptions to 403.5 (Clearances within employee work areas) and 405.8 (Handrails within employee work areas).	2010 Standards without these provisions; Note that HUD is permitting use of Section 215.3 (Fire Alarm Systems in Employee Work Areas).
7. Exception 2 to Section 206.2.1 Site Arrival Points	2010 Standards at Section 206.2.1 without Exception 2.
8. Exception to Section 206.2.2 Within a Site	2010 Standards at Section 206.2.2 without the Exception.
9. Exception 1 to Section 206.2.3 Multi-Story Buildings and Facilities	2010 Standards at Section 206.2.3 without Exception 1.
10. Section 214—Scoping of Washing Machines and Clothes Dryers	HUD's Section 504 regulation and UFAS 4.34.7 Laundry Facilities. HUD recipients should also be aware that, when washing machines and clothes dryers are provided in individual dwelling units, front loading accessible washing machines and clothes dryers may be required in accessible dwelling units as a reasonable accommodation for individuals with disabilities.
11. Exception to Section 215.1 Visible Alarms	2010 Standards at Section 215 without the Exception to Section 215.1 and HUD's Section 504 regulation at 24 CFR 8.20, 8.21, 8.22, 8.23, 8.24, 8.25, and 8.26.

The option to use the 2010 Standards under title II of the ADA, with identified exceptions, is available to all HUD recipients for purposes of complying with Section 504. HUD recipients must designate the accessibility standard they are using: The 2010 Standards with the identified exceptions outlined in this May 23, 2014 Notice, or UFAS. If HUD recipients choose to use the 2010 Standards, they must apply the 2010 Standards, with the identified exceptions, to the entire project. This option applies until HUD revises its Section 504 regulation to adopt an updated accessibility standard. This table provides a summary. Additional explanatory information is provided in other parts of the May 23, 2014 document.

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[21] The Act uses the term ''handicap'' instead of ''disability.'' Both terms have the same legal meaning.

[22] 42 U.S.C. 3604(f).

[23] *See* HUD regulation implementing the design and construction provisions at 24 CFR 100.200 *et seq.; Final Fair Housing Accessibility Guidelines* (''Guidelines''), 56 FR 9472 (Mar. 6, 1991); *Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines* (''Questions and Answers''), 59 FR 33362–68 (June 28, 1994); *Fair Housing Act Design Manual* (''Design Manual'') (August 1996, Revised April 1998). For additional technical assistance, *see* the Fair Housing Act Accessibility FIRST Web site, *www.fairhousingfirst.org.*

Federal Register

Friday,
October 24, 2008

Part IV

Department of Housing and Urban Development

24 CFR Part 100

Design and Construction Requirements; Compliance With ANSI A117.1 Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–5006–F–02]

RIN 2529–AA92

Design and Construction Requirements; Compliance With ANSI A117.1 Standards

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity and construction requirements of the Fair Housing Act and its amendments, by: Updating and clarifying the references to the American National Standards Institute (ANSI) building standard for accessibility; and codifying the current HUD recognized safe harbors under the Act. The ANSI A117.1 standard is the technical standard for the design of housing and other facilities that are accessible to persons with disabilities referenced in the Fair Housing Act, and is commonly referred to as ''ANSI A117.1.'' This final rule updates the references to the ANSI A117.1 to adopt the 2003 edition of the standard, and clarifies that compliance with the appropriate requirements of the 1986, 1992, and 1998 editions also remains sufficient to meet the design and construction requirements of the Fair Housing Act and its amendments. This final rule follows a July 18, 2007, proposed rule and takes into consideration the public comments received on that rule. This final rule makes no substantive changes to the proposed rule, but adds a new section on incorporation by reference and makes other technical revisions consistent with recent guidelines on incorporation by reference.

DATES: *Effective date:* November 24, 2008.

The standards incorporated by reference in this final rule are approved by the Director of the Federal Register as of *November 24, 2008*.

FOR FURTHER INFORMATION CONTACT: Cheryl Kent, Special Advisor for Disability Policy, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000; telephone number 202–708–2333 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) (the Fair Housing Act) prohibits discrimination in housing and housing-related transactions based on race, color, religion, national origin, and sex. The Fair Housing Amendments Act of 1988 expands the coverage of the Fair Housing Act to include families with children and persons with disabilities.[1] The Fair Housing Act, as amended, provides that unlawful discrimination against persons with disabilities includes the failure to design and construct covered multifamily dwellings for first occupancy after March 13, 1991, in such a manner that: (1) The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons; (2) all the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by handicapped persons in wheelchairs; and (3) all premises within such dwellings contain the following features of adaptive design: (a) An accessible route into and through the dwelling; (b) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) reinforcements in bathroom walls to allow later installation of grab bars; and (d) usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. Additionally, the Fair Housing Act states that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people (commonly cited as ''ANSI A117.1'') suffices to satisfy the above-listed requirements.

On January 23, 1989, at 54 FR 3232, HUD published its final regulation implementing the Fair Housing Amendments Act of 1988 (HUD's regulation). In the final regulation, HUD adopted the 1986 edition of ANSI A117.1, which was the edition in effect at that time, as the appropriate edition for acceptable compliance with the Fair Housing Act. HUD's regulation adopting ANSI A117.1 is located at 24 CFR 100.201, and HUD's regulation implementing the design and construction requirements is located at 24 CFR 100.205.

[1] The Fair Housing Act refers to people with ''handicaps.'' Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the terms ''persons with disabilities'' and ''disability,'' which are the preferred usage. Accordingly, this document hereinafter uses the terms ''persons with disabilities,'' ''disability,'' or ''disabled,'' unless directly quoting the Fair Housing Act.

II. This Final Rule

This final rule updates the references to the ANSI A117.1 standard to adopt the 2003 edition, and to stipulate that compliance with the appropriate requirements of the 1998, 1992, and 1986 editions continues to satisfy the requirements of the Fair Housing Act. Since the ANSI standards are incorporated by reference, this final rule also adds a section on incorporation by reference and otherwise revises the language incorporating the ANSI standards. This change is technical and not substantive.

The final rule also updates the regulation to acknowledge all 10 safe harbors currently recognized by HUD. This rule does not change either the scoping requirements or the substance of the existing accessible design and construction requirements contained in the regulations, nor does the rule state that compliance with the 1986 ANSI standard is no longer appropriate. The appropriate requirements of the 1986, 1992, 1998, and 2003 editions of ANSI A117.1 all constitute safe harbors for compliance with the accessibility requirements of the Fair Housing Act, when used together with the Act, HUD's regulations, and HUD's Fair Housing Accessibility Guidelines (or Guidelines in this preamble) for the scoping requirements.

In addition, the final rule makes an editorial change to the definitions of ''Accessible,'' ''Accessible route,'' ''Building entrance on an accessible route,'' and to § 100.205(e) to combine the two sentences in the proposed rule that referred to the editions of ANSI A117.1 that are safe harbors into a single sentence. This is an editorial change only for purposes of greater clarity.

This final rule applies only to the accessibility requirements of the Fair Housing Act. When more than one law applies to a project, and there are different accessibility standards for each law, the governing principle to follow is that the more stringent requirements of each law apply. For example, when a residential property that is covered by the Fair Housing Act receives federal financial assistance, it must also comply with the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504) and 24 CFR part 8. A complex that is covered by the Fair Housing Act may also be covered, in part, by the Americans with Disabilities Act (ADA), *e.g.*, the rental office and any other place of public accommodation that is leased or used by persons other than the residents and their guests.

Therefore, this final rule does not constitute a change in the requirements for compliance for federally funded facilities and dwelling units covered by Section 504 or the Architectural Barriers Act (ABA); such facilities and units must comply with their respective regulatory requirements at 24 CFR parts 8 and 24 CFR part 40, including the Uniform Federal Accessibility Standard (UFAS), the ADA, and the Department of Justice's regulations for the ADA. However, to the extent that the requirements of the Fair Housing Act apply to the same dwelling units that are subject to the requirements of Section 504, the ABA, or the ADA, the safe harbors for compliance outlined in this final rule shall be applied to those dwelling units that are subject to the Fair Housing Act, but may not be used in lieu of more stringent accessibility requirements mandated by Section 504 and the ABA, or the ADA, where applicable.

III. Discussion of Public Comments

The Department published its proposed rule on July 18, 2007 (72 FR 39540), for public comment. The public comment period ended on September 17, 2007. A total of eight comments were received from the following: An individual building owner; a consultant who monitors compliance with the Fair Housing Act; a nonprofit organization that addresses design issues for persons with disabilities and older persons; a nonprofit organization representing paralyzed veterans; an organization representing building safety and fire prevention professionals; a coalition representing both the multifamily rental housing industry and an international federation representing owners and managers of commercial properties; a national, nonprofit organization of diverse communities within the disability community; and an organization representing wheelchair users.

A. The ANSI A117.1 Standard

Comment: Several commenters expressed support for HUD's proposal to update its regulations and to clarify the accessibility building requirements. The commenters wrote that each new edition of ANSI A117.1 yields additional information and that updating the technical specifications to ANSI 1998 and 2003 would be valuable.

Two commenters expressed concerns regarding the continued use of previous editions of ANSI A117.1. One of the commenters, while agreeing with HUD that covered multifamily buildings should be constructed using the technical specifications of ANSI 1998 or ANSI 2003, objected regarding ANSI 1992, writing that ANSI 1992 is no longer in print and is generally difficult to locate. Another commenter objected to use of the 1986, 1992, and 1998 editions, writing that only the 2003 edition of ANSI meets the design and construction requirements of the Fair Housing Act. Conversely, certain building industry commenters objected to HUD's adopting any edition of ANSI except for the 1986 edition, arguing that Congress adopted the 1986 edition as the version meeting the Act.

Response: The Department agrees with the commenters' support of the ANSI standard. Congress, in the Fair Housing Act, specifically referenced the ANSI standard and encouraged its use for compliance with the Act's accessibility requirements. Contrary to the commenters' assertion that Congress adopted the 1986 edition, the Fair Housing Act did not reference a specific edition of the standard. In its final regulations implementing the Fair Housing Act, the Department elected to specify the 1986 edition—the edition in effect at that time—in response to public comments that the Department should refer to a specific edition and incorporate future editions through rulemaking proceedings.

The Department's review and recognition of new editions of the ANSI A117.1 standard is well established. This issue was addressed during the Department's initial review of several model building codes, all of which referenced a more recent edition of the ANSI standard. In its final report, published in the **Federal Register**, on its review of these model building codes, the Department noted that many commenters commended the Department for recognizing the 1998 ANSI A117.1 as a safe harbor (65 FR 15740, March 23, 2000). Several commenters pointed out that ANSI A117.1–1998 is the basis for the accessibility provisions in the model codes and that HUD's acceptance of ANSI A117.1–1998 as a safe harbor resolved many of the concerns of the multifamily housing industry.

Further, as newer editions of ANSI have been developed, many organizations have encouraged the Department to adopt these newer editions. One major organization that represents home builders wrote to the Department in 1998, pointing out that a 1998 edition of the ANSI standard was about to be published and that it is logical to rely on the latest version of a standard, unless the statute specifically refers to a specific edition. This organization stated that there are sound policy reasons for adopting the latest version of the ANSI standard, since it reflects new developments in accessible design. The organization pointed out that since the Fair Housing Act does not refer to a particular edition of the ANSI standard, it would be reasonable for the Department to permit use of the 1998 ANSI standard. Also, the organization stated that the 1998 standard would be used by state and local officials around the country and urged the Department to state that the most recent edition of the ANSI standard meets the requirements of the Fair Housing Act.

Other comments the Department received on its proposed rule support the need to continue to recognize earlier editions of the standard because state and local building codes are not updated on any particular established schedule nor are they updated as frequently as the model building code is updated. Similarly, there are state and local jurisdictions that have adopted HUD's Fair Housing Accessibility Guidelines into their building code or state fair housing law. Accordingly, the Department believes that it is appropriate at this time to continue to recognize all four editions of the ANSI A117.1 standard—1986, 1992, 1998, and 2003, as previously proposed.

With respect to one of the commenter's concerns that ANSI 1992 is no longer in print and is generally difficult to locate, the Department determined that the standard, 1992 CABO/ANSI A117.1 Accessible and Usable Buildings and Facilities, is available in print and on compact disc (CD–Rom) from the International Code Council, Washington DC (1–800–786–4452 and *http://www.iccsafe.org/e/category.html*), which addresses the commenter's concern.

B. Concern With the Department's Discussion of Its Enforcement of the Fair Housing Act

Comment: One of the commenters expressed concern that the Department's discussion of how it enforces the Fair Housing Act was an announcement of new enforcement policy and did not belong in the preamble of a proposed rule relating to the adoption of the 1992, 1998, and 2003 ANSI standards.

Response: The commenter does not correctly characterize HUD's statements about enforcement of the Fair Housing Act in the preamble to the proposed rule. Rather than announcing new policy, the preamble merely restated HUD's existing enforcement policy as part of the agency's effort to explain the safe harbor provisions.

C. Concern With Expanding the Intent of the Fair Housing Act

Comment: One commenter wrote that if the proposed rule is promulgated, it would directly contradict the creativity and diversity of solutions to accessibility needs that the Fair Housing Act encourages and that it would also establish a national building code. The commenter wrote that the lack of specificity under the Fair Housing Act reflects the intent of Congress that builders retain flexibility in designing housing covered by the law. The commenter wrote that, in enacting the Fair Housing Act, Congress did not direct or empower HUD to promulgate binding regulations for accessible design features.

Response: The Department disagrees that its proposal either expands the intent of the Fair Housing Act or limits designers and builders with respect to the design and construction of covered multifamily dwellings. In this final rule, the Department is adopting the 2003 edition of the ANSI A117.1 standard, while at the same time continuing to recognize the earlier 1986, 1992, and 1998 editions. Moreover, the recognition of additional safe harbors does not in any way result in the adoption of a mandatory national building code. Rather, designers and builders may continue to use alternative methods of complying, with the following caveat, which the Department has stated since the publication of the regulations and the Fair Housing Accessibility Guidelines in 1991. If a designer or builder does not rely on one of the HUD-recognized safe harbors, that designer or builder has the burden of demonstrating how its efforts comply with the accessibility requirements of the Fair Housing Act.

D. Codification of HUD-Recognized Safe Harbors

Comment: One commenter wrote that while HUD's effort to list in a binding regulation the standards and codes accepted as safe harbors for compliance with the Fair Housing Act's accessibility requirements is appreciated, the many limiting comments and exceptions attending HUD's designation of these standards as safe harbors detracts significantly from their usefulness and reliability. The commenter wrote that to follow the safe harbors as described by the proposed rule assumes extensive prior knowledge and study not only of the standards themselves, but also of the administrative guidance, enforcement actions, and judicial decisions surrounding them. The commenter wrote that it is unrealistic to expect multifamily housing professionals to have that sort of complex understanding of the difficult technical nuances.

Response: The Department does not agree that including the 10 currently recognized safe harbors in its regulations will create difficulty in complying with the Act. The Department has placed very few conditions on the use of the building codes as safe harbors. Indeed, the few conditions that the Department has set on the International Building Code (IBC) were determined necessary to ensure that the declared safe harbor for IBC provided at least the same degree of accessibility as the Fair Housing Act, HUD's regulations, and the Guidelines. The 2003 IBC was deemed a safe harbor with only one condition, and this condition is spelled out in the same paragraph in which the Department specified the 2003 IBC. The 2006 IBC had text missing, upon its initial publication, and it was necessary to alert users about the text that was missing. In addition, it was determined that it would be helpful to alert users of the IBC code about its 2006 Commentary because users may not have been aware that a Commentary with guidance exists or they may need additional guidance on how to interpret the code.

E. References to the Fair Housing Act in the IBC

Comment: One commenter wrote that HUD should seek greater inclusion in technical code documents such as the ANSI standard of references to HUD's Fair Housing Accessibility Guidelines. The commenter wrote that this would avoid circumstances where people relying on ANSI overlook the need to reference those Guidelines.

Response: The Department is mindful of the importance of the Guidelines in the Department's work as a member of the ANSI A117 Committee and its involvement in the code development process. The 2003 and the 1998 editions of ANSI A117.1 include an explanation in their ''Purpose'' statements that the Type B dwelling units are intended to be consistent with the intent of the criteria of the Guidelines. The Department also wishes to point out that individuals using an edition of the IBC that has been recognized by HUD as a safe harbor will not need to refer to the Guidelines because these editions of the IBC contain scoping requirements consistent with the Fair Housing Act, HUD's regulations implementing the Act, and the Guidelines. The International Code Council (ICC) has included references to the Fair Housing Act, HUD's regulations, and the Fair Housing Accessibility Guidelines in its 2006 IBC Code Commentary. The Department also provided commentary to ICC, which ICC included in this same document, to provide guidance in interpreting language that the Department recommended and which the code body accepted for inclusion in Chapter 11 of the IBC.

F. HUD Participation in the ANSI and IBC Development Process

Comment: One commenter recommended that HUD continue to participate in the model code development process. Two commenters recommended that HUD participate as a full and equal partner on the A117.1 Committee and offer proposals regardless of possible objection from committee members.

Response: The Department agrees with these comments and intends to continue its active role as a member of the ANSI A117 Committee. The Department also hopes to be actively engaged in the IBC code development process, and has participated in recent code hearings. The Department proposed changes to the code that it believes will ensure greater compliance with the Fair Housing Act.

G. Clarification of Requirements for Type B Dwelling Units as Designated in ANSI

Comment: One commenter asked about requirements for townhouse units in the State of California, stating that in buildings with four or more townhouse style units, the State requires 10 percent (at least one) of these units to be accessible on the primary entrance level. The commenter stated that neither the townhouse units nor the buildings have an elevator, and that the units are multistory with garage, living room, powder room, and den on the first floor (ground level) and the kitchen, dining room, bathrooms, and bedrooms on the second level. The commenter asked for clarification on whether it was intended that the ground floors of such townhouse units comply with the Fair Housing Act's accessibility requirements or be ''Type B units'' as provided for in the ANSI A117.1–2003 accessibility standard when there are no elevators, either in the unit or in the building.

Response: The Fair Housing Act and HUD's Fair Housing Accessibility Guidelines require multistory townhouse units to be accessible only if they have an internal elevator, or if they are located in a building that has one or more elevators. However, the Fair Housing Act does not preclude states or units of local government from

establishing requirements that are more stringent than the requirements of the Act. It appears that the State of California may have established a more stringent requirement. However, if the commenter would like further technical guidance on this matter, the Department has established a technical guidance program called Fair Housing Accessibility FIRST, to provide technical guidance to the building industry on the accessibility requirements of the Fair Housing Act. This program includes a technical guidance telephone hotline (1–888–341–7781) and a comprehensive technical guidance Web site (*http://www.fairhousingfirst.org/*).

H. Comments in Response to Proposed Rule's Request for Public Comment on Sunsetting Earlier Safe Harbors

Comment: In its proposed rule, the Department requested public comments on both the efficacy of continuing to recognize older editions of ANSI A117.1, and on how long the Department should continue to recognize earlier editions of the IBC. The Department made this request to obtain feedback for consideration for possible future rulemaking. Two commenters expressed concerns regarding the continued use of previous editions of ANSI A117.1. One of the commenters, while agreeing with HUD that covered multifamily buildings should be constructed using the technical specifications of ANSI 1998 or ANSI 2003, demurred regarding the 1992 edition, writing that ANSI A117.1–1992 is no longer in print and is generally difficult to locate. Another commenter objected to use of the 1986, 1992, and 1998 editions, writing that only the 2003 edition of the ANSI meets the design and construction requirements of the Fair Housing Act.

One commenter also wrote that it is illogical to suggest that older standards and safe harbors, which have been recognized to provide accessible housing over the past 20 years, are no longer adequate because a newer standard for compliance is being recognized as an additional safe harbor by HUD. The commenter wrote that neither the Fair Housing Act nor its legislative history indicates that Congress intended future versions of ANSI to replace ANSI 1986 as a safe harbor. The commenter urged HUD to withdraw its proposed regulatory changes. This commenter also proffered that rather than requiring full compliance with any particular safe harbor document, HUD should encourage the flexibility of using standards from more than one such document without losing benefits of the safe harbor status.

One commenter wrote that given the likelihood that state and local jurisdictions will continue to rely on legal adoptions of or references to the 10 safe harbor documents, it is incumbent on HUD to maintain its regulatory recognition of these documents. In addition, the commenter wrote that any action regarding the recognition of a safe harbor should be understood to preserve the legal status of buildings constructed using that safe harbor. Another commenter wrote that the numerous conditions imposed on the use of the 2003 IBC make it possible that the full complement of required information will not be conveyed to every intended recipient and user. The commenter wrote that since there are other versions of the IBC available as safe harbors, HUD should drop the 2003 IBC from this designation.

One commenter recommended that HUD move to sunset older safe harbors over the next few years, with the exception of the HUD Fair Housing Act Design Manual. The Design Manual has, in the commenter's view, proven to be the most useful and popular safe harbor and offers a significant number of illustrations that enhance the users' understanding of the Fair Housing design and construction requirements. The commenter wrote that once the final rule is published, the next step should be the updating of the Design Manual, referencing ANSI 1998 and 2003.

Several commenters suggested that HUD phase out all safe harbors other than the 2003 edition of ANSI A117.1. The commenters wrote that reliance on the latest edition would avoid any confusion regarding the applicable accessibility requirements. One of the commenters wrote that, in reference to a building with dwelling units to which the Fair Housing Act and Section 504 apply, these dual standards for housing accessibility coupled with the multiplicity of safe harbors could result in confusion.

Response: The Department has considered all of the comments offered on its request for comment on the appropriateness of sunsetting some of the current HUD-recognized safe harbors at some future time. At present, the Department has not determined whether in the future it might be appropriate to sunset some of the safe harbors. If it decides to do so in the future, the Department will give the public appropriate notice and opportunity to comment at that time. With respect to one of the commenter's concerns that ANSI 1992 is no longer in print, as noted earlier in this preamble, the 1992 edition of ANSI 117.1 is available from the International Code Council.

IV. HUD Policy Regarding HUD-Recognized Safe Harbors for Compliance With the Fair Housing Act's Design and Construction Requirements

As the Department noted in the preamble to the proposed rule, with the recognition of ICC/ANSI A117.1–2003 and the 2006 IBC as safe harbors, the Department currently recognizes 10 safe harbors for compliance with the design and construction requirements of the Fair Housing Act. (See 72 FR 39541–39542.) These documents are:

1. Fair Housing Accessibility Guidelines, March 6, 1991 (*http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm*), in conjunction with the June 28, 1994, Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines (*http://www.hud.gov/offices/fheo/disabilities/fhefhasp.cfm*);

2. Fair Housing Act Design Manual (*http://www.huduser.org/publications/destech/fairhousing.html*), published by HUD in 1996 and updated in 1998;

3. ANSI A117.1–1986, Accessible and Usable Buildings and Facilities (available from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112), in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;

4. CABO/ANSI A117.1–1992, Accessible and Usable Buildings and Facilities (*http://www.iccsafe.org*), in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;

5. ICC/ANSI A117.1–1998, Accessible and Usable Buildings and Facilities (*http://www.iccsafe.org*), in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;

6. ICC/ANSI A117.1–2003, Accessible and Usable Buildings and Facilities (*http://www.iccsafe.org*), in conjunction with the Fair Housing Act, HUD's regulations, and the Guidelines for the scoping requirements;

7. 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000 (*http://www.iccsafe.org*) (ICC has issued an errata sheet to the CRHA);

8. 2000 International Building Code, as amended by the 2001 Supplement to the International Building Code (2001 IBC Supplement);

9. 2003 International Building Code, published by ICC (*http://www.iccsafe.org*), December 2002, with one condition: Effective February 28, 2005, HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, ''ICC interprets Section 1104.1, and specifically the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7 [2]''; and

10. 2006 International Building Code, published by ICC (*http://www.iccsafe.org*) in January 2006, with a January 31, 2007, erratum to correct the text missing from Section 1107.7.5 and interpreted in accordance with the relevant 2006 IBC Commentary.

The Department is also reiterating, in this preamble to the final rule, its policy with respect to the above safe harbors, as it did in the preamble to the proposed rule. If a State or locality has adopted one of the above documents without modification to the provisions that address the Fair Housing Act requirements, a building covered by the Act's design and construction requirements will be deemed compliant, provided: (1) The building is designed and constructed in accordance with plans and specifications approved during the building permitting process and (2) the building code official does not waive, incorrectly interpret, or misapply one or more of those requirements. However, neither the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Fair Housing Act, nor that construction of a building subject to the Fair Housing Act was approved under such a code, changes HUD's statutory responsibility to conduct an investigation, following receipt of a complaint from an aggrieved person, to determine whether the requirements of the Fair Housing Act have been met. Nor does either fact prohibit the Department of Justice from investigating whether violations of the Fair Housing Act's design and construction provisions may have occurred. The Fair Housing Act provides that: ''Determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title.'' 42 U.S.C. 3604(f)(6)(a).

HUD's investigation of an accessibility discrimination complaint under the Fair Housing Act typically involves, *inter alia*, a review of building permits, certificates of occupancy, and construction documents showing the design of the buildings and the site, and an on-site survey of the buildings and property. During the investigation, HUD investigators take measurements of relevant interior and exterior elements on the property. All parties to the complaint have an opportunity to present evidence concerning, *inter alia,* whether HUD has jurisdiction over the complaint, and whether the Act has been violated as alleged. In enforcing the design and construction requirements of the Fair Housing Act, a prima facie case may be established by proving a violation of HUD's Fair Housing Accessibility Guidelines. This prima facie case may be rebutted by demonstrating compliance with a recognized, comparable, objective measure of accessibility. See Order on Secretarial Review, *U.S. Department of Housing and Urban Development and Montana Fair Housing, Inc.* v. *Brent Nelson*, HUD ALJ 05–068FH (September 21, 2006) (2006 WL 4540542). In making a determination as to whether the design and construction requirements of the Fair Housing Act have been violated, HUD uses the Fair Housing Act, the regulations, and the Guidelines, all of which reference the technical standards found in ANSI A117.1–1986.

It is the Department's position that these documents represent safe harbors only when used in their entirety; that is, once a specific safe harbor document has been selected, the building in question should comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the full benefit of the safe harbor. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the above safe harbor documents or from a variety of sources, and will be lost if waivers of provisions are requested and obtained from state or local governmental agencies. A designer or builder taking this approach runs the risk of building an inaccessible property. While this does not necessarily mean that failure to meet all of the respective provisions of a specific safe harbor document will result in unlawful discrimination under the Fair Housing Act, designers and builders that choose to depart from the provisions of a specific safe harbor bear the burden of demonstrating that their actions result in compliance with the Act's design and construction requirements. HUD's purpose in recognizing a number of safe harbors for compliance with the Fair Housing Act's design and construction requirements is to provide a range of options that, if followed in their entirety during the design and construction phase without modification or waiver, will result in residential buildings that comply with the design and construction requirements of the Act.

V. Additional Information

A link to the Department's report of its review of the 2006 IBC, as well as the February 28, 2005, and March 23, 2000, reports, is located at *http://www.hud.gov/offices/fheo/disabilities/modelcodes/*. The Fair Housing Act, as amended in 1988, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this Web site. The Fair Housing Act regulations are located at *http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr100_00.html*. CABO/ANSI A117.1–1992, ICC/ANSI A117.1–1998, and ICC/ANSI A117.1–2003 are available for purchase at *http://www.iccsafe.org/e/category.html*. ANSI A117.1–1986 is available from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number 1–800–854–7179, and can be purchased at *global.ihs.com*.

VI. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis on any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule adopts the 2003 edition of ANSI A117.1 for purposes of defining technical standards for accessibility for covered multifamily dwellings. The final rule also provides that compliance with the 1986 edition of ANSI A117.1 that HUD previously adopted, as well as with the 1992 and 1998 editions of ANSI A117.1, would meet the requirements of the Fair Housing Act and of HUD-recognized safe harbors. Small entities need not incur a significant economic impact, as small entities can still be in compliance

[2] ICC's Web site includes information about the condition placed on HUD's approval of the 2003 IBC as a safe harbor at the following links: *http://www.iccsafe.org/news/nr/2005/index.html; http://www.iccsafe.org/government/news/*; and *http://www.iccsafe.org/news/ePeriodicals/eNews/archive/ICCeNews_0305.html*.

with the requirements of the Fair Housing Act if they continue to use the 1986 ANSI A117.1 technical standard. Adopting the 2003 edition, as well as the 1992 and 1998 editions of the standard, may even alleviate a significant economic impact for small entities, as those entities may find compliance with more recent editions of the ANSI A117.1 standard to be less burdensome than compliance with the 1986 edition. The final rule does not impose an undue burden on small entities, as the rule would merely codify the use of more recent ANSI A117.1 standards as satisfying the design and construction requirements of the Fair Housing Act. Therefore, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Impact

This final rule is a policy document that sets out fair housing and nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (2 U.S.C. 1531–1538) requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose, within the meaning of the UMRA, any federal mandates on any state, local, or tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for this program is 14.400.

VII. Incorporation by Reference

These reference standards are approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these standards may be obtained from the following organizations:

ICC/ANSI A117.1–2003, ICC/ANSI A117.1–1998, and CABO/ANSI A117.1–1992 may be obtained from the International Code Council, 500 New Jersey Avenue, NW., 6th Floor, Washington, DC 20001–2070, telephone number 1–888–422–7233, and may be ordered online at *http://www.iccsafe.org/cs/standards/a117/order.html.*

ANSI A117.1–1986 may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number 1–800–854–7179, and may be ordered online at *global.ihs.com.*

The 1986, 1992, 1998, and 2003 editions of ANSI A117.1 may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410–0001, telephone number 202–708–2333.

List of Subjects in 24 CFR Part 100

Fair housing, Incorporation by reference, Individuals with disabilities.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 100 as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

■ 1. The authority for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

■ 2. In § 100.201, remove the definition of ''ANSI A117.1–1986'' and revise the definitions of ''*Accessible,*'' ''*Accessible route,*'' and ''*Building entrance on an accessible route*'' to read as follows:

§ 100.201 Definitions.

Accessible, when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase ''*readily accessible to and usable by*'' is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ICC/ANSI A117.1–2003 (incorporated by reference at § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference at § 100.201a), CABO/ANSI A117.1–1992 (incorporated by reference at § 100.201a), ANSI A117.1–1986 (incorporated by reference at § 100.201a), or a comparable standard is deemed ''*accessible*'' within the meaning of this paragraph.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ICC/ANSI A117.1–2003 (incorporated by reference at § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference at § 100.201a), CABO/ANSI A117.1–1992, ANSI A117.1–1986 (incorporated by reference at § 100.201a), or a comparable standard is an ''*accessible route.*''

* * * * *

Building entrance on an accessible route means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ICC/ANSI A117.1–2003 (incorporated by reference at § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference at § 100.201a), CABO/ANSI A117.1–1992 (incorporated by reference at § 100.201a), ANSI A117.1–1986 (incorporated by reference at § 100.201a), or a comparable standard complies with the requirements of this paragraph.

* * * * *

■ 3. Add § 100.201a to read as follows:

§ 100.201a Incorporation by reference.

(a) The following standards are incorporated by reference into 24 CFR part 100 pursuant to 5 U.S.C. 552(a) and 1 CFR part 51, as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. The effect of compliance with these standards is as stated in 24 CFR 100.205.

(b) The addresses of organizations from which the referenced standards can be obtained appear below:

(1) American National Standard: Accessible and Usable Buildings and Facilities, 2003 edition, (ICC/ANSI A117.1–2003), may be obtained from the

International Code Council, 500 New Jersey Avenue, NW., 6th Floor, Washington, DC 20001–2070, telephone number 1–888–422–7233, *http://www.iccsafe.org/e/category.html.*

(2) American National Standard: Accessible and Usable Buildings and Facilities, 1998 edition, (ICC/ANSI A117.1–1998), may be obtained from the International Code Council, 500 New Jersey Avenue, NW., 6th Floor, Washington, DC 20001–2070, telephone number 1–888–422–7233, *http://www.iccsafe.org/e/category.html.*

(3) American National Standard: Accessible and Usable Buildings and Facilities, 1992 edition, (CABO/ANSI A117.1–1992), may be obtained from the International Code Council, 500 New Jersey Avenue, NW., 6th Floor, Washington, DC 20001–2070, telephone number 1–888–422–7233, *http://www.iccsafe.org/e/category.html.*

(4) American National Standard for Buildings and Facilities: Providing Accessibility and Usability for Physically Handicapped People, 1986 edition, (ANSI A117.1–1986) may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112, telephone number 1–800–854–7179, *global.ihs.com.*

(c) The 1986, 1992, 1998, and 2003 editions of ANSI A117.1 may be inspected at the Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5240, Washington, DC 20410–0001, telephone number 202–708–2333.

■ 4. Revise § 100.205(e) to read as follows:

§ 100.205 Design and construction requirements.

* * * * *

(e)(1) Compliance with the appropriate requirements of ICC/ANSI A117.1–2003 (incorporated by reference at § 100.201a), ICC/ANSI A117.1–1998 (incorporated by reference at § 100.201a), CABO/ANSI A117.1–1992 (incorporated by reference at § 100.201a), or ANSI A117.1–1986 (incorporated by reference at § 100.201a) suffices to satisfy the requirements of paragraph (c)(3) of this section.

(2) The following also qualify as HUD-recognized safe harbors for compliance with the Fair Housing Act design and construction requirements:

(i) Fair Housing Accessibility Guidelines, March 6, 1991, in conjunction with the Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, June 28, 1994;

(ii) Fair Housing Act Design Manual, published by HUD in 1996, updated in 1998;

(iii) 2000 ICC Code Requirements for Housing Accessibility (CRHA), published by the International Code Council (ICC), October 2000 (with corrections contained in ICC-issued errata sheet), if adopted without modification and without waiver of any of the provisions;

(iv) 2000 International Building Code (IBC), as amended by the 2001 Supplement to the International Building Code (2001 IBC Supplement), if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements;

(v) 2003 International Building Code (IBC), if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements, and conditioned upon the ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, ''ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.''

(vi) 2006 International Building Code; published by ICC, January 2006, with the January 31, 2007, erratum to correct the text missing from Section 1107.7.5, if adopted without modification and without waiver of any of the provisions intended to address the Fair Housing Act's design and construction requirements, and interpreted in accordance with the relevant 2006 IBC Commentary;

(3) Compliance with any other safe harbor recognized by HUD in the future and announced in the **Federal Register** will also suffice to satisfy the requirements of paragraph (c)(3) of this section.

* * * * *

Dated: September 11, 2008.

Kim Kendrick,

Assistant Secretary for Fair Housing and Equal Opportunity.

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U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

Washington, D.C.
April 30, 2013

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

ACCESSIBILITY (DESIGN AND CONSTRUCTION) REQUIREMENTS FOR COVERED MULTIFAMILY DWELLINGS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act (the "Act"),[1] which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.[2] One of the types of disability discrimination prohibited by the Act is the failure to design and construct covered multifamily dwellings with certain features of accessible design. *See* 42 U.S.C. § 3604(f). This Joint Statement provides guidance regarding the persons, entities, and types of housing and related facilities that are subject to the accessible design and construction requirements of the Act (hereinafter, "design and construction requirements"). *See* 42 U.S.C. § 3604(f)(3).

[1]The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

[2]The Act uses the term "handicap" instead of "disability." Both terms have the same legal meaning. *See Bragdon* v. *Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

This Joint Statement does not focus on the specific technical criteria that must be followed to comply with the design and construction requirements because HUD has already provided rulemaking and specific technical guidance to the public on those criteria. *See* HUD regulations implementing the design and construction provisions at 24 C.F.R. § 100.200 *et seq.*; *Final Fair Housing Accessibility Guidelines* ("Guidelines"), 56 Fed. Reg. 9,472 (Mar. 6, 1991); *Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines* ("Questions and Answers"), 59 Fed. Reg. 33,362 (June 28, 1994); *Fair Housing Act Design Manual* ("Design Manual") (August 1996, Revised April 1998)[3]. For additional technical assistance, *see* the Fair Housing Act Accessibility FIRST website, www.fairhousingfirst.org. This Joint Statement also does not focus on the accessibility requirements applicable to housing and related facilities under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (1990), the Architectural Barriers Act (1968), and state or local laws. Housing providers involved in designing and constructing covered multifamily dwellings are also subject to the other nondiscrimination provisions of the Fair Housing Act, including the obligations to provide reasonable accommodations and allow reasonable modifications. *See* Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act (May 17, 2004) and Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications under the Fair Housing Act (Mar. 5, 2008), at http://www.hud.gov/offices/fheo/disabilities/index.cfm or http://www.justice.gov/crt/about/hce/about_guidance.php. Further information about all of the Fair Housing Act's nondiscrimination requirements is available on HUD's Fair Housing website, which may be accessed at http://www.hud.gov/offices/fheo/index.cfm, and DOJ's Fair Housing website, which may be accessed at http://www.justice.gov/crt/about/hce/housing_coverage.php.

QUESTIONS AND ANSWERS

Accessibility Requirements of the Fair Housing Act

1. What are the accessible features required by the Act?

The Act requires that covered multifamily dwellings be designed and constructed with the following accessible features:

- The public and common use areas must be readily accessible to and usable by persons with disabilities;
- All doors designed to allow passage into and within all premises of covered dwellings must be sufficiently wide to allow passage by persons with disabilities, including persons who use wheelchairs;
- All premises within covered dwellings must contain the following features:
    - An accessible route into and through the dwelling unit;

[3]All references to the Fair Housing Act Design Manual are to the August 1996 edition revised and republished April 1998.

- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- Reinforcements in bathroom walls to allow the later installation of grab bars;
- Usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about and use the space.

See 42 U.S.C. § 3604(f)(3)(C).

To describe these requirements in more detail, HUD published the Fair Housing Act regulations ("Regulations") at 24 C.F.R. Part 100 on January 23, 1989, the Guidelines on March 6, 1991, the Questions and Answers on June 28, 1994, and the Design Manual (issued in 1996 and revised and republished in 1998). In the Guidelines, the above statutory provisions appear as seven requirements, as follows:

Requirement 1. Accessible building entrance on an accessible route.

Requirement 2. Accessible and usable public and common use areas.

Requirement 3. Usable doors.

Requirement 4. Accessible route into and through the covered dwelling unit.

Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.

Requirement 6. Reinforced walls for grab bars.

Requirement 7. Usable kitchens and bathrooms.

Types of Dwellings Covered by the Act

2. What types of housing are covered by the Fair Housing Act's design and construction requirements?

The Fair Housing Act requires all "covered multifamily dwellings" designed and constructed for first occupancy after March 13, 1991, to be readily accessible to and usable by persons with disabilities. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas are subject to the Act's design and construction requirements. In buildings with four or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to the Act's design and construction requirements.

The term "covered multifamily dwelling" is defined by the Act and its implementing regulations and covers many different types of residential buildings and facilities.[4] Dwellings subject to the Act's design and construction requirements include condominiums, cooperatives, apartment buildings, vacation and time share units, assisted living facilities, continuing care facilities, nursing homes, public housing developments, HOPE VI projects, projects funded with HOME or other federal funds, transitional housing, single room occupancy units (SROs), shelters designed as a residence for homeless persons, dormitories, hospices, extended stay or residential hotels, and more.

Housing or some portion of housing covered by the Act's design and construction requirements may be subject to additional accessibility requirements under other laws. Those laws include Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Architectural Barriers Act, and state or local laws.

3. What standards are used to determine whether a housing facility that includes short-term residencies is covered by the Act's design and construction requirements?

Whether a housing facility that includes short-term residencies is a "dwelling" under the Act depends on whether the facility is intended to be used as a residence for more than a brief period of time. As a result, the operation of each housing facility needs to be examined carefully to determine whether it is intended to contain dwellings. Factors to be considered in determining whether a facility contains dwellings include, but are not limited to: (1) the length of time persons will stay in the project; (2) whether the rental rate for the unit will be calculated on a daily, weekly, monthly or yearly basis; (3) whether the terms and length of occupancy will be established through a lease or other written agreement; (4) how the property will be described to the public in marketing materials; (5) what amenities will be included inside the unit, including kitchen facilities; (6) whether the resident will possess the right to return to the property; and (7) whether the resident will have anywhere else to return. *See* Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. 15,740, 15,746-47 (Mar. 23, 2000). *See also* preamble to the final rule implementing the Fair Housing Amendments Act of 1988, stating that the definition of dwelling is "broad enough to cover each of the types of dwellings enumerated in the proposed rule: mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties." 54 Fed. Reg. 3,232, 3,238 (Jan. 23, 1989).

4. Do the Fair Housing Act's design and construction requirements, or any other laws mandating accessible design, apply to detached single family homes?

The Fair Housing Act's design and construction requirements apply only to covered multifamily dwellings -- that is, buildings having four or more dwelling units built for first occupancy after March 13, 1991. This includes both rental and sale units and also attached single family homes when there are four or more dwellings in the building (*e.g.*,

[4]The federal regulation specifying the types of residential buildings and facilities that are subject to the design and construction requirements of the Act appears at 24 C.F.R. § 100.201.

condominiums). Detached single family houses as well as duplexes and triplexes are not covered by the Act's design and construction requirements. *See* 42 U.S.C. §§ 3604(f)(3)(C), (f)(7). Condominiums that are not detached are, however, covered. Preamble to the Guidelines, 56 Fed. Reg. at 9,481.

However, any housing (including single family detached homes) constructed by federal, state, or local government entities or constructed using any federal, state, or local funds may be subject to accessibility requirements under laws other than the Fair Housing Act. These laws -- particularly Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act -- have requirements for accessibility that exceed those contained in the Fair Housing Act. In addition, state and local building codes may contain accessibility requirements for detached single family homes and/or other housing. Housing subject to the requirements of more than one federal, state, or local law must comply with the requirements of each such law. Where federal, state, or local laws differ, the more stringent requirements apply. *See* Preamble to the Guidelines, 56 Fed. Reg. at 9,477. In other words, state or local laws may increase accessibility beyond what is required by federal law but may not decrease the accessibility required by federal law.

5. Do the Act's design and construction requirements apply to a building with four or more sleeping rooms that are each occupied by a separate household who share toilet or kitchen facilities?

Yes. A building with four or more sleeping rooms, each occupied by a separate household who share toilet or kitchen facilities, constitutes a covered multifamily dwelling for purposes of the Act's design and construction requirements. However, HUD has determined that a single family house that will be occupied by four or more persons functioning as one distinct household, such as a "group home" for persons with disabilities, is not considered to be a "covered multifamily dwelling" for purposes of the Act's design and construction requirements, even if it contains four or more sleeping areas with a shared kitchen and bathroom. *See* Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,746.

6. Are carriage house units -- where a dwelling unit is constructed above a garage -- covered by the Act's design and construction requirements?

If an individual stacked flat unit incorporates parking that serves only that unit, and the dwelling footprint is located directly above and within the footprint of the garage below, the unit is treated like a multistory unit without an elevator. It is, therefore, not covered unless the dwelling unit level is on an accessible route. However, for example, where several flat units are located over a common garage, the units are covered, and the units and common garage must comply with the Act's design and construction requirements whether or not the parking spaces are individually assigned or deeded to a specific unit. *See* memorandum from HUD General Counsel, Frank Keating, to Gordon Mansfield, Assistant Secretary for FHEO (Dec. 16, 1991), reprinted in the Design Manual at back of Appendix C. *See also* Design Manual at 1.29.

Example 1: A residential building consists of 4 dwelling units in which each dwelling unit has a 2-car garage and the garage footprint is used as the footprint for the floors of the dwelling unit above. These are carriage houses and are not covered.

Example 2: A residential building consists of 4 dwelling units situated over 4 individual 2-car garages, and the garage footprint serves as the footprint for the dwelling unit above. However, the front of the dwelling unit is accessed at grade from the street and access to the garages is from a lower level at the rear. The dwelling unit level of these units is on an accessible route. Therefore these units do not qualify as carriage houses and must comply with the Act's design and construction requirements.

Ground Floor Dwelling Units

7. Can a non-elevator building have more than one ground floor?

Yes. The Regulations define "ground floor" as "a floor of a building with a building entrance on an accessible route." *See* 24 C.F.R. § 100.201. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor. *See* Guidelines, 56 Fed. Reg. at 9,500; Questions and Answers, Q. 6 and 12, 59 Fed. Reg. at 33,364, 33,365.

Example 1: A covered building is located on a slope with the upper story at grade on one side and the lower story at grade on the opposite side. It has entrances on both sides. This building has two ground floors.

Example 2: A 3-story residential building has an adjacent 3-story parking garage, with walkways leading from each floor of the garage to each floor of the residential building. In this case, all three floors of the residential building are covered and must comply with the Act's design and construction requirements because there is a vehicular or pedestrian arrival point on each level of the garage that provides access to the dwelling units on the opposite side. For purposes of the Act, each floor of the residential building is treated as a ground floor. This is true irrespective of whether the residential building or the garage has an elevator.

Single-story and Multistory Dwelling Units

8. Does the Fair Housing Act require townhouses to be accessible?

Yes, if the townhouses are single-story, or multistory with elevators internal to the unit, or multistory and located in a building with one or more elevators. *See* questions 22-27, below.

A discussion of the application of the Act's design and construction requirements to townhouses appears in the Preamble to the Regulations, 54 Fed. Reg. at 3,243-44, and in the Preamble to the Guidelines, 56 Fed. Reg. at 9,481. *See also* Questions and Answers, Q. 1, 59 Fed. Reg. at 33,363.

9. May a unit include either a loft or a raised or sunken living room and still comply with the Act's design and construction requirements?

Yes, but with certain restrictions. The Guidelines permit a single-story dwelling unit to have a special design feature such as a loft or an area on a different level within a room, but all portions of the single-story unit except the loft or the sunken or raised area must be on an accessible route. Note, however, that a covered dwelling unit may not have both a loft and a raised or sunken area. A single-story unit may have either a raised or sunken area, but this is limited to an area within a room and not the entire room. Further, the raised or sunken area must not interrupt the required accessible route throughout the rest of the unit. A unit with a loft is treated as a single-story unit. *See* Guidelines, Requirement 4(2), 56 Fed. Reg. at 9,507; *see also* Design Manual at 4.5. A loft (defined as an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling) may be provided without an accessible route to the loft. The Guidelines specify that kitchens and all bathrooms, including powder rooms, must be on an accessible route; therefore, a kitchen, bathroom, or powder room may not be located in a loft, or in a raised or sunken area, unless an accessible route is provided to the loft or the raised or sunken area. Because a unit with a loft is a single-story unit, all primary or functional living spaces must be on an accessible route. Secondary living spaces, such as a den, play area, or an additional bedroom, are the only spaces that may be in a loft unless an accessible route is provided to the loft. *See* Design Manual at 4.7.

10. What constitutes finished living space that would permit a unit to be considered a multistory unit that is not covered under the Act's design and construction requirements?

A multistory dwelling unit is one in which there is finished living space located on one floor and on the floor or floors immediately above or below it. Design Manual at 17, Guidelines, 56 Fed. Reg. at 9,500. An area is considered to have finished living space if it has interior partitions, wall finishes, electrical, heating and cooling systems or other building systems installed and if it complies with local building code requirements for habitable spaces. Habitable space is a space for living, sleeping, eating, or cooking. Habitable space does not include bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas. *See* Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,762.

11. Do the Act's design and construction requirements apply to multistory townhouses in non-elevator buildings containing four or more dwelling units?

No. The Fair Housing Act applies to all ground floor dwelling units in non-elevator buildings consisting of four or more dwelling units. Multistory townhouses in non-elevator buildings are not considered ground floor dwelling units because the entire

dwelling unit is not on the floor that qualifies as a ground floor. Thus, if a building containing four or more dwelling units has only multistory townhouses and does not have an elevator, the Act's design and construction requirements do not apply. However, if the building has four or more dwelling units and includes one or more single story dwelling units, such as a townhouse, villa, or patio apartment, then the Act's requirements apply to the single story dwelling unit(s) and to the public and common use areas. *See* Preamble to the Regulations, 54 Fed. Reg. at 3,243-44, and Preamble to the Guidelines, 56 Fed. Reg. at 9,481. *See also* Questions and Answers, Q. 1, 59 Fed. Reg. at 33,363.

Additions

12. Do the Act's design and construction requirements apply to additions of four or more dwelling units or additions of new public and common use areas to existing buildings that were built for first occupancy on or before March 13, 1991?

Yes. When four or more units are built as an addition to a building that was built before the effective date of the Act's design and construction requirements, then the added units must comply with the design and construction requirements of the Act. If any new public and common use spaces are added along with the units, then these spaces are also required to be accessible. However, if only public and common use spaces are added to an existing building not already covered by the Act's design and construction requirements, then those spaces do not need to be made accessible. *See* Design Manual at 11; Questions and Answers, Q. 4, 59 Fed. Reg. at 33,364.

> Example 1: An existing 4-wing residential building with four or more units built in 1985 is partially destroyed by fire such that one complete wing of the building must be torn down and rebuilt. Since the fire destruction necessitates complete rebuilding of this wing, all ground floor units in the new wing or all units in the new wing if the building has an elevator, are covered as an addition and must meet the Act's design and construction requirements.
>
> Example 2: The new owner of a residential building built in 1975 decides to add a clubhouse with meeting rooms for residents. Since the original units were not built after the effective date of the Act, and no new units are being added, the new public and common use areas are not subject to the Act's design and construction requirements, but may be subject to other accessibility laws (*e.g.*, ADA, Section 504).

13. Do additions of units or public and common use areas to buildings with four or more units that were built after March 13, 1991, have to meet the design and construction requirements of the Act?

Yes. Any of the following additions to a building with four or more units designed and constructed after March 13, 1991, must comply with the design and construction requirements of the Act: ground floor units in non-elevator buildings; any units in

elevator buildings; and public and common use areas. *See* Questions and Answers, Q. 4, 59 Fed. Reg. at 33,364.

14. If only dwelling units are added to housing that was designed and constructed for first occupancy on or before March 13, 1991, do the existing public or common use areas have to be retrofitted to comply with the Act's design and construction requirements?

No. Although new covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991 would have to comply with the Act's design and construction requirements, public and common use areas designed and constructed for first occupancy before the effective date do not have to be modified to comply with those requirements. The covered dwelling units must be on an accessible pedestrian route. For example, where an addition consisting of new covered multifamily dwellings shares an inaccessible entrance with an existing building, the inaccessible entrance and route thereto must be made accessible to ensure access to the new units. Furthermore, if any new public and common use spaces are constructed at the same or later time as the new covered dwelling units, then these new public and common use spaces would need to be made accessible. *See* Questions and Answers, Q. 4(c), 59 Fed. Reg. at 33,364.

Alterations/Renovations

15. Do the Fair Housing Act's design and construction requirements apply to the alteration or renovation of residential properties designed and constructed for first occupancy on or before March 13, 1991?

No. "First occupancy" as defined in the Regulations implementing the Act means a building that has never before been used for any purpose. Therefore, alterations, rehabilitation, or repair of pre-existing residential buildings are not covered because first occupancy occurred before the effective date of the Act's design and construction requirements. *See* 24 C.F.R. § 100.201; Questions and Answers, Q. 9, 59 Fed. Reg. at 33,365. However, in those cases where the façade on a pre-existing building is maintained, but the building is otherwise destroyed, the new units are subject to the design and construction requirements. *See* Design Manual at 11.

> Example 1: A 2-story residential building built in 1964 containing 20 units is being renovated into 10 large luxury condominium units in 2010. The exterior walls and roof will remain in place, but the interior will be completely rebuilt. This building is not covered because the first occupancy of the building occurred before the effective date of the design and construction requirements of the Act, and the renovations do not constitute construction of a new building.
>
> Example 2: An existing residential building in a historic district is being torn down so that a new 2-story non-elevator residential building with eight dwelling units, four on each floor, may be constructed. The façade of the existing building will be preserved, however, and the new building will be built behind the façade.

In this case, the building is a new building designed and constructed for first occupancy after the effective date of the Act's design and construction requirements, and the ground floor units must comply with the Act's design and construction requirements. The preservation of the façade does not change this fact.

16. Do the Fair Housing Act's design and construction requirements apply to the alteration or renovation of nonresidential buildings into residential buildings?

No. First occupancy means a "building that has never before been used for any purpose." The conversion of a nonresidential building into a residential building through alteration or renovation does not cause the building to become a covered multifamily dwelling. This is true even if the original nonresidential building was built after March 13, 1991. This situation needs to be distinguished, however, from additions of covered multifamily dwellings (*see* questions 12, 13 and 14, above). *See* 24 C.F.R. § 100.201; Questions and Answers, Q. 4, 8 and 9, 59 Fed. Reg. at 33,364-65.

Example: A warehouse built in 1994 is being rehabilitated into a small condominium residential building with two stories and a total of 12 dwelling units. This conversion of this building is not covered because at the time of its first occupancy it was not designed and constructed as a covered multifamily dwelling.

Building Separations

17. Does the use of breezeways to separate dwelling units that would otherwise be covered by the Act's design and construction requirements make those units exempt from the Act's requirements?

No. In situations where four or more dwelling units are connected by one or more covered walkways (breezeways), stairs, or other elements that are structurally tied to the main body of a building, the dwelling units are considered to be in a single building. If the building does not contain an elevator, the ground floor units are subject to the Act's design and construction requirements. *See* Design Manual at 10. If the building contains an elevator, all units are subject to the Act's design and construction requirements.

18. Are dwelling units in one structure that are separated by firewalls treated as separate buildings under the Act?

No. Under the Act, dwelling units built within a single structure, but separated by a firewall, are treated as part of a single building. *See* Preamble to the Guidelines, 56 Fed. Reg. at 9,480; Design Manual at 10; Questions and Answers, Q. 1(c), 59 Fed. Reg. at 33,363.

Example: Four condominiums were designed and constructed after March 13, 1991, as part of one structure. In accordance with the local building code, the

adjoining condominiums are separated by firewalls. Although these condominiums may be considered separate buildings under the local building code, they are considered part of one building for purposes of the Fair Housing Act's design and construction requirements. They must therefore comply with the Act's design and construction requirements.

Dwelling Units Custom-Designed or Pre-Sold Prior to Completion

19. Do the Act's design and construction requirements apply to dwelling units that are sold before construction and/or custom designed during construction for a particular purchaser?

Yes. The mere fact that a covered dwelling unit is sold before the completion of design or construction or is custom designed for a purchaser does not exempt the unit from compliance with the Act's design and construction requirements. The Act's requirements are mandatory, regardless of the ownership status of the individual unit. *See* Preamble to the Guidelines, 56 Fed. Reg. at 9,481; Questions and Answers, Q. 3(b), 59 Fed. Reg. at 33,364.

20. May the builder, at the purchaser's request, modify a covered dwelling unit that is sold before the completion of design and construction so that the unit will no longer comply with the design and construction requirements?

No. All covered dwelling units are subject to the design and construction requirements of the Act and although a unit may be custom designed to meet a purchaser's wishes, a builder may not build a covered unit that has features that do not comply with the Act. *See* Preamble to the Guidelines, 56 Fed. Reg. at 9,481.

Subsequent Changes to Accessible Features

21. May owners of covered multifamily buildings designed and constructed in compliance with the Fair Housing Act make subsequent changes to the building so that it no longer meets the Act's requirements?

Original and subsequent owners of covered multifamily buildings that were designed and constructed in compliance with the Fair Housing Act's design and construction requirements must maintain the building's accessible features so that the building continues to meet the Act's requirements.

Buildings with One or More Elevators

22. Does the Fair Housing Act require a townhouse to be accessible if it is located in a building that has an elevator and also has at least four dwelling units?

Yes. If the building containing four or more dwelling units has at least one elevator, then all the dwelling units in the building are covered. This requirement applies to single story and multistory townhouses as follows:

- For single story townhouses in such buildings, the accessible features required by the Act must be provided throughout the entire unit. *See* Guidelines, Requirement 4(2), 56 Fed. Reg. at 9,507.

- For multistory townhouses located in such buildings, elevator access must be provided to the primary entrance level of the townhouse, and that level must meet the Act's design and construction requirements including providing a usable kitchen and an accessible bathroom or powder room, or just an accessible bathroom if there is both a bathroom and a powder room. However, the powder room in such situations must still have certain accessible features, including a usable door, and an accessible route into the powder room.[5]

23. If a covered building has a building elevator that serves some, but not all, of the units in the building, is it covered by the design and construction requirements?

The Act's design and construction requirements apply to all dwelling units in buildings with four or more units if such buildings have one or more elevators. Thus, elevator access must be provided to all units in the building. *See* 42 U.S.C. § 3604(f)(7). *See also* Guidelines, Requirement 1(3)(a)(ii), 56 Fed. Reg. at 9,504. The Design Manual at 1.21-1.22, provides a more detailed discussion of how the Act's design and construction requirements apply with respect to elevator buildings.

An exception to this general rule occurs when an elevator is provided only as a means of providing an accessible route to dwelling units on a ground floor that is above grade, below grade, or at grade, and does not provide access to floors that are not ground floors.[6] In this case, the elevator is not required to serve dwelling units on floors other than ground floors, and the building is not considered to be an elevator building. Under that exception, only the ground floor units are required to meet the requirements of the Guidelines. The Guidelines, Requirement 1(3)(a)(i), 56 Fed. Reg. at 9,504, and the Design Manual at 1.31, illustrate this situation. However, if such an elevator is extended to reach floors other than the ground floor, then all of the units in the building must

[5]The powder room must comply with all the provisions except those applying solely to accessible bathrooms set out in Requirements 6 and 7 of the Guidelines, 56 Fed. Reg. at 9,509-15.

[6]A second exception occurs when the elevator is located completely within one or more units and does not serve other areas of the building. That exception is discussed in more detail in questions 25-27, below.

comply with the design and construction requirements and an accessible route must be provided to all units.

> Example: A 3-story building has below grade parking and provides an elevator only as a means of access from the below grade parking to the first level of dwelling units, which is located at grade. In this case, the elevator need not provide access to the second and third floors, and the building is not treated as a building with one or more elevators.

24. If the only elevator provided in a covered building is a freight elevator, are all of the units in the building covered by the design and construction requirements of the Act?

Yes. If a freight elevator is provided in a building with four or more dwelling units, even though no passenger elevator is provided, all units must comply with the Act's design and construction requirements.

> Example: A 3-story building has a freight elevator from a side entrance where there is a large level pull-up area for moving vans. The freight elevator serves all 3 stories of the building. In this case, the building is treated as a building with one or more elevators, and all floors and all dwelling units on each floor of the building must comply with the Act's design and construction requirements.

25. If one multistory townhouse, in a building with four or more units, contains an internal (*i.e.*, unit-specific) elevator for that occupant's use, and there are no elevators serving other units in the building, must the unit with an elevator meet the Act's design and construction requirements?

Yes. Because the multistory townhouse has an elevator, the building with four or more units in which the townhouse is located is a building that "ha[s] one or more elevators" within the meaning of 42 U.S.C. § 3604(b)(7)(A). The Act's design and construction requirements therefore apply to any townhouse with an internal (*i.e.*, unit-specific) elevator if the townhouse is part of a building containing four or more units. Because the internal elevator serves only the individual unit, however, and there are no other elevators in the building that serve the other units, those multistory townhouses in the building that do not have internal elevators are not required to meet the Act's design and construction requirements. As the Preamble to the Proposed Guidelines, 55 Fed. Reg. 24,370, 24,377 (June 15, 1990), states:

"In both the proposed and final rulemaking, the Department stated that a dwelling unit with two or more floors in a non-elevator building is not a 'covered dwelling unit' even if it has a ground-floor entrance, because the entire dwelling unit is not on the ground floor. (Of course, if the unit had a[n] internal elevator, it would be subject to the Fair Housing Act requirements.)."

See also Preamble to the Regulations, which states, "townhouses consisting of more than one story are covered only if they have elevators and if there are four or more such townhouses."[7]

26. How do the Act's design and construction requirements apply if the builder of multistory townhouses in a building with four or more units offers an elevator as an option, and one or more of the buyers elects the elevator option?

If the developer of a building with four or more units that includes multistory townhouses offers internal (*i.e.*, unit-specific) elevators in the multistory townhouses as an option, and one or more of the buyers elects to have the elevator installed during construction, then those multistory townhouses with interior elevators are covered, and must comply with the Act's design and construction requirements. In addition, if a multistory townhouse is designed and constructed for later installation of an internal elevator (for example, if it contains an elevator shaft or stacked closets so that the unit was designed for potential installation of an elevator after construction), the multistory townhouse is also covered and must comply with the design and construction requirements. In the case of stacked closets, the closets must have been designed in a manner that will accommodate later installation of an elevator, *e.g.*, inclusion of an elevator pit with a temporary flooring insert, and a raised ceiling to accommodate future elevator cab override. *See*, *e.g.*, Preamble to the Regulations, 54 Fed. Reg. at 3,244, 3,251; Preamble to the Proposed Guidelines, 55 Fed. Reg. at 24,377; Preamble to the Guidelines, 56 Fed. Reg. at 9,481; Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66.

27. If a building with four or more units contains multistory townhouses with internal elevators or the option for a buyer to add an elevator, must the public and common use areas of the development also comply with the design and construction requirements of the Act?

Yes. Once a building is determined to have at least one covered dwelling unit, that is, either an elevator installed in at least one unit, or at least one unit designed for later installation of an elevator (*see* question 25, above), the design and construction requirements apply to the public and common use areas of the building and the development in which the building is located. *See* Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66.

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[7] *See* Preamble to the Regulations, 54 Fed. Reg. at 3,244, 3,251; Preamble to the Proposed Guidelines, 55 Fed. Reg. at 24,377; Preamble to the Guidelines, 56 Fed. Reg. at 9,481; Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66. This position also is recognized in other documents determined by HUD to be safe harbors for compliance (*see* Question 37); *e.g.*, the Appendix to the Code Requirements for Housing Accessibility 2000, states that "a multistory unit in a non-elevator building is not subject to Chapter 4 unless it has an internal elevator. Section 406.7.2 would thus apply to those multistory units with an internal elevator." Appendix § 406.7.2. Likewise, *see* the Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,740 which noted HUD's agreement with the model code creators that "multistory units with internal elevators" are covered under the FHA. 65 Fed. Reg. at 15,759, 15,767, 15,776, and 15,786.

Note: If a builder is designing a development with units that come with a buyer's option to have the builder install an elevator, then the builder must design the elevator optional unit(s) and public and common use areas so that they are compliant with the Act's requirements. Otherwise, the builder must modify the elevator optional unit(s) and public and common use areas to comply with the Act's design and construction requirements once a buyer selects an elevator as an option.

Accessible Routes

28. What is an accessible route?

The Regulations define an accessible route as a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard, or Section 5, Requirement 1 of the Guidelines is an accessible route. *See* 24 C.F.R. § 100.201. Exterior accessible routes must be pedestrian routes that are separate from the road or driveway. For example, it is not acceptable to provide only a road or driveway as an accessible route. However, there is a vehicular route exception to the requirement to provide an accessible pedestrian route that, if met, may apply. *See* Guidelines, Requirement 1(5), Requirement 2, Chart, Element 1, 56 Fed. Reg. at 9,504, 9,505; Design Manual at 1.9. *See also* question 33, below.

29. Does the Act permit covered multifamily dwellings to be designed and constructed in a manner that requires persons with disabilities to use an indirect or circuitous route to enter a building or unit or to use locks or call buttons that are not required of other persons?

No. Under the Fair Housing Act, persons with disabilities must be able to enter their dwellings through the same entrance that is used by other persons to enter their dwellings. *See* Preamble to the Proposed Regulations, 53 Fed. Reg. 44,992, 45,004 (Nov. 7, 1988) ("[h]andicapped persons should be able to enter a newly constructed building through an entrance used by persons who do not have handicaps."). In addition, routes to the primary entrances of buildings and dwelling units are public and common use areas and must be readily accessible to and usable by people with disabilities.

Therefore, the accessible route cannot be hidden, remote, circuitous or require people with disabilities to travel long distances. Furthermore, the accessible route to the primary entrance must not place special conditions on persons with disabilities -- such as a special key, an attendant, or additional waiting periods that are not imposed on other persons, *i.e.*, including persons who use an inaccessible entrance. This does not preclude the use of special locks or security systems at entrances that are used by all persons to enter the building and/or the dwelling units, and which are used by all residents and members of

the public visiting the development; however, such locks and security systems must be accessible. *See* Design Manual at 1.35; *see also* 42 U.S.C. § 3604(f)(2).

30. Must an accessible route between public and common use areas and dwelling units be an interior route if the general circulation path is interior?

Yes. The Act permits accessible routes between public and common use areas and dwellings to be interior or exterior. However, if the general circulation path is provided via an interior route, then that path is a public and/or common use area that must be "readily accessible to and usable by" persons with disabilities. *See* Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05. Persons with disabilities cannot be required to go outside a building to access a public and common use area when persons without disabilities are not required to do the same. The Fair Housing Act prohibits discrimination in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of disability. *See* 42 U.S.C. § 3604(f)(2).

31. Does the Act require accessible routes between buildings that contain only covered multifamily dwelling units?

Walkways between separate buildings containing only covered dwelling units generally are not required to be accessible. However, if the walkways also serve as the accessible route to a public or common use area, the walkways must be accessible. For example, if a walkway connects separate buildings containing only covered dwelling units and is the only walkway from the buildings to the clubhouse, it must be accessible. *See* Guidelines, Requirement 2, Chart, Element 1(b), 56 Fed. Reg. at 9,505; Design Manual at 2.16.

32. Must there be accessible pedestrian routes from site arrival points to building entrances serving covered dwelling units?

Yes. Requirements 1 and 2 of the Guidelines require an accessible pedestrian route, within the boundary of the site, from vehicular and pedestrian arrival points to the entrances of covered buildings and dwelling units, except in very limited circumstances where a site is impractical due to steep terrain or unusual site characteristics. The Guidelines outline the tests that must be performed pre-construction during the site design process to determine site impracticality under Requirement 1. If the conditions of these tests are not met, then there must be an accessible entrance on an accessible route from all vehicular and pedestrian arrival points to the entrances of covered buildings and dwelling units. *See* Guidelines, Requirements 1 and 2, 56 Fed. Reg. at 9,503-05 and the discussions of site impracticality in the Design Manual at Part II, Chapter 1. *See also* HUD Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code, 70 Fed. Reg. 9,738, 9,742 (Feb. 28, 2005).

33. May a builder use a vehicular route in lieu of an accessible pedestrian route to connect dwelling unit entrances with public and common use areas?

The Act requires an accessible pedestrian route connecting entrances to covered dwelling units with public and common use areas, including the public street or sidewalk, except in rare circumstances that are outside the control of the owner where extreme terrain or impractical site characteristics result in a finished grade exceeding 8.33%, or where physical barriers or legal restrictions that are outside the control of the owner prevent installation of an accessible pedestrian route. In these rare cases, the Guidelines allow access by means of a vehicular route leading from the accessible parking serving the covered dwelling unit to the accessible parking serving the public or common use facility. *See* Guidelines, Requirements 1 and 2, 56 Fed. Reg. 9,503-05. *See also* HUD Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code, 70 Fed. Reg. at 9,744.

> Example 1: An undisturbed site has slopes of 8.33% or less between planned accessible entrances to covered dwelling units and public use or common use areas and has no legal restrictions or other unique characteristics preventing the construction of accessible routes. For aesthetic reasons, the developer would like to create some hills or decorative berms on the site. Because there are no extreme site conditions (severe terrain or unusual site characteristics such as floodplains), and no legal barriers that prevent installation of an accessible pedestrian route between the covered dwelling units and any planned public use or common use facilities, the developer is obligated to provide accessible pedestrian routes.
>
> Example 2: A developer plans to build several buildings with covered dwelling units clustered in a level area of a site. The site has some undisturbed slopes of 10% and greater. A swimming pool and tennis court will be added on the two opposing sides of the site. The builder plans grading that will result in a finished grade exceeding a slope of 8.33% along the route between the covered dwelling units and the swimming pool and tennis court. There are no physical barriers or legal restrictions (*e.g.*, pipe easement, wildlife habitat, or protected wetlands) outside the control of the owner or builder that prevent the builder from reducing the existing grade to provide an accessible pedestrian route between the covered dwelling units and the pool and tennis court. Therefore, the developer's building plan would not meet the design and construction requirements of the Act because it is within the owner's control to assure that the final grading falls below 8.33% and meets the slope and other requirements for an accessible pedestrian route. Accessible pedestrian routes from the covered dwelling units to the pool and tennis court must be provided.

34. What is the site impracticality exception to the accessible route requirement of the Fair Housing Act design and construction requirements?

The Regulations provide that all covered multifamily dwellings must be served by an accessible route "unless it is impractical to do so because of the terrain or unusual

characteristics of the site." The Regulations place the burden of establishing site impracticality on the persons or entities that designed or constructed the housing. 24 C.F.R. § 100.205(a). *See also Memphis Ctr. for Indep. Living v. Richard & Milton Grant Co.*, No. 01-CV-2069, Fair Housing-Fair Lending Reporter ¶ 16,779, 16,779.4 (W.D. Tenn. Apr. 26, 2004) (order granting partial summary judgment to the United States). The Guidelines set forth two distinct tests which may be used to establish site impracticality: the site analysis test and the individual building test. To claim impracticality, the test must be fully followed and performed at the design stage before construction starts. *See* Guidelines, Requirement 1, 56 Fed. Reg. at 9,503-04; Questions and Answers, Q. 11, 59 Fed. Reg. at 33,365.

Accessible Entrances

35. How many entrances to a covered multifamily dwelling must be accessible?

The Guidelines require at least one accessible entrance to each covered dwelling unit and to buildings containing covered dwelling units, unless it is impractical to do so as determined by applying one of the site impracticality tests provided in the Guidelines. Additional entrances to a building or to a dwelling also must be accessible if they are public and common use areas, *i.e.*, if they are designed for and used by the public or residents. *See* 24 C.F.R. § 100.201; Design Manual at 3.10 ("[t]he exterior of the primary entry door of covered dwelling units is part of public and common use spaces, therefore, it must be on an accessible route and be accessible . . . "). It is not acceptable to design and construct a covered multifamily building or dwelling unit in such a manner that persons with disabilities must use a different entrance than the entrance used by persons without disabilities. *See* Preamble to the Proposed Regulations, 53 Fed. Reg. at 45,004 ("[h]andicapped persons should be able to enter a newly constructed building through an entrance used by persons who do not have handicaps."). *See also* Design Manual at 1.28 (illustration). Buildings containing covered dwelling units with more than one ground floor must have an accessible entrance on each ground floor connecting to each covered dwelling unit. *See* 24 C.F.R. § 100.205(a); Guidelines, Requirement 1, 56 Fed. Reg. at 9,503-04.

> Example 1: If a secondary entrance at the back of a building containing covered units leads to the clubhouse or parking, both that entrance and the primary entrance at the front of the building must be accessible. *See* Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05.
>
> Example 2: If a non-elevator building has more than one ground floor (*i.e.*, a building built into a hill with entrances to the first and second stories at grade on opposite sides), then it must have at least one accessible entrance to each floor that connects to the covered dwelling units. *See* 24 C.F.R. § 200.201 (definition of "ground floor"); Guidelines, Requirement 1(1)(a), 56 Fed. Reg. at 9,503.
>
> Example 3: If a covered multifamily building has two entrances -- one entrance facing the public street that is inaccessible because it has steps, and a second

entrance which is accessible, but it is in the back of the building, the building does not comply with the Act. The entrance facing the street must also be made accessible because it is part of the route to the street and is a public and common use area. This is true even if the residential parking is located in the back of the building across from the back entrance and both entrances can be accessed from inside the building via interior hallways. *See* question 36, below.

36. Which entrance to a covered dwelling unit or building containing covered dwelling units must be accessible?

The primary entry to dwelling units that have individual exterior entrances or the primary entry to a building containing covered dwelling units must be accessible. This entrance is part of the public and common use areas because it is used by residents, guests and members of the public for the purpose of entering the dwelling or building. It must therefore be readily accessible to and usable by persons with disabilities. Service doors, back doors, and patio doors may serve as additional accessible entrances, but may not serve as the only accessible entrance to buildings or units. *See* Guidelines, 56 Fed. Reg. at 9,500. *See also United States v. Edward Rose & Sons*, 384 F.3d 258 (6th Cir. 2004), *aff'g*, 246 F. Supp. 2d 744 (E.D. Mich. 2003).

Safe Harbors for Compliance with the Act

37. Are there any "safe harbors" for compliance with the Fair Housing Act?

Yes. In the context of the Act, a safe harbor is an objective and recognized standard, guideline, or code that, if followed without deviation, ensures compliance with the Act's design and construction requirements. The Act references the American National Standard Institute ("ANSI") A117.1 standard as a means of complying with the technical provisions in the Act. In determining whether a standard, guideline or code qualifies as a safe harbor, HUD compares it with the Act, HUD's regulations implementing the Act, the ANSI A117.1-1986 standard (the edition that was in place at the time the Act was passed) and the Guidelines to determine if, taken as a whole, it provides at least the same level of accessibility. HUD currently recognizes ten safe harbors for compliance with the Fair Housing Act's design and construction requirements, listed below. If a state or locality has adopted one of these safe harbor documents without amendment or deviation, then covered residential buildings that are built to those specifications will be designed and constructed in accordance with the Act as long as the building code official does not waive or incorrectly interpret or apply one or more of those requirements. *See* Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,756; *see also* Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code, 70 Fed. Reg. at 9,740; Report of HUD Review of the Fair Housing Accessibility Requirements in the 2006 International Building Code, 72 Fed. Reg. 39,432, 39,438 (July 18, 2007), and Design and Construction Requirements, Compliance with ANSI A117.1 Standards, 73 Fed. Reg. 63,610, 63,614 (Oct. 24, 2008).

Those involved in the design and construction of covered multifamily dwellings who claim the protection of a safe harbor must identify which one of the following HUD-recognized safe harbors they relied upon.

The ten HUD-recognized safe harbors for compliance with the Act's design and construction requirements are:

1. HUD's March 6, 1991 Fair Housing Accessibility Guidelines and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;

2. ANSI A117.1-1986 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations and the Guidelines;

3. CABO/ANSI A117.1-1992 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations, and the Guidelines;

4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations, and the Guidelines;

5. HUD's Fair Housing Act Design Manual published in 1996 and revised in 1998;

6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;

7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes;

8. 2003 International Building Code (IBC), with one condition. Effective February 28, 2005, HUD determined that the IBC 2003 is a safe harbor, conditioned upon the International Code Council publishing and distributing the following statement to jurisdictions and past and future purchasers of the 2003 IBC;

   ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7;

9. ICC/ANSI A117.1-2003 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations, and the Guidelines; and

10. 2006 International Building Code, published by ICC, January 2006, with the 2007 erratum (to correct the text missing from Section 1107.7.5), and interpreted in accordance with relevant 2006 IBC Commentary.

HUD's purpose in recognizing a number of safe harbors for compliance with the Fair Housing Act's design and construction requirements is to provide a range of options that, if followed in their entirety without modification or waiver during design and construction, will result in residential buildings that comply with the design and construction requirements of the Fair Housing Act. In the future, HUD may decide to recognize additional safe harbors.

38. May an architect or builder select aspects from among the HUD recognized safe harbors when designing and constructing a single project and retain "safe harbor" status?

No. The ten documents listed above are safe harbors only when used in their entirety, that is, once a specific safe harbor document has been selected, the building in question must comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the full benefit of the safe harbor. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more than one of the above safe harbor documents, from a variety of sources, or if waivers of provisions are requested and received. If it is shown that the designers and builders departed from the provisions of a safe harbor document, they bear the burden of demonstrating that the dwelling units nonetheless comply with the Act's design and construction requirements.

39. If a property is built to some recognized, comparable, and objective standard other than one of the safe harbors, can it still comply with the Act's design and construction requirements?

Yes. The purpose of the Fair Housing Act Guidelines is "to describe the minimum standards of compliance with the specific accessibility requirements of the Act." Preamble to the Guidelines, 56 Fed. Reg. at 9,476. The Introduction to the Guidelines states, "builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act." Guidelines, 56 Fed. Reg. at 9,499. However, the standard chosen must meet or exceed all of the design and construction requirements specified in the Act and HUD's Regulations, and the builders and developers bear the burden of showing that their standard provides an equivalent or a higher degree of accessibility than every provision of one of the recognized safe harbors. *See* Design Manual at 13; Preamble to the Guidelines, 56 Fed. Reg. at 9,478-79. While there are some differences among the ten designated safe harbors, there is broad consensus about what is required for accessibility based on the ANSI standards and the safe harbors. These standards result from a process that includes input from a variety of stakeholders, including builders, designers, managers, and disability-rights advocates. Builders and designers should therefore exercise caution before following a standard that contains specifications for an element

that do not meet the parallel requirements of the other safe harbors. If the alternative standard is not a generally accepted accessibility standard, it may well not provide the minimum accessibility required by the Act.

40. What constitutes evidence of noncompliance with the Fair Housing Act design and construction requirements?

A case of discrimination may be established by showing that the housing does not meet HUD's Guidelines. This evidence may be rebutted by proof of compliance with a recognized, comparable, objective measure or standard of accessibility. The Ninth Circuit has affirmed this approach in *Nelson v. HUD*, Nos. 07-72803 and 07-73230, 2009 WL 784260, at *2 (9th Cir. Mar. 26, 2009).

41. If I follow my state or local building code, am I safe from liability if a building does not comply with the Fair Housing Act's design and construction requirements?

No. The Fair Housing Act's design and construction requirements are separate from and independent of state and local code requirements. If a state or local code requires, or is interpreted or applied in a manner that requires, less accessibility than the Act's design and construction requirements, the Act's requirements must still be followed. However, state and local governments can assist those involved in building housing subject to the Act's design and construction requirements by incorporating one of the HUD-recognized safe harbors listed above into their building codes without deviation, amendment, or waiver. *See* 42 U.S.C. § 3604(f)(6)(B). For example, some jurisdictions have already adopted the revised editions of the IBC that are recognized by HUD as safe harbors. *See* question 39, above.

42. Does the Fair Housing Act require fully accessible units?

No. The Fair Housing Act does not require fully accessible units. For example, the Act's design and construction requirements do not require the installation of a roll-in shower in a dwelling unit in new construction. The Act's design and construction requirements are modest and result in units that look similar to traditional units and are easily adapted by people with disabilities who require features of accessibility not required by the Fair Housing Act.

43. Can a builder meet the Fair Housing Act's design and construction requirements by building a specific number or percentage of fully accessible dwelling units?

No. Congress specifically rejected the approach of requiring only a specific number or percentage of units to be fully accessible. Instead, Congress decided that all covered multifamily dwelling units must comply with the Act's design and construction requirements. *See* question 1, above, and 42 U.S.C. § 3604(f)(3)(C). Other laws may require developers to construct a specific number or percentage of units with a higher

degree of accessibility than the Act's modest requirements. *See* questions 46, 47 and 48, below. *See* H.R. Rep. 100-711, at 49 (1988).

Reviews for Compliance

44. Does HUD or DOJ review state and local building codes to determine whether they comply with the Act's accessibility requirements?

No. Although HUD has reviewed several model building codes to determine whether they comply with the Act's design and construction requirements (*see* question 37, above), neither HUD nor DOJ reviews individual state and local building codes for consistency with the Act.

45. Does HUD or DOJ review site or building plans for compliance with the Act's design and construction requirements?

No. Neither HUD nor DOJ is required by the Act or has the capacity to review or approve builders' plans or issue certifications of compliance with the Act's design and construction requirements. *See* 42 U.S.C. § 3604(f)(5)(D). The burden of compliance rests with those who design or construct covered multifamily dwellings. *See* Design Manual at 2. To assist those involved in design or construction to comply with the Act's requirements, HUD provides rulemaking, training and technical assistance on the Act, the Regulations, and the Guidelines. HUD has also recognized ten safe harbors for compliance with the Act's design and construction requirements. *See* question 37, above. HUD also provides technical guidance through its Fair Housing Accessibility FIRST program, an initiative designed to promote compliance with the Fair Housing Act design and construction requirements. The program offers comprehensive and detailed instruction programs, useful online web resources, and a toll-free information line for technical guidance and support. The Fair Housing Accessibility FIRST website is found at http://www.fairhousingfirst.org. DOJ's fair housing website may be accessed at http://www.justice.gov/crt/about/hce/housing_coverage.php.

Buildings Covered by the Act and Other Accessibility Laws or Codes

46. When would both Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act apply to the same property, and which standard would apply in this situation?

If housing was built for first occupancy after March 13, 1991, and federal financial assistance is involved, both Section 504 and the Fair Housing Act apply. The accessibility standards under both laws must be used. *See* Preamble to the Guidelines, 56 Fed. Reg. at 9,477-79.

HUD's Section 504 requirements are found in 24 C.F.R. Part 8 and these regulations reference the Uniform Federal Accessibility Standards (UFAS). Further information about the applicability of Section 504 can be found at

http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm. The Uniform Federal Accessibility Standards may be found at http://www.access-board.gov/ufas/ufas-html/ufas.htm.

47. What if the Americans with Disabilities Act (ADA) and the Fair Housing Act requirements both apply to the same property?

In those cases where a development is subject to the accessibility requirements of more than one federal law, the accessibility requirements of each law must be met.

There are certain residential properties, or portions of other residential properties, that are covered by both the Fair Housing Act and the ADA. These properties must be designed and built in accordance with the accessibility requirements of both the Fair Housing Act and the ADA. To the extent that the requirements of different federal laws apply to the same feature, the requirements of the law imposing greater accessibility requirements must be met, in terms of both scoping and technical requirements.

In the preamble to its regulation implementing Title III of the ADA, the Department of Justice discussed the relationship between the requirements of the Fair Housing Act and the ADA. The preamble noted that many facilities are mixed-use facilities. For example, a hotel may allow both residential and short term stays. In that case, both the ADA and the Fair Housing Act will apply to the facility. The preamble to the Title III regulation also stated that residential hotels, commonly known as "single room occupancies," may be subject to Fair Housing Act requirements when operated or used as a residence but they are also considered "places of lodging" subject to the requirements of the ADA when guests are free to use them on a short-term basis. A similar analysis applies with respect to homeless shelters, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. It is important for those involved in the design and construction of such facilities to comply with all applicable accessibility requirements. *See* 56 Fed. Reg. 35,544, 35,546-47 (July 26, 1991).

Covered multifamily dwellings that are funded or provided through programs operated by or on behalf of state and local entities (*e.g.*, public housing, homeless shelters) are also subject to the requirements of Title II of the ADA.

Under the Fair Housing Act, the common areas of covered multifamily dwellings that qualify as places of public accommodation under the ADA must be designed and constructed in accordance with the ADA Standards for Accessible Design, and the Act's design and construction requirements. For example, a rental office in a multifamily residential development, a recreational area open to the public, or a convenience store located in that development would be covered by the Act and under Title III of the ADA. *See* 28 C.F.R. § 36.104. Common use areas for use only by residents and their guests are covered by the Act's design and construction requirements, but would not be covered by the ADA.

48. What if a state or local building code requires greater accessibility than the Fair Housing Act?

The Fair Housing Act does not reduce the requirements of state or local codes that require greater accessibility than the Act. Thus, the state or local building code's greater accessibility must be provided. However, if a state or local code requires, or is interpreted or applied in a manner that requires, less accessibility than the Act, the Act's requirements must nonetheless be followed. *See* Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,753-57. *See also* Preamble to the Final Rule, Design and Construction Requirements, Compliance with ANSI A117.1 Standards, 73 Fed. Reg. at 63,610.

Accessible Public and Common Use Areas

49. Are rental offices and other public and common use areas required to be accessible under the Fair Housing Act?

Rental offices and other public and common use areas must be accessible if they serve multifamily dwelling units that are subject to the design and construction requirements of the Act. If there are no covered dwelling units on the site, then the public and common use areas of the site are not required to be accessible under the Fair Housing Act. *See* Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66.

It is important to note that Title III of the Americans with Disabilities Act contains accessibility requirements that apply to rental and sales offices and other places of public accommodation that may be associated with housing, even if the housing is not covered by the Fair Housing Act's design and construction requirements. Further, Title II of the ADA applies accessibility requirements to housing and related facilities owned or operated by state or local government entities. In addition, Section 504 of the Rehabilitation Act and the Architectural Barriers Act may also apply to public and common use areas of properties that are designed, constructed, or operated by entities receiving federal financial assistance. The question of whether the accessibility requirements of any of these three federal laws apply to the public or common use areas of a property needs to be considered in addition to whether the Fair Housing Act's design and construction requirements apply.

50. When covered parking is provided as an amenity to covered multifamily housing, what are the accessibility requirements under the Fair Housing Act?

When covered parking is provided, at least 2% of the covered parking serving the covered dwelling units must comply with the accessibility requirements for covered parking and be on an accessible pedestrian route to the covered dwelling units. *See* Guidelines, Requirement 2, Chart, Element 4, 56 Fed. Reg. at 9,505; Design Manual at 2.23 to 2.24.

51. When a swimming pool is provided on a site with covered multifamily dwellings, what are the design and construction requirements for the pool?

When provided, a swimming pool must be located on an accessible pedestrian route that extends to the pool edge, but the Guidelines do not require that the pool be equipped with special features to offer greater access into the pool than is provided for persons without disabilities. In addition, a door or gate accessing the pool must meet the Act's design and construction requirements and the deck around the pool must be on an accessible route. If toilet rooms, showers, lockers or other amenities are provided at the pool, these also must be accessible and meet the requirements for accessible public and common use areas. *See* Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05. It is important to note that the swimming pools and related facilities may be subject to the ADA if persons other than residents and their guests are allowed to use them.

52. Are garbage dumpsters required to comply with the Act's design and construction requirements?

Garbage dumpsters are public and common use spaces and must be located on accessible pedestrian routes. If an enclosure with a door is built around the dumpster, both the door to the enclosure and the route through this door to the dumpster must meet the provisions of ANSI A117.1-1986 or another safe harbor (when used in accordance with HUD's policy statement, *see* questions 37-38, above). If parking is provided at the dumpster, accessible parking must also be provided. *See* Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05; Design Manual at 2.16 (figure). However, there are no technical specifications for the actual garbage dumpster.

53. When emergency warning systems are installed in the public and common use areas of covered multifamily buildings (for example, in corridors, or breezeways), do the Act's design and construction requirements require such warning systems to include visual alarms?

Yes. The Act requires public and common uses areas to be readily accessible to and usable by persons with disabilities. This includes accessibility of building emergency warning systems, when provided. Alarms placed in these areas must have audible and visual features and the Guidelines reference the provisions of ANSI A117.1-1986 Section 4.26 for such alarms. *See* Guidelines, Requirement 2, Chart, 56 Fed. Reg. at 9,505.

> Example: A single user restroom in a rental office must have a visual alarm if the rental office is served by an audible alarm.

54. If there is an emergency warning system installed in the public and common use areas of a covered multifamily building, must there be visual alarms in the interior of dwelling units?

No. The Fair Housing Act's design and construction requirements do not require installation of visual alarms on the interior of dwelling units; however, if there is a

building alarm system provided in a public and common use area, then it must be accessible as specified in ANSI A117.1-1986. In addition, the system must have the capability of supporting an audible and visual alarm system in individual units. Note: The International Building Code (IBC) requires that certain multifamily residential buildings that must have a fire alarm also have the capability of supporting visible alarm notification appliances which meet the requirements of ICC/ANSI A117.1. *See, e.g.*, 2006 IBC §§ 907.2.9 and 907.9.1.4.

Enforcement

55. What remedies are typically sought in Fair Housing Act design and construction cases?

Lawsuits brought pursuant to the Fair Housing Act may seek injunctive relief including retrofitting of the property so that the covered dwelling units and public and common use areas meet the Act's requirements, training, education, reporting, future compliance with the Act's requirement, surveying and inspecting retrofits, monetary damages for aggrieved persons, and, in cases brought by the federal government, civil penalties.

56. Who can be sued for violations of the accessibility requirements of the Fair Housing Act?

Any person or entity involved in the noncompliant design and construction of buildings or facilities subject to the Act's design and construction requirements may be held liable for violations of the Act. This includes a person or entity involved in only the design, only the construction, or both the design and construction of covered multifamily housing.

Note that a person or entity that has bought a building or property after it was designed and constructed may be sued when that person or entity is necessary to provide authority to remedy violations or allow access for other necessary reasons such as the identification of any aggrieved persons. This may include subsequent owners, homeowners associations, property management companies or later individual owners or occupants of inaccessible units when such persons must be involved to provide authority to remedy violations.

57. If someone is successfully sued for violating the Act's design and construction requirements, will a court order the building to be torn down and rebuilt?

Courts make rulings in cases based on the facts of each specific situation. Thus, it is difficult to predict what a court might order in a case without knowing the facts. However, extensive modifications including complete retrofits of buildings, units, and public and/or common use areas have been routinely sought and obtained by federal law enforcement agencies and ordered by courts.

58. What recourse is available to a person with a disability or a person associated with a person with a disability who believes that she cannot rent, purchase, or view housing at a particular multifamily property because it is in violation of the design and construction requirements of the Act?

When a person with a disability or a person associated with a person with a disability believes that she has been harmed by a failure to design and construct a unit or property in accordance with the Act's requirements (or any other discriminatory housing practice), she may file a complaint with HUD within one year after the alleged discriminatory practice has occurred or terminated or may file a lawsuit in federal district court within two years after the alleged discriminatory practice has occurred or terminated. *See* 42 U.S.C. §§ 3610 and 3613. However, persons aggrieved by discriminatory housing practices are encouraged to file a complaint as soon as possible after the discriminatory housing practice occurs or terminates. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the complainant.

59. At what point do the time frames for a person filing a complaint begin to run?

A person should file a complaint as soon as possible after becoming aware that he or she has been or may be harmed because a property may not be constructed in compliance with the accessibility requirements of the Fair Housing Act. Under the Fair Housing Act, "[a]n aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint" with HUD (*see* 42 U.S.C. § 3610(a)) and "may commence a civil action [in Court]. . . not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." *See* 42 U.S.C. § 3613(a)(1)(A). While some courts have had differing views, HUD and DOJ believe that the Act is violated, and the one- or two-year statute of limitations begins to run, when an "aggrieved person" is injured as a result of the failure to design and construct housing to be accessible as required by the Act. *See* 42 U.S.C. § 3602(i). A failure to design and construct a multifamily property in accordance with the Act may cause an injury to a person at any time until the violation is corrected. A person may be injured before, during or after a sale, rental or occupancy of a dwelling.

In addition, HUD has interpreted the Act to hold that "with respect to the design and construction requirements, complaints can be filed at any time that the building continues to be in noncompliance, because the discriminatory housing practice -- failure to design and construct the building in compliance -- does not terminate" until the building is brought into compliance with the Act and the continuing violation terminates. *See* Design Manual at 22. Although not all courts have agreed with these interpretations, HUD uses them in determining whether to accept a complaint.

Readers should be aware that as of the date of this joint statement, at least one circuit court has ruled that the Act's statute of limitations for individual complaints begins to run

upon the completion of the covered dwelling, regardless of when the dwelling is actually sold, rented or occupied by a person with a disability.[8]

The time frames for the United States to bring an action under the Fair Housing Act are not addressed in this question and answer.

60. If a designer or builder has built more than one multifamily property in violation of the Act's design and construction requirements, may he be held liable for violations at all of those properties?

Where a builder, owner, architect or developer of covered multifamily does not comply with the design and construction requirements over a period of time at multiple properties, violations at all of the noncompliant properties may be part of a continuing violation or pattern or practice of illegal discrimination. HUD and DOJ may investigate and take legal action respecting all such properties. An entity involved in the design and construction of an earlier noncompliant property and involved in the design and construction of a later noncompliant property may therefore be subjected to a complaint for participating in a continuing violation or engaging in a pattern or practice of violating the Act.

61. How is a complaint alleging a failure to design and construct multifamily housing filed?

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: http://www.hud.gov/offices/fheo/index.cfm; or
- By mailing a completed complaint form or letter to:

  Office of Fair Housing and Equal Opportunity
  Department of Housing & Urban Development
  451 7th Street, S.W., Room 5204
  Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

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[8] *See Garcia* v. *Brockway*, 526 F.3d 456 (9th Cir. 2008) (en banc). Complaints by persons in states and territories located in the Ninth Circuit -- Washington, Idaho, Montana, Oregon, California, Nevada, Arizona, Alaska, Northern Mariana Islands, Hawaii, and Guam -- may be subject to this ruling if other dwellings designed and/or constructed by the same respondent or defendant were not completed within the limitations period.

The Civil Rights Division of the Department of Justice brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise legal questions involving the application and/or interpretation of the Act. To alert DOJ to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section - G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

To report an incident of housing discrimination to the U.S. Department of Justice, call the Fair Housing Tip Line: 1-800-896-7743, or e-mail: fairhousing@usdoj.gov.

For more information on the types of housing discrimination cases handled by DOJ, please refer to the DOJ's Housing and Civil Enforcement Section's website at http://www.justice.gov/crt/about/hce/housing_coverage.php.

A HUD or DOJ determination not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is DOJ's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in unusual circumstances.

Reasonable Accommodations and Reasonable Modifications Under the Act

62. Is any information available concerning reasonable accommodations and reasonable modifications under the Fair Housing Act?

Yes. HUD and DOJ have published joint statements concerning reasonable accommodations and reasonable modifications for persons with disabilities under the Fair Housing Act. *See* Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act (May 17, 2004) and Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications under the Fair

Housing Act (Mar. 5, 2008), at http://www.hud.gov/offices/fheo/disabilities/index.cfm or http://www.justice.gov/crt/about/hce/about_guidance.php.

Location of Documents

63. Where can one find the documents referred to in this Joint Statement?

A copy of the Preamble to the Regulations is found at 54 Fed. Reg. 3,243 (Jan. 23, 1989). The Regulations are found at 24 C.F.R. Part 100. The Preamble to the Guidelines can be found at 56 Fed. Reg. 9,472 (Mar. 6, 1991), and both the Preamble to the Guidelines and the Guidelines are reprinted in the Fair Housing Act Design Manual in Appendix B. The Questions and Answers can be found at 59 Fed. Reg. 33,362 (June 28, 1994) and is reprinted at Appendix C of the Fair Housing Act Design Manual. The Fair Housing Act Design Manual can be obtained from http://www.huduser.org/publications/destech/fairhousing.html. *See also* HUD's Office of Fair Housing and Equal Opportunity website at http://www.hud.gov/offices/fheo/disabilities/index.cfm.

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
May 17, 2004

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE ACCOMMODATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act[1] (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.[2] One type of disability discrimination prohibited by the Act is the refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.[3] HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable accommodations to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to

[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601 - 3619.

[2] The Act uses the term "handicap" instead of the term "disability." Both terms have the same legal meaning. *See* Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. § 3604(f)(3)(B).

reasonable accommodations.[4]

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against applicants or residents because of their disability or the disability of anyone associated with them[5] and from treating persons with disabilities less favorably than others because of their disability. The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling."[6] The Act also prohibits housing providers from refusing residency to persons with disabilities, or placing conditions on their residency, because those persons may require reasonable accommodations. In addition, in certain circumstances, the Act requires that housing providers allow residents to

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[4] Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of l973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability and require recipients of federal financial assistance to provide reasonable accommodations to applicants and residents with disabilities. Although Section 504 imposes greater obligations than the Fair Housing Act, (*e.g.*, providing and paying for reasonable accommodations that involve structural modifications to units or public and common areas), the principles discussed in this Statement regarding reasonable accommodation under the Fair Housing Act generally apply to requests for reasonable accommodations to rules, policies, practices, and services under Section 504. *See* U.S. Department of Housing and Urban Development, Office of Public and Indian Housing, Notice PIH 2002-01(HA) (www.hud.gov/offices/fheo/disabilities/PIH02-01.pdf) and "Section 504: Frequently Asked Questions," (www.hud.gov/offices/fheo/disabilities/sect504faq.cfm#anchor272118).

[5] The Fair Housing Act's protection against disability discrimination covers not only home seekers with disabilities but also buyers and renters without disabilities who live or are associated with individuals with disabilities 42 U.S.C. § 3604(f)(1)(B), 42 U.S.C. § 3604(f)(1)(C), 42 U.S.C. § 3604(f)(2)(B), 42 U.S.C. § (f)(2)(C). *See also* H.R. Rep. 100-711 – 24 (reprinted in 1988 U.S.C.A.N. 2173, 2184-85) ("The Committee intends these provisions to prohibit not only discrimination against the primary purchaser or named lessee, but also to prohibit denials of housing opportunities to applicants because they have children, parents, friends, spouses, roommates, patients, subtenants or other associates who have disabilities."). *Accord*: Preamble to Proposed HUD Rules Implementing the Fair Housing Act, 53 Fed. Reg. 45001 (Nov. 7, 1988) (citing House Report).

[6] 42 U.S.C. § 3604(f)(3)(B). HUD regulations pertaining to reasonable accommodations may be found at 24 C.F.R. § 100.204.

make reasonable structural modifications to units and public/common areas in a dwelling when those modifications may be necessary for a person with a disability to have full enjoyment of a dwelling.[7] With certain limited exceptions (*see* response to question 2 below), the Act applies to privately and publicly owned housing, including housing subsidized by the federal government or rented through the use of Section 8 voucher assistance.

2. Who must comply with the Fair Housing Act's reasonable accommodation requirements?

Any person or entity engaging in prohibited conduct – *i.e.*, refusing to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. *See e.g.*, City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 703, 710 (D. Md. 2001), aff'd 2002 WL 2012545 (4th Cir. 2002). Under specific exceptions to the Fair Housing Act, the reasonable accommodation requirements of the Act do not apply to a private individual owner who sells his own home so long as he (1) does not own more than three single-family homes; (2) does not use a real estate agent and does not employ any discriminatory advertising or notices; (3) has not engaged in a similar sale of a home within a 24-month period; and (4) is not in the business of selling or renting dwellings. The reasonable accommodation requirements of the Fair Housing Act also do not apply to owner-occupied buildings that have four or fewer dwelling units.

3. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

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[7] This Statement does not address the principles relating to reasonable modifications. For further information see the HUD regulations at 24 C.F.R. § 100.203. This statement also does not address the additional requirements imposed on recipients of Federal financial assistance pursuant to Section 504, as explained in the Introduction.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking.[8] This list of major life activities is not exhaustive. *See e.g.*, Bragdon v. Abbott, 524 U.S. 624, 691-92 (1998)(holding that for certain individuals reproduction is a major life activity).

4. Does the Act protect juvenile offenders, sex offenders, persons who illegally use controlled substances, and persons with disabilities who pose a significant danger to others?

No, juvenile offenders and sex offenders, by virtue of that status, are not persons with disabilities protected by the Act. Similarly, while the Act does protect persons who are recovering from substance abuse, it does not protect persons who are currently engaging in the current illegal use of controlled substances.[9] Additionally, the Act does not protect an individual with a disability whose tenancy would constitute a "direct threat" to the health or safety of other individuals or result in substantial physical damage to the property of others unless the threat can be eliminated or significantly reduced by reasonable accommodation.

5. How can a housing provider determine if an individual poses a direct threat?

The Act does not allow for exclusion of individuals based upon fear, speculation, or stereotype about a particular disability or persons with disabilities in general. A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable objective evidence (*e.g.*, current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. Consequently, in evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (*i.e.*, a significant risk of substantial harm). In such a situation, the provider may request that the individual document

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[8] The Supreme Court has questioned but has not yet ruled on whether "working" is to be considered a major life activity. See Toyota Motor Mfg, Kentucky, Inc. v. Williams, 122 S. Ct. 681, 692, 693 (2002). If it is a major activity, the Court has noted that a claimant would be required to show an inability to work in a "broad range of jobs" rather than a specific job. *See* Sutton v. United Airlines, Inc., 527 U.S. 470, 492 (1999).

[9] *See, e.g.*, United States v. Southern Management Corp., 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance").

how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy. The housing provider must have reliable, objective evidence that a person with a disability poses a direct threat before excluding him from housing on that basis.

Example 1: A housing provider requires all persons applying to rent an apartment to complete an application that includes information on the applicant's current place of residence. On her application to rent an apartment, a woman notes that she currently resides in Cambridge House. The manager of the apartment complex knows that Cambridge House is a group home for women receiving treatment for alcoholism. Based solely on that information and his personal belief that alcoholics are likely to cause disturbances and damage property, the manager rejects the applicant. The rejection is unlawful because it is based on a generalized stereotype related to a disability rather than an individualized assessment of any threat to other persons or the property of others based on reliable, objective evidence about the applicant's recent past conduct. The housing provider may not treat this applicant differently than other applicants based on his subjective perceptions of the potential problems posed by her alcoholism by requiring additional documents, imposing different lease terms, or requiring a higher security deposit. However, the manager could have checked this applicant's references to the same extent and in the same manner as he would have checked any other applicant's references. If such a reference check revealed objective evidence showing that this applicant had posed a direct threat to persons or property in the recent past and the direct threat had not been eliminated, the manager could then have rejected the applicant based on direct threat.

Example 2: James X, a tenant at the Shady Oaks apartment complex, is arrested for threatening his neighbor while brandishing a baseball bat. The Shady Oaks' lease agreement contains a term prohibiting tenants from threatening violence against other residents. Shady Oaks' rental manager investigates the incident and learns that James X threatened the other resident with physical violence and had to be physically restrained by other neighbors to keep him from acting on his threat. Following Shady Oaks' standard practice of strictly enforcing its "no threats" policy, the Shady Oaks rental manager issues James X a 30-day notice to quit, which is the first step in the eviction process. James X's attorney contacts Shady Oaks' rental manager and explains that James X has a psychiatric disability that causes him to be physically violent when he stops taking his prescribed medication. Suggesting that his client will not pose a direct threat to others if proper safeguards are taken, the attorney requests that the rental manager grant James X an exception to the "no threats" policy as a reasonable accommodation based on James X's disability. The Shady Oaks rental manager need only grant the reasonable accommodation if James X's attorney can provide satisfactory assurance that James X will receive appropriate counseling and

periodic medication monitoring so that he will no longer pose a direct threat during his tenancy. After consulting with James X, the attorney responds that James X is unwilling to receive counseling or submit to any type of periodic monitoring to ensure that he takes his prescribed medication. The rental manager may go forward with the eviction proceeding, since James X continues to pose a direct threat to the health or safety of other residents.

6. What is a "reasonable accommodation" for purposes of the Act?

A "reasonable accommodation" is a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.

To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

Example 1: A housing provider has a policy of providing unassigned parking spaces to residents. A resident with a mobility impairment, who is substantially limited in her ability to walk, requests an assigned accessible parking space close to the entrance to her unit as a reasonable accommodation. There are available parking spaces near the entrance to her unit that are accessible, but those spaces are available to all residents on a first come, first served basis. The provider must make an exception to its policy of not providing assigned parking spaces to accommodate this resident.

Example 2: A housing provider has a policy of requiring tenants to come to the rental office in person to pay their rent. A tenant has a mental disability that makes her afraid to leave her unit. Because of her disability, she requests that she be permitted to have a friend mail her rent payment to the rental office as a reasonable accommodation. The provider must make an exception to its payment policy to accommodate this tenant.

Example 3: A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing

provider must make an exception to its "no pets" policy to accommodate this tenant.

7. Are there any instances when a provider can deny a request for a reasonable accommodation without violating the Act?

Yes. A housing provider can deny a request for a reasonable accommodation if the request was not made by or on behalf of a person with a disability or if there is no disability-related need for the accommodation. In addition, a request for a reasonable accommodation may be denied if providing the accommodation is not reasonable – *i.e.*, if it would impose an undue financial and administrative burden on the housing provider or it would fundamentally alter the nature of the provider's operations. The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

When a housing provider refuses a requested accommodation because it is not reasonable, the provider should discuss with the requester whether there is an alternative accommodation that would effectively address the requester's disability-related needs without a fundamental alteration to the provider's operations and without imposing an undue financial and administrative burden. If an alternative accommodation would effectively meet the requester's disability-related needs and is reasonable, the provider must grant it. An interactive process in which the housing provider and the requester discuss the requester's disability-related need for the requested accommodation and possible alternative accommodations is helpful to all concerned because it often results in an effective accommodation for the requester that does not pose an undue financial and administrative burden for the provider.

Example: As a result of a disability, a tenant is physically unable to open the dumpster placed in the parking lot by his housing provider for trash collection. The tenant requests that the housing provider send a maintenance staff person to his apartment on a daily basis to collect his trash and take it to the dumpster. Because the housing development is a small operation with limited financial resources and the maintenance staff are on site only twice per week, it may be an undue financial and administrative burden for the housing provider to grant the requested daily trash pick-up service. Accordingly, the requested accommodation may not be reasonable. If the housing provider denies the requested accommodation as unreasonable, the housing provider should discuss with the tenant whether reasonable accommodations could be provided to meet the tenant's disability-related needs – for instance, placing an open trash collection can in a location that is readily accessible to the tenant so the tenant can dispose of his own trash and the provider's maintenance staff can then transfer the trash to the dumpster when they are on site. Such an accommodation would not involve a

fundamental alteration of the provider's operations and would involve little financial and administrative burden for the provider while accommodating the tenant's disability-related needs.

There may be instances where a provider believes that, while the accommodation requested by an individual is reasonable, there is an alternative accommodation that would be equally effective in meeting the individual's disability-related needs. In such a circumstance, the provider should discuss with the individual if she is willing to accept the alternative accommodation. However, providers should be aware that persons with disabilities typically have the most accurate knowledge about the functional limitations posed by their disability, and an individual is not obligated to accept an alternative accommodation suggested by the provider if she believes it will not meet her needs and her preferred accommodation is reasonable.

8. What is a "fundamental alteration"?

A "fundamental alteration" is a modification that alters the essential nature of a provider's operations.

> **Example:** A tenant has a severe mobility impairment that substantially limits his ability to walk. He asks his housing provider to transport him to the grocery store and assist him with his grocery shopping as a reasonable accommodation to his disability. The provider does not provide any transportation or shopping services for its tenants, so granting this request would require a fundamental alteration in the nature of the provider's operations. The request can be denied, but the provider should discuss with the requester whether there is any alternative accommodation that would effectively meet the requester's disability-related needs without fundamentally altering the nature of its operations, such as reducing the tenant's need to walk long distances by altering its parking policy to allow a volunteer from a local community service organization to park her car close to the tenant's unit so she can transport the tenant to the grocery store and assist him with his shopping.

9. What happens if providing a requested accommodation involves some costs on the part of the housing provider?

Courts have ruled that the Act may require a housing provider to grant a reasonable accommodation that involves costs, so long as the reasonable accommodation does not pose an undue financial and administrative burden and the requested accommodation does not constitute a fundamental alteration of the provider's operations. The financial resources of the provider, the cost of the reasonable accommodation, the benefits to the requester of the requested accommodation, and the availability of other, less expensive alternative accommodations that would effectively meet the applicant or resident's disability-related needs must be considered in determining whether a requested accommodation poses an undue financial and administrative

burden.

10. What happens if no agreement can be reached through the interactive process?

A failure to reach an agreement on an accommodation request is in effect a decision by the provider not to grant the requested accommodation. If the individual who was denied an accommodation files a Fair Housing Act complaint to challenge that decision, then the agency or court receiving the complaint will review the evidence in light of applicable law and decide if the housing provider violated that law. For more information about the complaint process, see question 19 below.

11. May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation?

No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation.

> **Example 1**: A man who is substantially limited in his ability to walk uses a motorized scooter for mobility purposes. He applies to live in an assisted living facility that has a policy prohibiting the use of motorized vehicles in buildings and elsewhere on the premises. It would be a reasonable accommodation for the facility to make an exception to this policy to permit the man to use his motorized scooter on the premises for mobility purposes. Since allowing the man to use his scooter in the buildings and elsewhere on the premises is a reasonable accommodation, the facility may not condition his use of the scooter on payment of a fee or deposit or on a requirement that he obtain liability insurance relating to the use of the scooter. However, since the Fair Housing Act does not protect any person with a disability who poses a direct threat to the person or property of others, the man must operate his motorized scooter in a responsible manner that does not pose a significant risk to the safety of other persons and does not cause damage to other persons' property. If the individual's use of the scooter causes damage to his unit or the common areas, the housing provider may charge him for the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

> **Example 2:** Because of his disability, an applicant with a hearing impairment needs to keep an assistance animal in his unit as a reasonable accommodation. The housing provider may not require the applicant to pay a fee or a security deposit as a condition of allowing the applicant to keep the assistance animal. However, if a tenant's assistance animal causes damage to the applicant's unit or the common areas of the dwelling, the housing provider may charge the tenant for

the cost of repairing the damage (or deduct it from the standard security deposit imposed on all tenants), if it is the provider's practice to assess tenants for any damage they cause to the premises.

12. When and how should an individual request an accommodation?

Under the Act, a resident or an applicant for housing makes a reasonable accommodation request whenever she makes clear to the housing provider that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability. She should explain what type of accommodation she is requesting and, if the need for the accommodation is not readily apparent or not known to the provider, explain the relationship between the requested accommodation and her disability.

An applicant or resident is not entitled to receive a reasonable accommodation unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable accommodation request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable accommodation request does not need to mention the Act or use the words "reasonable accommodation." However, the requester must make the request in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability.

Although a reasonable accommodation request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

Example: A tenant in a large apartment building makes an oral request that she be assigned a mailbox in a location that she can easily access because of a physical disability that limits her ability to reach and bend. The provider would prefer that the tenant make the accommodation request on a pre-printed form, but the tenant fails to complete the form. The provider must consider the reasonable accommodation request even though the tenant would not use the provider's designated form.

13. Must a housing provider adopt formal procedures for processing requests for a reasonable accommodation?

No. The Act does not require that a housing provider adopt any formal procedures for reasonable accommodation requests. However, having formal procedures may aid individuals with disabilities in making requests for reasonable accommodations and may aid housing providers in assessing those requests so that there are no misunderstandings as to the nature of the request, and, in the event of later disputes, provide records to show that the requests received proper consideration.

A provider may not refuse a request, however, because the individual making the request did not follow any formal procedures that the provider has adopted. If a provider adopts formal procedures for processing reasonable accommodation requests, the provider should ensure that the procedures, including any forms used, do not seek information that is not necessary to evaluate if a reasonable accommodation may be needed to afford a person with a disability equal opportunity to use and enjoy a dwelling. See Questions 16 - 18, which discuss the disability-related information that a provider may and may not request for the purposes of evaluating a reasonable accommodation request.

14. Is a housing provider obligated to provide a reasonable accommodation to a resident or applicant if an accommodation has not been requested?

No. A housing provider is only obligated to provide a reasonable accommodation to a resident or applicant if a request for the accommodation has been made. A provider has notice that a reasonable accommodation request has been made if a person, her family member, or someone acting on her behalf requests a change, exception, or adjustment to a rule, policy, practice, or service because of a disability, even if the words "reasonable accommodation" are not used as part of the request.

15. What if a housing provider fails to act promptly on a reasonable accommodation request?

A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation.

16. What inquiries, if any, may a housing provider make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation?

Under the Fair Housing Act, it is usually unlawful for a housing provider to (1) ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or (2) ask about the nature or severity of such persons' disabilities. Housing providers may, however, make the following inquiries, provided these inquiries are made of all applicants, including those with and without disabilities:

- An inquiry into an applicant's ability to meet the requirements of tenancy;

- An inquiry to determine if an applicant is a current illegal abuser or addict of a controlled substance;

- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability; and

- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability.

Example 1: A housing provider offers accessible units to persons with disabilities needing the features of these units on a priority basis. The provider may ask applicants if they have a disability and if, in light of their disability, they will benefit from the features of the units. However, the provider may not ask applicants if they have other types of physical or mental impairments. If the applicant's disability and the need for the accessible features are not readily apparent, the provider may request reliable information/documentation of the disability-related need for an accessible unit.

Example 2: A housing provider operates housing that is legally limited to persons with chronic mental illness. The provider may ask applicants for information needed to determine if they have a mental disability that would qualify them for the housing. However, in this circumstance, the provider may not ask applicants if they have other types of physical or mental impairments. If it is not readily apparent that an applicant has a chronic mental disability, the provider may request reliable information/documentation of the mental disability needed to qualify for the housing.

In some instances, a provider may also request certain information about an applicant's or a resident's disability if the applicant or resident requests a reasonable accommodation. See Questions 17 and 18 below.

17. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable accommodation?

A provider is entitled to obtain information that is necessary to evaluate if a requested reasonable accommodation may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the provider, and if the need for the requested accommodation is also readily apparent or known, then the provider may not request any additional information

about the requester's disability or the disability-related need for the accommodation.

If the requester's disability is known or readily apparent to the provider, but the need for the accommodation is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the accommodation.

> **Example 1:** An applicant with an obvious mobility impairment who regularly uses a walker to move around asks her housing provider to assign her a parking space near the entrance to the building instead of a space located in another part of the parking lot. Since the physical disability (*i.e.*, difficulty walking) and the disability-related need for the requested accommodation are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested accommodation.
>
> **Example 2:** A rental applicant who uses a wheelchair advises a housing provider that he wishes to keep an assistance dog in his unit even though the provider has a "no pets" policy. The applicant's disability is readily apparent but the need for an assistance animal is not obvious to the provider. The housing provider may ask the applicant to provide information about the disability-related need for the dog.
>
> **Example 3:** An applicant with an obvious vision impairment requests that the leasing agent provide assistance to her in filling out the rental application form as a reasonable accommodation because of her disability. The housing provider may not require the applicant to document the existence of her vision impairment.

18. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested accommodation?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability (*see* Answer 16, above). However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (*i.e.*, has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed accommodation, and (3) shows the relationship between the person's disability and the need for the requested accommodation. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (*e.g.*, proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits[10] or a credible statement by the individual). A doctor or other

[10] Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Insurance ("SSDI") benefits in most cases meet the definition of disability under the Fair Housing Act, although the converse may not be true. *See e.g.*, Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999)

medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable accommodation request or unless disclosure is required by law (*e.g.*, a court-issued subpoena requiring disclosure).

19. If a person believes she has been unlawfully denied a reasonable accommodation, what should that person do if she wishes to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for reasonable accommodation, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;

- By completing the "on-line" complaint form available on the HUD internet site: http://www.hud.gov; or

- By mailing a completed complaint form or letter to:

    Office of Fair Housing and Equal Opportunity
    Department of Housing & Urban Development
    451 Seventh Street, S.W., Room 5204
    Washington, DC 20410-2000

(noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at http://www.usdoj.gov/crt/housing/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY

Washington, D.C.
March 5, 2008

JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE

REASONABLE MODIFICATIONS UNDER THE FAIR HOUSING ACT

Introduction

The Department of Justice ("DOJ") and the Department of Housing and Urban Development ("HUD") are jointly responsible for enforcing the federal Fair Housing Act[1] (the "Act"), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.[2] One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.[3] HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.[4]

[1] The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

[2] The Act uses the term "handicap" instead of "disability." Both terms have the same legal meaning. See Bragdon v. Abbott, 524 U.S. 624, 631 (1998) (noting that the definition of "disability" in the Americans with Disabilities Act is drawn almost verbatim "from the definition of 'handicap' contained in the Fair Housing Amendments Act of 1988"). This document uses the term "disability," which is more generally accepted.

[3] 42 U.S.C. § 3604(f)(3)(A).

[4] This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at www.hud.gov/offices/fheo/disabilities/index.cfm. Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: http://www.fairhousingfirst.org.

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against housing applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability. The Act makes it unlawful for any person to refuse "to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."[5] The Act also makes it unlawful for any person to refuse "to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling." The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions[6],

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Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at www.hud.gov/offices/fheo/disabilities/index.cfm and http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

[5] 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

[6] The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing

placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

2. What is a reasonable modification under the Fair Housing Act?

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. Further, the modification must be "reasonable." Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive.

3. Who is responsible for the expense of making a reasonable modification?

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

4. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other

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account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term "substantially limits" suggests that the limitation is "significant" or "to a large degree."

The term "major life activity" means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking. This list of major life activities is not exhaustive.

5. Who is entitled to a reasonable modification under the Fair Housing Act?

Persons who meet the Fair Housing Act's definition of "person with a disability" may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

Example 1: A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant's disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant's expense.

Example 2: A homeowner with a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. There is no evidence that the shingles permitted by the homeowner's association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner's association is not required to permit the homeowner's modification because the homeowner's request is not reasonable and there is no nexus between the request and the disability.

6. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested reasonable modification?

A housing provider may not ordinarily inquire as to the nature and severity of an individual's disability. However, in response to a request for a reasonable modification, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act's definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed modification, and (3) shows the relationship between the person's disability and the need for the requested modification. Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual herself (e.g., proof that an individual under 65 years of age receives Supplemental Security

Income or Social Security Disability Insurance benefits[8] or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

7. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable modification?

A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the modification.

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

Example 1: An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.

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[8] Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a disability under the Fair Housing Act, although the converse may not be true. See, e.g., Cleveland v. Policy Management Systems Corp, 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Example 2: A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

8. Who must comply with the Fair Housing Act's reasonable modification requirements?

Any person or entity engaging in prohibited conduct – i.e., refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 2d 703, 710 (D. Md. 2001), aff'd, 2002 WL 2012545 (4th Cir. 2002).

9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?[9]

Under the Fair Housing Act, a reasonable *modification* is a structural change made to the premises whereas a reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. See Reasonable Accommodation Statement, Questions 7 and 8.

Example 1: Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.

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[9] Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of l973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. See Question 31.

Example 2: Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.

Example 3: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

Example 4: Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

10. Are reasonable modifications restricted to the interior of a dwelling?

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: www.hud.gov/offices/fheo/disabilities/index.cfm and the Fair Housing Accessibility FIRST website at: http://www.fairhousingfirst.org.

Example 1: A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

Example 2: A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

Example 3: A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

Example 1: Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

Example 2: Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

Example 3: A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

15. When and how should an individual request permission to make a modification?

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

An applicant or resident is not entitled to receive a reasonable modification unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does

not need to mention the Act or use the words "reasonable modification." However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.

Although a reasonable modification request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

16. Does a person with a disability have to have the housing provider's approval before making a reasonable modification to the dwelling?

Yes. A person with a disability must have the housing provider's approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

17. What if the housing provider fails to act promptly on a reasonable modification request?

A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

Example: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.

19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

Example 1: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

Example 2: As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

20. What if the housing provider wants a more costly design for the requested modification?

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

22. May a housing provider or homeowner's association condition approval of the requested modification on the requester obtaining special liability insurance?

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

Example: Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable

wear and tear. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

Example 1: Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

Example 2: Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

Example 3: Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?

No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

Example 1: Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

Example 2: Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

Example 3: A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

Example 1: If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

Example 2: If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

Example 3: If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?

If the dwelling unit is not subject to the design and construction requirements (i.e., a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

Example 1: A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

Example 2: A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

Example 3: A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

Example 1: A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

Example 2: A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant's disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504's requirements. See www.hud.gov/offices/fheo/disabilities/sect504.cfm.

32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for a reasonable modification, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: http://www.hud.gov; or
- By mailing a completed complaint form or letter to:

  Office of Fair Housing and Equal Opportunity
  Department of Housing & Urban Development
  451 Seventh Street, S.W., Room 5204
  Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application

and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at http://www.usdoj.gov/crt/housing/hcehome.html.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

California Civil Code 51.3

Unruh Act
Senior Housing

[*Note: Does not apply to Mobilehome Parks and is more restrictive than the Federal Fair Housing Act]*

51.3.

(a) The Legislature finds and declares that this section is essential to establish and preserve specially designed accessible housing for senior citizens. There are senior citizens who need special living environments and services, and find that there is an inadequate supply of this type of housing in the state.

(b) For the purposes of this section, the following definitions apply:

(1) "Qualifying resident" or "senior citizen" means a person 62 years of age or older, or 55 years of age or older in a senior citizen housing development.

(2) "Qualified permanent resident" means a person who meets both of the following requirements:

(A) Was residing with the qualifying resident or senior citizen prior to the death, hospitalization, or other prolonged absence of, or the dissolution of marriage with, the qualifying resident or senior citizen.

(B) Was 45 years of age or older, or was a spouse, cohabitant, or person providing primary physical or economic support to the qualifying resident or senior citizen.

(3) "Qualified permanent resident" also means a disabled person or person with a disabling illness or injury who is a child or grandchild of the senior citizen or a qualified permanent resident as defined in paragraph (2) who needs to live with the senior citizen or qualified permanent resident because of the disabling condition, illness, or injury. For purposes of this section, "disabled" means a person who has a disability as defined in subdivision (b) of Section 54. A "disabling injury or illness" means an illness or injury which results in a condition meeting the definition of disability set forth in subdivision (b) of Section 54.

(A) For any person who is a qualified permanent resident under this paragraph whose disabling condition ends, the owner, board of directors, or other governing body may require the formerly disabled resident to cease residing in the development upon receipt of six months' written notice; provided, however, that the owner, board of directors, or other governing body may allow the person to remain a resident for up to one year after the disabling condition ends.

(B) The owner, board of directors, or other governing body of the senior citizen housing development may take action to prohibit or terminate occupancy by a person who is a qualified permanent resident under this paragraph if the owner, board of directors, or other governing body finds, based on credible and objective evidence, that the person is likely to pose a significant threat to the health or safety of others that cannot be

ameliorated by means of a reasonable accommodation; provided, however, that the action to prohibit or terminate the occupancy may be taken only after doing both of the following:

(i) Providing reasonable notice to and an opportunity to be heard for the disabled person whose occupancy is being challenged, and reasonable notice to the coresident parent or grandparent of that person.

(ii) Giving due consideration to the relevant, credible, and objective information provided in the hearing. The evidence shall be taken and held in a confidential manner, pursuant to a closed session, by the owner, board of directors, or other governing body in order to preserve the privacy of the affected persons.

The affected persons shall be entitled to have present at the hearing an attorney or any other person authorized by them to speak on their behalf or to assist them in the matter.

(4) "Senior citizen housing development" means a residential development developed, substantially rehabilitated, or substantially renovated for, senior citizens **that has at least 35 dwelling units**. Any senior citizen housing development which is required to obtain a public report under Section 11010 of the Business and Professions Code and which submits its application for a public report after July 1, 2001, shall be required to have been issued a public report as a senior citizen housing development under Section 11010.05 of the Business and Professions Code. No housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed or put to use for occupancy by senior citizens.

(5) "Dwelling unit" or "housing" means any residential accommodation **other than a mobilehome.**

(6) "Cohabitant" refers to persons who live together as husband and wife, or persons who are domestic partners within the meaning of Section 297 of the Family Code.

(7) "Permitted health care resident" means a person hired to provide live-in, long-term, or terminal health care to a qualifying resident, or a family member of the qualifying resident providing that care. For the purposes of this section, the care provided by a permitted health care resident must be substantial in nature and must provide either assistance with necessary daily activities or medical treatment, or both.

A permitted health care resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident in the absence of the senior citizen from the dwelling unit only if both of the following are applicable:

(A) The senior citizen became absent from the dwelling due to hospitalization or other necessary medical treatment and expects to return to his or her residence within 90 days from the date the absence began.

(B) The absent senior citizen or an authorized person acting for the senior citizen submits a written request to the owner, board of directors,

or governing board stating that the senior citizen desires that the permitted health care resident be allowed to remain in order to be present when the senior citizen returns to reside in the development.

Upon written request by the senior citizen or an authorized person acting for the senior citizen, the owner, board of directors, or governing board shall have the discretion to allow a permitted health care resident to remain for a time period longer than 90 days from the date that the senior citizen's absence began, if it appears that the senior citizen will return within a period of time not to exceed an additional 90 days.

(c) The covenants, conditions, and restrictions and other documents or written policy shall set forth the limitations on occupancy, residency, or use on the basis of age. Any such limitation shall not be more exclusive than to require that one person in residence in each dwelling unit may be required to be a senior citizen and that each other resident in the same dwelling unit may be required to be a qualified permanent resident, a permitted health care resident, or a person under 55 years of age whose occupancy is permitted under subdivision (h) of this section or under subdivision (b) of Section 51.4. That limitation may be less exclusive, but shall at least require that the persons commencing any occupancy of a dwelling unit include a senior citizen who intends to reside in the unit as his or her primary residence on a permanent basis. The application of the rules set forth in this subdivision regarding limitations on occupancy may result in less than all of the dwellings being actually occupied by a senior citizen.

(d) The covenants, conditions, and restrictions or other documents or written policy shall permit temporary residency, as a guest of a senior citizen or qualified permanent resident, by a person of less than 55 years of age for periods of time, not less than 60 days in any year, that are specified in the covenants, conditions, and restrictions or other documents or written policy.

(e) Upon the death or dissolution of marriage, or upon hospitalization, or other prolonged absence of the qualifying resident, any qualified permanent resident shall be entitled to continue his or her occupancy, residency, or use of the dwelling unit as a permitted resident. This subdivision shall not apply to a permitted health care resident.

(f) The condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential rental property shall have been developed for, and initially been put to use as, housing for senior citizens, or shall have been substantially rehabilitated or renovated for, and immediately afterward put to use as, housing for senior citizens, as provided in this section; provided, however, that no housing development constructed prior to January 1, 1985, shall fail to qualify as a senior citizen housing development because it was not originally developed for or originally put to use for occupancy by senior citizens.

(g) The covenants, conditions, and restrictions or other documents or written policies applicable to any condominium, stock cooperative, limited-equity housing cooperative, planned development, or multiple-family residential property that contained age restrictions on January 1, 1984, shall be enforceable only to the extent permitted by this section, notwithstanding lower age restrictions contained in those documents or policies.

(h) Any person who has the right to reside in, occupy, or use the housing or an unimproved lot subject to this section on January 1, 1985, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the enactment of this section.

(i) The covenants, conditions, and restrictions or other documents or written policy of the senior citizen housing development shall permit the occupancy of a dwelling unit by a permitted health care resident during any period that the person is actually providing live-in, long-term, or hospice health care to a qualifying resident for compensation. For purposes of this subdivision, the term "for compensation" shall include provisions of lodging and food in exchange for care.

(j) Notwithstanding any other provision of this section, this section shall not apply to the County of Riverside.

51.4. (a) The Legislature finds and declares that the requirements for senior housing under Sections 51.2 and 51.3 are more stringent than the requirements for that housing under the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) in recognition of the acute shortage of housing for families with children in California. The Legislature further finds and declares that the special design requirements for senior housing under Sections 51.2 and 51.3 may pose a hardship to some housing developments that were constructed before the decision in Marina Point, Ltd. v. Wolfson (1982) 30 Cal.3d 721. The Legislature further finds and declares that the requirement for specially designed accommodations in senior housing under Sections 51.2 and 51.3 provides important benefits to senior citizens and also ensures that housing exempt from the prohibition of age discrimination is carefully tailored to meet the compelling societal interest in providing senior housing.

(b) Any person who resided in, occupied, or used, prior to January 1, 1990, a dwelling in a senior citizen housing development that relied on the exemption to the special design requirement provided by this section prior to January 1, 2001, shall not be deprived of the right to continue that residency, occupancy, or use as the result of the changes made to this section by the enactment of Chapter 1004 of the Statutes of 2000.

Date: May 22, 2017

To: Mark Paxson, General Counsel, State Treasurer's Office

From: Ida A. Clair, Principal Architect, Division of the State Architect

Subject: Compliance with California Building Code, Chapter 11B for California Tax Credit Allocation Committee projects.

The genesis of the definition for "Public Housing" in Chapter 2 of the California Building Code (CBC) are the Americans with Disabilities Act (ADA) and the 2010 ADA Standards for Accessible Design (2010 ADAS) that regulates the built environment.

2010 ADAS and ADA Title II Regulations Part 35, applicable to state and local government services.

§ 35.102 (a) *"this part applies to all services, programs and activities made available by public entities."*

§ 35.151 (a) "*each facility or part of a facility constructed by, on behalf of, or for the use of a public entity….."*

§ 35.151 (j) "*The requirements….. also apply to housing programs that are operated by public entities…."*

The ADA mandates that when State or local governments establish a program that provides housing to its residents, that public entity has the obligation to ensure that its program is operated in a non-discriminatory manner whether the program is provided directly by the public entity or through "contractual, licensing, or other arrangements."

When a State or local government enters into an agreement with a private party the obligation to comply with the ADA is not contracted away. Adherence to the ADA and the 2010 ADAS is required in such an agreement.

The definition of public housing in CBC Chapter 2 includes the requirements in the above referenced sections. This is the starting point for determining whether or not a project is public housing and thereby regulated by CBC Chapter 11B.

PUBLIC HOUSING. [DSA-AC] Housing facilities owned, operated, or constructed by, for or on behalf of a public entity including but not limited to the following:

> *1. Publically owned and/or operated one- or two- family dwelling units or congregate residences;*
> *2. Publically owned and/or operated buildings or complexes with three or more residential dwellings units;*
> *3. Reserved.*
> *4. Publically owned and/or operated homeless shelters, group homes and similar social service establishments;*
> *5. Publically owned and/or operated transient lodging, such as hotels, motels, hostels and other facilities providing accommodations of a short term nature of not more than 30 days duration;*
> *6. Housing at a place of education owned or operated by a public entity, such as housing on or serving a public school, public college or public university campus;*
> *7. Privately owned housing made available for public use as housing.*

The California Tax Credit Allocation Committee (TCAC) facilitates the investment of private capital into the development of affordable rental housing for low-income Californians. As such this is a housing program administered by a public entity.

Projects receiving tax credits from the California Tax Credit Allocation Committee meet the definition of “public housing”; CBC Chapter 11B compliance is thus required.

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United States Department of Justice
Civil Rights Division

2010 Americans with Disabilities Act Standards for Accessible Design

Is the project constructed or altered by, on behalf, or for the use of a public entity (Title II)?

Compliance with the Fair Housing Act may also be required depending on the number, type of units and date of construction.

YES

Are the facilities with residential dwelling units provided by entities subject to HUD 504 Regulations?

NO

Are the facilities with residential dwelling units provided by entities not subject to HUD 504 Regulations?

YES

Provide units in a number required by HUD Section 504 Regulations

Technical requirements per 2010 ADAS Chapter 8 with exceptions.

YES

Are the facilities social service center establishments?
- Group homes
- Halfway houses
- Shelters or similar establishments either temporary or residential dwelling units

Number of required units:
- With mobility features 5%
- With communication features 2%

YES

Are the facilities newly constructed with residential dwelling units?

YES

Number of required units:
- With mobility features 5%
- With communication features 2%

YES

Are the facilities housing at a place of education?

YES

Under graduate student housing not leased on year-round basis?

NO

Graduate student or faculty housing leased on year-round basis with no common use educational programming areas?

YES

Comply with requirements in Sections 233 and 809

YES

Comply with transient lodging standards Sections 224 and

NO

Addition to an existing building?

YES

Requirements apply only to residential dwelling units added until total number complies with minimum number required (5% mobility and 2% communication)

NO

Alteration to vacated building with 15 or more residential dwelling

YES

At least 5% of the residential dwelling units required to be on accessible route, comply with 809.2 through 809.4, and 2% required to comply with 809.5

NO

Alteration to individual residential dwelling unit?

YES

Where bathroom or kitchen is substantially altered and at least one other room is altered, requirements apply to the altered units until the total number meets minimum

NO

Is the project an alteration to a Qualified Historical Building?

YES

Does not require actions where significant historic features are impaired

Is the project constructed as a place of public accommodation (Title III)?

YES

Are the facilities newly constructed with residential dwelling units?

YES

Are the facilities social service center establishments?
- Group homes
- Halfway houses
- Shelters or similar establishments either temporary or residential dwelling units

NO

Comply with Sections 233 and 809

NO

Are the facilities a public accommodation with transient lodging guest rooms?

YES

Are the residential dwelling units in the facility privately owned?

YES

Standards apply to public accommodation areas of the facility, not residential dwelling units.

Are the facilities places of lodging?
- Hotel
- Motel
- Inn

NO

Are the facilities housing at a place of education?

YES

Compliance with the Fair Housing Act may also be required depending on the number, type of units and date of construction.

YES

Under graduate student housing not leased on a year-round basis?

YES

Comply with Sections 224 and 806

NO

Graduate student or faculty housing leased on year-round basis with no common use educational programming areas?

YES

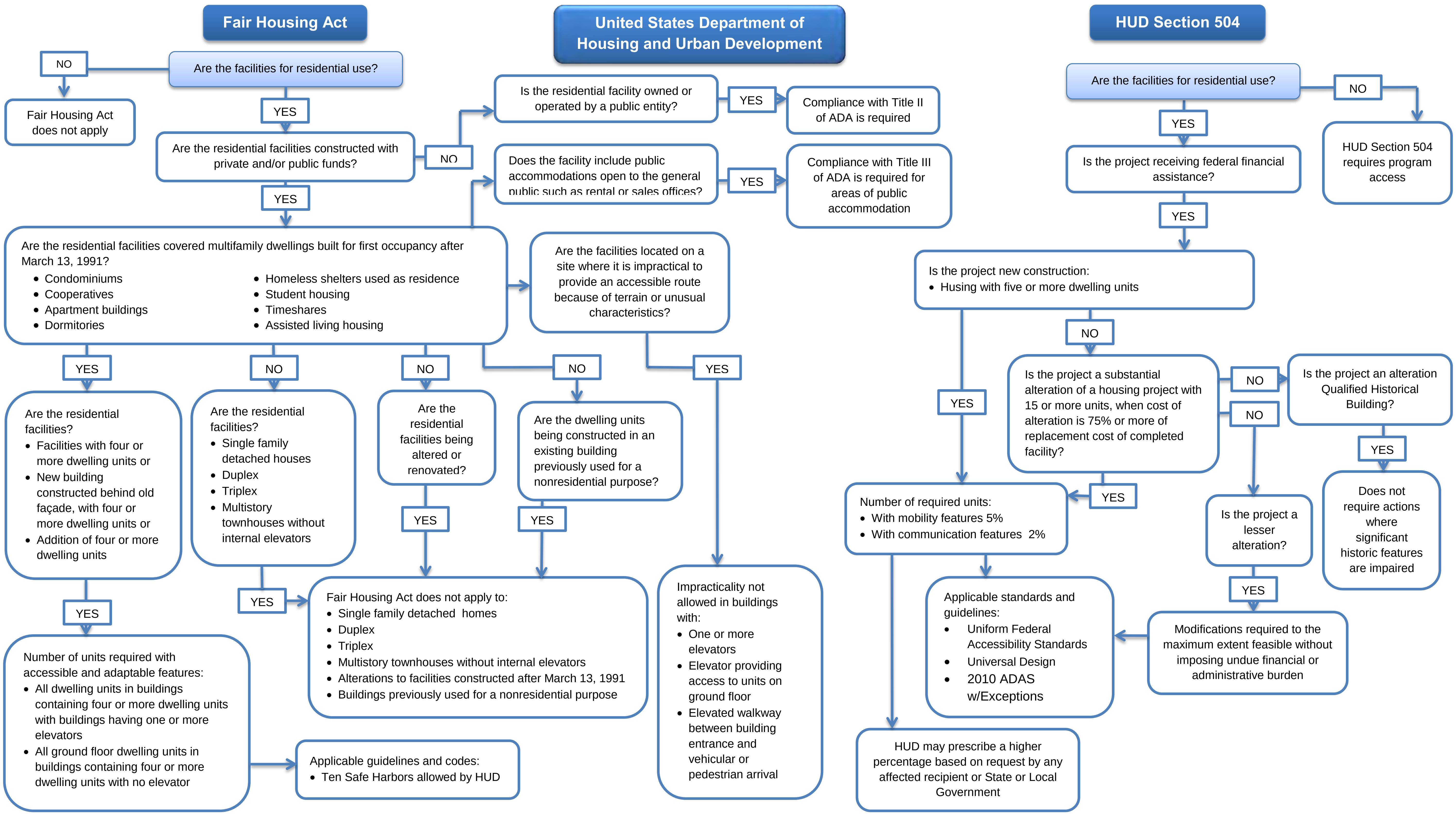
Comply with requirements in Sections 233 and 809

NO

Is a commercial facility located in a newly constructed or altered private residence?

YES

Portions of the facility used exclusively as a residence not regulated by 2010 ADAS. Portions used in operation of commercial or both commercial facility and residence are covered.


Fair Housing Act
Are the facilities for residential use?
NO
Fair Housing Act does not apply
YES
Are the residential facilities constructed with private and/or public funds?
NO
YES
Are the residential facilities covered multifamily dwellings built for first occupancy after March 13, 1991?
• Condominiums
• Cooperatives
• Apartment buildings
• Dormitories
• Homeless shelters used as residence
• Student housing
• Timeshares
• Assisted living housing
YES
NO
NO
NO
Are the residential facilities?
• Facilities with four or more dwelling units or
• New building constructed behind old façade, with four or more dwelling units or
• Addition of four or more dwelling units
YES
Number of units required with accessible and adaptable features:
• All dwelling units in buildings containing four or more dwelling units with buildings having one or more elevators
• All ground floor dwelling units in buildings containing four or more dwelling units with no elevator
Applicable guidelines and codes:
• Ten Safe Harbors allowed by HUD
Are the residential facilities?
• Single family detached houses
• Duplex
• Triplex
• Multistory townhouses without internal elevators
YES
Are the residential facilities being altered or renovated?
YES
Are the dwelling units being constructed in an existing building previously used for a nonresidential purpose?
YES
Fair Housing Act does not apply to:
• Single family detached homes
• Duplex
• Triplex
• Multistory townhouses without internal elevators
• Alterations to facilities constructed after March 13, 1991
• Buildings previously used for a nonresidential purpose
United States Department of Housing and Urban Development
Is the residential facility owned or operated by a public entity?
YES
Compliance with Title II of ADA is required
Does the facility include public accommodations open to the general public such as rental or sales offices?
YES
Compliance with Title III of ADA is required for areas of public accommodation
Are the facilities located on a site where it is impractical to provide an accessible route because of terrain or unusual characteristics?
YES
Impracticality not allowed in buildings with:
• One or more elevators
• Elevator providing access to units on ground floor
• Elevated walkway between building entrance and vehicular or pedestrian arrival
HUD Section 504
Are the facilities for residential use?
NO
HUD Section 504 requires program access
YES
Is the project receiving federal financial assistance?
YES
Is the project new construction:
• Husing with five or more dwelling units
NO
YES
Is the project a substantial alteration of a housing project with 15 or more units, when cost of alteration is 75% or more of replacement cost of completed facility?
NO
NO
Is the project an alteration Qualified Historical Building?
YES
Does not require actions where significant historic features are impaired
YES
Number of required units:
• With mobility features 5%
• With communication features 2%
Is the project a lesser alteration?
YES
Applicable standards and guidelines:
• Uniform Federal Accessibility Standards
• Universal Design
• 2010 ADAS w/Exceptions
Modifications required to the maximum extent feasible without imposing undue financial or administrative burden
HUD may prescribe a higher percentage based on request by any affected recipient or State or Local Government

Department of General Services
Division of the State Architect

California Building Code
California Code of Regulations Title 24, Part 2, Volume 1 Chapter 11B

Transient Lodging, privately operated or publicly owned and/or operated

Are the facilities transient lodging?

YES

Are the facilities?
- Hotels
- Motels
- Inns
- Dormitories
- Resorts and similar transient lodging facilities

NO

Are the facilities social service center establishments?
- Group homes
- Halfway houses
- Shelters or similar establishments, either temporary or residential dwelling units

YES

Comply with Sections 11B-224.8 and 11B-233 for Social Service Center Establishments

NO

Are the facilities housing at a place of education?

YES

Under graduate student housing not leased on year-round basis?

YES

Comply with transient lodging standards Section 11B-224 and 11B-806 or Housing at a Place of Education 11B-224.7

NO

Graduate student or faculty housing leased on year-round basis with no common use educational programming areas?

YES

Comply with Sections 11B-233 and 11B-809

Are the facilities public housing with residential dwelling units?

YES

Are the housing facilities public housing with residential dwelling units?

YES

Are the facilities newly constructed with one or more residential dwelling units?

YES

Comply with Section 11B-233.3

NO

Are the facilities located on a site where it is impractical to provide an accessible route because of terrain or unusual characteristics?

YES

Impracticality not allowed in buildings with:
- One or more elevators
- Elevator providing access to units on ground floor
- Elevated walkway between building entrance and vehicular or pedestrian arrival points

NO

Addition to an existing public housing facility?

YES

Requirements apply only to residential dwelling units added until total number complies with minimum number required (5% mobility, 2% communication and ground floor accessible units with adaptable features)

NO

Alteration to vacated building with 15 or more residential dwelling units

YES

At least 5% of the residential dwelling units required to be on accessible route, comply with 809.2 through 809.4, 2% required to comply with 809.5 and ground floor accessible units with adaptable features.

NO

Alteration to individual residential dwelling unit

YES

Where bathroom or kitchen is substantially altered and at least one other room is altered, requirements apply until the total number meets minimum number required (5% mobility, 2% communication and ground floor accessible units with adaptable features)

YES

Is the project an alteration to a Qualified Historical Building?

YES

Does not require actions where significant historic features are impaired

NO

Are the housing facilities privately funded covered multi-family dwellings?

YES

Refer to Chapter 11A of the California Building Code

NO

Is a commercial facility located in a newly constructed or altered private residence?

YES

Portions of the facility used exclusively as a residence not regulated by Chapter 11B. Portions used in operation of public accommodation or both public accommodation and residence are regulated by Chapter 11B.

California Department of Housing and Community Development

California Building Code
California Code of Regulations Title 24, Part 2, Volume 1 Chapter 11A

Are the housing facilities privately funded, newly constructed, covered multifamily dwellings?

NO → Is the residential facility public housing?
- YES → Comply with Chapter 11B
- NO → Is the project newly constructed, covered multifamily dwellings and associated common areas including but not limited to:
  - Apartment buildings with 3 or more dwelling units including timeshares not a place of public accommodation
  - Condominiums with 4 or more dwelling units including timeshare condominiums not a place of public accommodation
  - Lodging houses used as a residence with 4 to 5 guest rooms
  - Congregate residences
  - Dwellings with 3 or more efficiency units
  - Homeless shelters
  - Dormitories with 3 or more guest rooms
  - Timeshare dwellings with 3 or more units not considered a place of public accommodation or transient lodging
  - Other group R occupancies in covered multifamily dwellings regulated by State Fire Marshal

YES → Does the facility include public accommodations open to the general public such as rental or sales offices?
- YES → Comply with Chapter 11B for Places of Public Accommodation
- NO → Are the residential facilities constructed prior to March 13, 1991 being altered or renovated?
  - YES → Chapter 11A not applicable to alterations, repair, rehabilitation or maintenance
  - NO → Are the dormitories housing at a place of education?
    - YES → Compliance with Chapter 11B also required
    - YES → Are the facilities located on a site where it is impractical to provide an accessible route because of terrain or unusual characteristics?
      - YES → Impracticality not allowed in buildings with:
        - One or more elevators
        - Elevator providing access to units on ground floor
        - Elevated walkway between building entrance and vehicular or pedestrian arrival points

NO → Are the residential facilities?
- Single family detached homes
- Duplex
- Triplex

YES → Chapter 11A does not apply

YES → Number of dwelling units required to be adaptable and on an accessible route:
- All ground floor dwelling units in non-elevator buildings
- All dwelling units in elevator buildings
- Multistory dwelling units in non-elevator buildings – 10% no less than one of the multistory dwelling units
- Multistory dwelling units in elevator buildings – primary entry of multistory dwelling units, powder room or bathroom and kitchen on primary entry level

NO → Existing building with portion of building's exterior preserved and interior removed including all structural portions of floors and ceilings
- YES → Number of dwelling units required to be adaptable and on an accessible route:
- NO → Additions to existing buildings, where the addition alone meets the definition of a covered multifamily dwelling
  - YES → Number of dwelling units required to be adaptable and on an accessible route:
  - NO → Are the dwelling units being constructed in an existing building previously used for a nonresidential purpose?
    - YES → Chapter 11A does not apply
    - NO → New common use spaces serving existing covered multifamily dwellings
      - YES → Comply with Chapter 11A for common use spaces
      - NO → Number of dwelling units required to be adaptable and on an accessible route:

Useful Website Addresses	
Division of the State Architect, California Department of General Services Division develops accessibility, structural safety, and historical building codes and standards utilized in various public and private buildings throughout the State of California.	http://www.dgs.ca.gov/dsa/Home.aspx
California Building Standards Commission Agency responsible for reviewing and approving building standards proposed and adopted by state agencies.	http://www.bsc.ca.gov/
California Department of Housing and Community Development Provides leadership, policies and programs to preserve and expand safe and affordable housing opportunities and promote strong communities for all Californians. Promulgates California Building Code, Chapter 11A.	http://www.hcd.ca.gov/
California Commission on Disability Access Promotes disability access in California through dialogue and collaboration with stakeholders including but not limited to the disability and business community and all levels of government.	https://www.ccda.ca.gov/
California Tax Credit Allocation Committee The California Tax Credit Allocation Committee (CTCAC) administers the federal and state Low-Income Housing Tax Credit Programs. Both programs were created to promote private investment in affordable rental housing for low-income Californians	http://www.treasurer.ca.gov/ctcac/

Useful Website Addresses	
United States Department of Justice, Civil Rights Division Provides information and technical assistance on the Americans with Disabilities Act.	http://casinstitute.org/
United States Access Board Develops accessibility guidelines and standards for the built environment, transportation, communication, medical diagnostic equipment, and information technology.	http://www.access-board.gov/
United States Department of Housing and Urban Development Agency responsible for enforcement of Federal Fair Housing Laws.	http://portal.hud.gov/hudportal/HUD
Fair Housing Accessibility First Supported by HUD to promote compliance with the Fair Housing Act design and construction requirements.	http://www.fairhousingfirst.org/
FOIA Electronic Reading Room US DOJ website for technical assistance letters, list of settlement agreements and core letters.	https://www.justice.gov/crt/foia-electronic-reading-room
ada National Network Information, guidance and training on the Americans with Disabilities Act.	http://adata.org/
Accessibility Online Training program coordinated by the ADA National Network and the US Access Board. Provider of online training webinars.	http://www.accessibilityonline.org/
CORADA Comprehensive online resource for the ADA.	https://www.corada.com
Certified Access Specialist Institute Influencing positive change in access through awareness and proactive adaptation of the built environment.	https://casinstitute.org/

City of Los Angeles v. AECOM Services Inc.

University of California – Access Compliance Training
September 25 and 28th, 2017

CITY OF LOS ANGELES, a municipal corporation (acting by and through its Department of Airports), Third-Party-Plaintiff-Appellant,

v.

AECOM SERVICES, INC.; TUTOR PERINI CORPORATION, Third-Party-Defendants-Appellees, and BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES; JAROTH, INC., Third-Party-Defendants.

No. 15-56606.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted April 5, 2017 — Pasadena, California.
Filed April 24, 2017.

Appeal from the United States District Court For the Central District of California; S. James Otero, District Judge, Presiding, D.C. No. 2:13-cv-04057-SJO-PJW.

Timothy T. Coates (argued) and Edward L. Xanders, Greines Martin Stein & Richland LLP, Los Angeles, California; Kevin Gilbert, Lozano Smith, Walnut Creek, California; Kerrin Tso, Los Angeles City Attorney's Office, Los Angeles, California; for Third-Party-Plaintiff-Appellant.

Robert Nida (argued), Edward Wei, and Nomi L. Castle, Castle & Associates APLC, Beverly Hills, California, for Third-Party-Defendant-Appellee Tutor Perini Corporation.

Noel Eugene Macaulay (argued) and Steven H. Schwartz, Schwartz & Janzen LLP, Los Angeles, California, for Third-Party-Defendant-Appellee AECOM Services, Inc.

Christine Van Aken, Chief of Appellate Litigation; Dennis J. Herrera, City Attorney; City Attorney's Office, San Francisco, California; for Amici Curiae League of California Cities and California Association of Joint Powers Authorities.

Before: MILAN D. SMITH, JR. and N.R. SMITH, Circuit Judges, and GARY FEINERMAN, District Judge.[*]

Opinion by Judge Milan D. Smith, Jr.

SUMMARY[**]

Disability Law/Preemption

The panel reversed the district court's dismissal of thirdparty claims brought by the City of Los Angeles for breach of contract and contribution against contractors that allegedly breached their contractual duty to perform services in compliance with federal disability regulations.

Two disabled individuals filed suit alleging that the City's FlyAway bus facility and service failed to meet federal and state accessibility standards. The City filed a third-party complaint alleging breach of contract by the companies hired to design and construct the bus facility.

The panel held that Title II of the Americans with Disabilities Act and § 504 of the Rehabilitation Act did not preempt the City's state-law claims. The panel held that field preemption did not apply because the ADA expressly disavows preemptive federal occupation of the disabilityrights field. Distinguishing a Fourth Circuit case, the panel held that conflict preemption also did not preclude the City's claims. The panel disagreed with the district court's conclusion that the states have not traditionally occupied the field of anti-discrimination law, and so the general presumption against preemption did not apply. Applying the presumption, the panel concluded that Congress did not indicate a clear and manifest purpose to preempt claims for state-law indemnification or contribution filed by a public entity against a contractor. The panel remanded the case for further proceedings.

OPINION

M. SMITH, Circuit Judge.

This appeal presents a single legal question that has not yet been addressed by our court: Do Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (§ 504) preempt a city's state-law claims for breach of contract and *de facto* contribution against contractors who breach their contractual duty to perform services in compliance with federal disability regulations? For the reasons set forth in this opinion, we hold that neither Title II nor § 504 preempts such claims.

FACTUAL AND PROCEDURAL BACKGROUND

Two disabled individuals filed suit against Appellant City of Los Angeles (the City), alleging that the City's FlyAway bus facility and service—a bus system that provides transportation between Los Angeles International Airport and various locations—failed to meet the accessibility standards set forth in Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.;* § 504 of the Rehabilitation Act, 29 U.S.C. §§ 701 *et seq.;* and various California statutes. The complaint specifically alleged that the FlyAway bus facility in Van Nuys, California, had been constructed in such a manner that it was inaccessible by disabled individuals. Plaintiffs sought damages, attorneys' fees, and an injunction requiring the City to modify its Van Nuys FlyAway facility so that it would become compliant with state and federal disability access standards.

The City subsequently filed a third-party complaint against Appellees AECOM Services, Inc. (AECOM) and Tutor Perini Corporation (Tutor).[1] The City's third-party complaint alleged that pursuant to the contract entered into by the City and the company hired to design and construct the Van Nuys FlyAway facility (which was AECOM's predecessor-in-interest), AECOM was obligated "to defend, indemnify, and hold harmless the City against all suits, claims, losses, demands, and expenses *to the extent that any such claim results from the negligent and/or intentional wrongful acts or omissions of [AECOM],* its subcontractors, officers, agents, servants, [or] employees." (emphasis added). The complaint also tracked the language of the contract, pursuant to which AECOM's predecessor-ininterest agreed

> to defend, indemnify and hold City . . . harmless from and against all suits and causes of action, claims, losses, demands and expenses . . . to the extent that any claim for personal injury and/or for property damage results from the negligent and/or the intentional wrongful acts or omissions of Consultant, its subcontractors of any tier, and its or their officers, agents, servants, or employees, successors or assigns.

(emphasis added).

The City further alleged that Tutor, the successor-ininterest to another company retained by the City to construct the Van Nuys FlyAway facility, was contractually obligated "to defend, indemnify, and hold harmless the City against all costs, liability, damage or expense . . . sustained as a proximate result of the acts or omissions of [Tutor] or relating to acts or events pertaining to, or arising out of, the contract." The contract between the City and Tutor's predecessor-in-interest also required that the contractor, in performing its contractual obligations, "comply with all applicable present and/or future local, . . . State and Federal Laws, statutes, ordinances, rules, regulations, restrictions and/or orders, including . . . the Americans with Disabilities Act of 1990," and stated that "Contractor shall be solely responsible for any and all damages caused, and/or penalties levied, as the result of Contractor's noncompliance with such enactments." The contract also stated that

> [e]xcept for the City's sole negligence or willful misconduct, Contractor expressly agrees to . . . defend, indemnify, keep and hold City . . . harmless from any and all costs, liability, damage or expense . . . sustained as a proximate result of the acts or omissions of Contractor, its agents, servants, subcontractors, employees or invitees; or [] relating to acts or events pertaining to, or arising from or out of, this Contract.

Based on the foregoing contractual provisions between the City and Appellees' respective predecessors-in-interest, the City's third-party complaint against Appellees sought damages for breach of contract, express contractual indemnity, and declaratory relief establishing Appellees' obligations to defend and indemnify the City.

Tutor moved to dismiss the City's claims pursuant to Federal Rule of Civil Procedure 12(b)(6), on the theory that Title II and § 504 preempt the City's claims for indemnification. The district court granted Tutor's motion to dismiss on preemption grounds. The

district court also denied the City's request for leave to amend its complaint, because it believed that any potential amendment would be futile. The City and AECOM then stipulated that the district court could rule on the viability of the City's claims against AECOM on the same basis as it did on Tutor's motion to dismiss because AECOM had asserted an identical preemption defense. The district court subsequently dismissed the City's claims against AECOM in an order substantively identical to the order previously issued in regard to Tutor's motion to dismiss. The City now appeals the district court's dismissal of its third-party claims against Appellees.

JURISDICTION AND STANDARD OF REVIEW

The district court entered a final judgment as to all parties in this appeal on October 8, 2015. We have jurisdiction over final judgments of the district court pursuant to 28 U.S.C. § 1291. We review *de novo* a district court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *In re Apple iPhone Antitrust Litig.*, 846 F.3d 313, 317 (9th Cir. 2017). We similarly review *de novo* questions of preemption under the Supremacy Clause. *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005).

ANALYSIS

I. The Americans with Disabilities Act and the Rehabilitation Act of 1973

Title II of the ADA states that "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. This echoes § 504 of the Rehabilitation Act, which states that "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. § 794(a). Title II "extends the anti-discrimination prohibition embodied in section 504 [of the Rehabilitation Act of 1973] to all actions of state and local governments," H.R. Rep. No. 101-485(II), at 84 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 367, and should be read "broadly in order to effectively implement the ADA's fundamental purpose of providing a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." *Hason v. Med. Bd. of Cal.*, 279 F.3d 1167, 1172 (9th Cir. 2002) (internal quotation marks and alteration omitted). In the context of claims brought under Title II, "the ADA's broad language brings within its scope anything a public entity does." *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001) (internal quotation marks omitted).

II. Federal Preemption of State Law

The Supremacy Clause of the United States Constitution provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. The Supreme Court has set forth two principles to guide courts in applying the federal preemption principle embodied in this constitutional provision. First, "the purpose of Congress is the ultimate touchstone in every pre-emption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (internal quotation marks and alteration omitted). Second, "[i]n all pre-emption cases, and particularly in those in which Congress has legislated in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Id.* (internal quotation marks and ellipsis omitted); *see also Wyeth v. Levine*, 555 U.S. 555, 565 (2009).

We have recognized three ways in which a federal law may preempt state legislation:

> First, Congress may preempt state law by so stating in express terms. Second, preemption may be inferred when federal regulation in a particular field is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. In such cases of field preemption, the mere volume and complexity of federal regulations demonstrate an implicit congressional intent to displace all state law. Third, preemption may be implied when state law actually conflicts with federal law. Such a conflict arises when compliance with both federal

> and state regulations is a physical impossibility, or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.

Bank of Am. v. City & Cty. of S.F., 309 F.3d 551, 558 (9th Cir. 2002), *as amended on denial of reh'g and reh'g en banc* (Dec. 20, 2002) (internal quotation marks and citations omitted).

The Supreme Court has stated, in the context of banking regulations, that the general presumption against preemption "is not triggered when the State regulates in an area where there has been a history of significant federal presence." *United States v. Locke*, 529 U.S. 89, 108 (2000). Taken in isolation, this language might suggest that any time the federal government has historically regulated in a given area, the typical presumption against preemption does not apply. However, the Court, in *Wyeth v. Levine*, 555 U.S. 555 (2009), somewhat cabined its language from *Locke* by further explaining the role of historic federal regulation in conducting a preemption analysis:

> Wyeth argues that the presumption against pre-emption should not apply to this case because the Federal Government has regulated drug labeling for more than a century. That argument misunderstands the principle: We rely on the presumption because respect for the States as "independent sovereigns in our federal system" leads us to assume that "Congress does not cavalierly pre-empt state-law causes of action." *Lohr*, 518 U.S. at 485 . . . . The presumption thus accounts for the historic presence of state law but *does not rely on the absence of federal regulation.*

Id. at 565 n.3 (emphasis added). *Locke*'s assertion that the presumption against preemption will not apply "where there has been a history of significant federal presence" must therefore be considered in conjunction with the specific circumstances attendant to banking regulations, and particularly the fact that in *Locke,* a state had "enacted legislation in an area where the federal interest has been manifest since the beginning of our Republic." *Locke*, 529 U.S. at 99. The Supreme Court found a wholly different situation in *Wyeth,* and, although Congress had enacted a "significant public health law" as early as 1906, the Court nevertheless recognized public health and safety as a realm in which the presumption applies. 555 U.S. at 565-66, 565 n.3.

III. either Title II nor Section 504 Preempts State-Law Claims for Contribution

Neither Title II nor § 504 contains a statement of express preemption, and no party in this appeal contends otherwise. The district court's opinion suggests, however, that field preemption applies to preclude Appellant's claims. We disagree. Field preemption occurs "where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress left no room for supplementary state regulation," or "where the field is one in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Hillsborough Cty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985) (internal quotation marks omitted). Title II specifically states that "[n]othing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of . . . any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter." 42 U.S.C. § 12201(b). In other words, the ADA expressly disavows preemptive federal occupation of the disability-rights field.

Nevertheless, we may affirm on any basis finding support in the record, and Appellees contend—as they did before the district court—that conflict preemption precludes the City's claims. Appellees' argument rests largely upon the Fourth Circuit Court of Appeals' decision in *Equal Rights Center v. Niles Bolton Associates*, 602 F.3d 597 (4th Cir. 2010). That case concerned a housing developer that filed crossclaims for implied and express contractual indemnification against the architect of its properties, seeking damages stemming from those properties' failure to comply with, *inter alia,* the ADA's disability accessibility requirements. *See id.* at 599. The Fourth Circuit held that the ADA preempted the developer's claim for indemnification, and further concluded that granting the developer leave to amend to include a claim for contribution would be futile, because any contribution claim would be a *de facto* indemnification claim, and thus similarly preempted. *Id.* at 602.

The *Equal Rights Center* court found that obstacle preemption, which is a subset of conflict preemption, applied to the claims there at issue. *Id.* at 601-02. It explained that the purpose of the ADA is "regulatory rather than compensatory," and that therefore "denying indemnification encourages the reasonable care required by the [federal statute]." *Id.* It further emphasized the nondelegable nature of responsibility under the ADA, pursuant to which "an owner cannot insulate himself from liability for discrimination in regard to living premises owned by him and managed for his benefit merely by relinquishing the responsibility for preventing such discrimination to another party." *Id.* at 602 (internal quotation marks and ellipsis omitted).

As an initial matter, the factual circumstances of *Equal Rights Center* materially differ from those in this appeal. Most importantly, the *Equal Rights Center* court emphasized that the developer "sought to allocate the *full* risk of loss to [the architect] for the apartment buildings at issue," and determined that "[a]llowing an owner to *completely insulate* itself [in that manner] from liability for an ADA or FHA violation through contract [would] diminish[] its incentive to ensure compliance with discrimination laws." *Id.* (emphases added). Here, by contrast, the relevant contractual provisions assign liability to Appellees only to the extent that their own actions give rise to liability. Thus, the *Equal Rights Center* court's concern with permitting a responsible party to completely insulate itself from Title II liability is not in play here. On the contrary, under the present circumstances, the greater concern is the potential for contractors to shield themselves from any liability they caused under both state contract law and federal disability regulations if Title II and § 504 are found to preempt Appellant's claims.[2]

Furthermore, while the developer in *Equal Rights Center* sought leave to amend to add a claim for contribution, the Fourth Circuit affirmed the district court's denial on the ground that the developer "really [sought] to have [the architect] pay *all* damages," and that any such claim would therefore be a "*de facto* claim for indemnification." 602 F.3d at 602, 604. Because the so-called contribution claim really constituted a claim for indemnification, the court declined to reach the question of whether a genuine state-law claim for contribution would be preempted. *See id.* at 604 n.2.[3]

Appellees also cite *Independent Living Center v. City of Los Angeles,* 973 F. Supp. 2d 1139 (C.D. Cal. 2013) in support of their preemption argument. That district court case concerned a suit for Title II and § 504 liability against the City of Los Angeles, and various owners of residential properties in the City of Los Angeles that received federal funds from or through the City, for having engaged in a "`pattern or practice' of discrimination against people with disabilities in violation of federal and state antidiscrimination laws." *Id.* at 1142. The City crossclaimed for express and implied contribution or indemnity against the property owners. *Id.* at 1143. The property owners moved to dismiss the City's crossclaims. *Id.* The district court found that no cause of action for implied contribution or indemnification exists under Title II or § 504. *Id.* at 1154, 1156. The district court also determined that state-law indemnity and contribution claims posed an obstacle to the full implementation of Title II and § 504, and that they were accordingly preempted. *Id.* at 1160. It reasoned "that congressional objectives are best served when parties with duties under the antidiscrimination statutes remain independently responsible for compliance," and held that "allowing public entities regulated by Section 504 and Title II to seek indemnification or contribution through state law to offset their liability would interfere with the methods by which the federal statutes were designed to reach their goal." *Id.* (internal alterations and quotation marks omitted). The court further held that the City's contractual indemnity crossclaim derived from the first-party claims under the ADA and FHA, citing *Equal Rights Center* for the proposition that such claims present an impermissible attempt to contract around the nondelegable nature of a party's duties under the ADA and FHA, and that permitting those claims would therefore undermine federal law. *Id.* at 1161. The *Independent Living Center* court rested its analysis regarding contract claim preemption wholly on *Equal Rights Center,* and did not discuss any difference between claims seeking contractual contribution, and those seeking indemnity. *Id.* We are, of course, not bound in any way by *Independent Living Center,* but we address its reasoning in this opinion as part of our analysis.

The district court in this case declined to address two aspects of *Independent Living Center* that cabin its persuasive effect on the present appeal. First, as the *Independent Living Center* court emphasized, the first-party plaintiffs in that matter alleged that the City had "failed . . . to maintain *policies, practices, or procedures* to ensure that accessible housing units [were] made available and [were] meaningfully accessible to people with disabilities," and that they additionally "*failed to monitor compliance* with the Rehabilitation Act accessibility requirements." *Id.* at 1144-45 (internal quotation marks omitted, emphases added). The court expressly found that "the main focus of [the] lawsuit [was] the legality of the overall housing program," and that "Plaintiffs did not file this case because a particular building violated provisions under the various statutes." *Id.* at 1148 (internal alterations omitted). Rather, the plaintiffs sought redress for a programmatic failure on the part of the City to maintain adequate policies and oversight under the relevant federal statutes. *See id.* at 1148-49.

That factual circumstance stands in stark contrast to the situation presented by this appeal. Cities implement policies and procedures as part of their standard operation. Were courts to permit a city to contract away its liability to implement policies and procedures that comply with federal disability regulations, they would indeed be permitting delegation of an entity's duties under the ADA. Here, however, the City does not seek indemnification or contribution for damages arising out of its own failure to implement policies or exercise oversight. Rather, it seeks redress for specific construction and design failures related to the FlyAway bus service. Cities usually have no choice but to contract out design and construction of public facilities because they do not have the expertise, personnel, or equipment necessary to construct public projects. They delegate that task by necessity. Accordingly, an important component in a city's doing all it can to fulfill its duties under Title II and § 504 is to require as part of its contracts with necessary third party entities that the requirements of those statutes be met.[4] Permitting enforcement of contract

claims seeking to hold a contractor liable for duties necessarily delegated to it does not raise the specter of entirely insulating public entities from ongoing Title II or § 504 liability posed by offloading all the city's responsibilities under those laws.

Second, although it found that conflict preemption precluded the City's claims for both contribution and indemnification, the *Independent Living Center* court relies almost entirely on *Equal Rights Center*—a case that expressly declined to address whether conflict preemption would apply to claims for contribution, as opposed to those for indemnification. *See* Indep. Living Ctr., 973 F. Supp. 2d at 1160-61. *Independent Living Center* expresses a clear concern regarding attempts to shift a responsible party's liability under federal disability statutes to another party, and accordingly explains how permitting express contractual indemnification claims poses an obstacle to the regulatory purpose of the ADA. It does not, however, explain how permitting claims for contribution commensurate with a third-party's own wrongdoing would pose a similar obstacle.

As discussed *supra,* analysis under the Supremacy Clause begins with a presumption against preemption, "unless [preemption] was the clear and manifest purpose of Congress." *Medtronic*, 518 U.S. at 485. The *Independent Living Center* court held that "the presumption against preemption is inapplicable [to the ADA], because the states have not traditionally occupied the field of antidiscrimination law." 973 F. Supp. 2d at 1157. We disagree with this characterization of the historical legal landscape, and we believe the district court erred in concluding that the presumption against preemption is inapplicable to claims brought under Title II of the ADA.

In *Federation of African American Contractors v. City of Oakland*, 96 F.3d 1204, 1214 (9th Cir. 1996), we observed that "[p]rivate causes of action against state actors who impair federal civil rights have not been traditionally relegated to state law." However, the mere co-existence of state and federal causes of action does not support a rejection of the presumption. *See Wyeth*, 555 U.S. at 565 n.3. Similarly, the fact that "Congress enacted Title II against a backdrop of pervasive unequal treatment in the administration of state services and programs," and that its "enactment of the ADA represents its judgment that there should be a comprehensive national mandate for the elimination of discrimination against individuals with disabilities," 973 F. Supp. 2d at 1158, does not render the presumption against preemption inapplicable. As the Supreme Court has explained, the presumption is rooted in federalism concerns. *See, e.g., Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977); *see also Wyeth*, 555 U.S. at 565 n.3; *id.* at 583-87 (Thomas, J., concurring in the judgment). The relevant question is whether a given area is one in which states have historically had the power to regulate, not whether states have previously regulated in the precise manner or to the degree that the federal government has itself chosen to regulate. *See Wyeth*, 555 U.S. at 565, 565 n.3. Indeed, if state and federal regulatory choices perfectly aligned, there would be no cause for federal legislation at all. Conversely, if the presumption against preemption failed to apply anytime federal regulations add something to state legislation, the presumption would be a nullity.

States have historically regulated in the area of civil rights generally, and in the field of discrimination against disabled individuals specifically. *See, e.g., Bd. of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 365, 368 n.5 (2001) ("It is worth noting that by the time that Congress enacted the ADA in 1990, every State in the Union had enacted such measures [against disability discrimination]."); *see also Bob-Lo Excursion Co. v. Michigan*, 333 U.S. 28, 33 (1948) (noting that "many states" had at that time enacted civil rights statutes); *Rodriguez v. Barrita, Inc.*, 10 F. Supp. 3d 1062, 1073 (N.D. Cal. 2014) ("Long before Congress passed the ADA, California enacted several statutes to prohibit disability discrimination at the state level."). We therefore apply the presumption against preemption, and, accordingly, will find preemption only if Congress indicated a "clear and manifest purpose" to that effect. *Nation v. City of Glendale*, 804 F.3d 1292, 1298 (9th Cir. 2015).

Obstacle preemption applies when a given "state law[] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." *Id.* Accordingly, whether claims for express contractual indemnification or contribution conflict with Title II and § 504 requires consideration of those statutes' animating purposes and intended consequences.

Congress expressly set forth the purpose of Title II as "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" through "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1)-(2). We have noted that "[t]here is no significant difference in analysis of the rights and obligations created by the ADA and the Rehabilitation Act." *Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1045 n.11 (9th Cir. 1999) (listing cases); *see also Weinreich v. L.A. Cty. Metro. Transp. Auth.*, 114 F.3d 976, 978 (9th Cir. 1997) ("Title II of the ADA was expressly modeled after Section 504 of the Rehabilitation Act.").

Nothing in Title II or § 504 addresses claims for statelaw indemnification or contribution filed by a public entity against a contractor. In *Equal Rights Center,* the Fourth Circuit drew on its reasoning in *Baker, Watts & Co. v. Miles & Stockbridge,* 876 F.2d 1101 (4th Cir. 1989), to nevertheless find contractual indemnification precluded. It explained that

> In holding the indemnification claim [in *Baker, Watts & Co.*] preempted, we analyzed whether the claim represented an obstacle to the regulatory goals of the federal law. We explained that "Congress ha[d] not provided a right to indemnification in the federal securities laws under any circumstances." Furthermore, we emphasized the total nature of a claim for indemnity, concluding that "it would run counter to the basic policy of the federal securities laws to allow a securities wrongdoer . . . to shift its *entire* responsibility for federal violations on the basis of a collateral state action for indemnification." As we explained, "[t]he goal of the 1933 and 1934 Acts is preventive as well as remedial, and `denying indemnification encourages the reasonable care required by the federal securities provisions.'"

Equal Rights Ctr., 602 F.3d at 601 (internal citations omitted). To the extent that this analysis relies on congressional *omission* of a federal cause of action for indemnification, it turns the presumption against preemption on its head. The basic premise of the presumption is that absent an affirmative indication to the contrary, a federal regulation will not preempt state law. The failure to provide a federal analogue to a state-law cause of action does not meet this standard.

Any concern that a public entity will be able to contract out of Title II or § 504 compliance makes sense in the context of indemnification for an entity's failure to maintain appropriate policies and practices—in other words, for its failure to take action solely within its control, as was arguably the case in *Equal Rights Center.* Permitting a shift of liability to a party lacking the power to remedy the violation would frustrate the federal statutes' regulatory purpose. As we have stated in the Title III context of landlords and lessees,

> a covered entity may not use a contractual provision to reduce any of its obligations under [the ADA] .. . . [A] public accommodation's obligations are not extended or changed in any manner by virtue of its lease with the other entity. H.R.Rep. No. 101-485(II), at 104, *reprinted in* 1990 U.S.C.C.A.N. 303, 387. The legislative history [of the ADA] confirms that a landlord has an independent obligation to comply with the ADA that may not be eliminated by contract.

Botosan v. Paul McNally Realty, 216 F.3d 827, 833 (9th Cir. 2000). This principle applies equally to Title II's requirements for public services. Crucially, however, the third-party claims asserted by the City against Appellees do not seek to shift liability in such a manner.

Unlike the crossclaims at issue in *Equal Rights Center,* the City's third-party claim seeks only to collect for violations arising out of *Appellees' own negligence or wrongdoing.* In this sense, though styled as a claim for "indemnification," the City functionally seeks contribution from Appellees. Allowing the City to seek redress for liability incurred by virtue of a third-party contractor's actions does not plausibly pose an obstacle to the intended purpose and effect of Title II or § 504. Rather, finding such claims precluded would itself hamper the statutes' regulatory purpose. The most a public entity may be able to do in furtherance of its duties under the respective acts may, in many situations, be to expressly contract for compliance (contractual provisions for which it will potentially have to pay a premium to the contractor). From there, the entity best situated to ensure full compliance may well be the contractor tasked with designing or constructing the public resource in question, and precluding contract clauses for contribution reduces a contractor's incentives to do so. *Cf. Baker, Watts & Co.*, 876 F.2d at 1107 (finding indemnification claims preempted by federal securities law, but stating that "Congress did not remove it from the power of a state to conclude that a state right to *contribution* would further the regulatory purposes of the federal securities laws by holding all violators to account." (emphasis added)).

In sum, neither Title II of the ADA nor § 504 of the Rehabilitation Act preempt the City's state-law claims for *de facto* contribution, however styled, against Appellees.

CONCLUSION

For the reasons set forth in this opinion, we REVERSE the district court's order dismissing the City's third-party claims, and REMAND for further proceedings consistent with this opinion.

[*] The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

[1] The City also named two other companies as third-party defendants, but neither of those entities is a party to this appeal.

[2] We acknowledge that were we to find state-law contribution claims preempted, future plaintiffs could still elect to bring suit directly against the contracting parties. We also acknowledge, however, that as a practical matter, it will often be the public-facing municipal entity that provides the most attractive target for litigation. That is precisely what happened here.

[3] Notably, in *Baker, Watts & Co. v. Miles & Stockbridge*, 876 F.2d 1101 (4th Cir. 1989), a case upon which the *Equal Rights Center* court relied heavily for its preemption analysis, the Fourth Circuit held that federal securities law preempted claims for indemnification, but that it did *not* similarly preempt claims for contribution. *Id.* at 1108.

In the present case, we do not view the labels of "indemnification" or "contribution" as dispositive of the analysis. Here, though the City may seek "indemnification" for a contractor's wrong-doing, that compensation only constitutes a portion of the City's total liability under federal disability statutes. In other words, the relief sought may be complete indemnification from the perspective of the *contractor's* liability; but it constitutes only partial contribution from the perspective of the *City's* liability exposure.

[4] In considering the actions for which Title II intends to impose liability on a public entity, we have previously framed the question in terms of the "outputs" of a public entity:

Consider, for example, how a Parks Department would answer the question, "What are the services, programs, and activities of the Parks Department?" It might answer, "We operate a swimming pool; we lead nature walks; we maintain playgrounds." It would not answer, "We buy lawnmowers and hire people to operate them." The latter is a means to deliver the services, programs, and activities of the hypothetical Parks Department, but it is not itself a service, program, or activity of the Parks Department.

Zimmerman v. Or. Dep't of Justice, 170 F.3d 1169, 1174 (9th Cir. 1999) (emphases added). In line with this analysis, the *Zimmerman* court found that the defendant Parks Department was not liable under Title II for employment discrimination, because employment is not a "service, program, or activity" of a public entity within the meaning of Title II, which relates to public services. *Id.; see also Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002) (framing analysis of the scope of Title II as asking whether a given activity constitutes "a normal function of a governmental entity").

Though *Zimmerman* was not a preemption case, its analysis is instructive insofar as it considered Congress' intention for the scope of actions falling under Title II. Preemption analysis focuses, first and foremost, on congressional intent. *See Hughes v. Talen Energy Mktg., LLC*, 136 S. Ct. 1288, 1297 (2016). If one frames the scope of Title II as encompassing a public entity's outputs, this supports the notion that Congress did not intend to preempt claims for liability arising from tasks that a City does not—and in many cases simply cannot—do itself, but must instead contract with others to provide the service.

Q & A

University of California – Access Compliance Training
September 25 and 28th, 2017

UCLA: Omar Newland, AIA Questions:

1- **Per CBC 2016, Chapter 2 Definitions (p.58) ELECTRIC VEHICLE (EV) CHARGER. "*Off-board charging equipment used to charge an electric vehicle*", therefore 110-120 volt electrical receptacles do not meet the definition because they are not charging equipment and consequently are exempt from the requirements applicable to EV Chargers and EV Charging Stations.**

DSA Response:

110-120 volt electrical receptacles can be used to charge electric vehicles or they can be considered convenience receptacles. If provided in association with a vehicle space and intended for use to charge an electric vehicle, DSA would consider these receptacles to be electric vehicle chargers; in that case California Building Code (CBC) Section 11B-228.3 requires accessibility to electric vehicle charging stations. When provided as convenience receptacles for public common use, accessibility to electrical receptacles is required by CBC Section 11B-205.

***11B*-205.1 General. Operable parts on accessible elements**, accessible routes, and in accessible rooms and spaces shall comply with *Section 11B*-309.

Exceptions:

1. Operable parts that are intended for use only by service or maintenance personnel shall not be required to comply with *Section 11B*-309.
2. Electrical or communication receptacles serving a dedicated use shall not be required to comply with *Section 11B*-309.
3. ***Reserved.***
4. Floor electrical receptacles shall not be required to comply with *Section 11B*-309.
5. HVAC diffusers shall not be required to comply with *Section 11B*-309.
6. Except for light switches, where redundant controls are provided for a single element, one control in each space shall not be required to comply with *Section 11B*-309.
7. Cleats and other boat securement devices shall not be required to comply with *Section 11B*-309.3.
8. Exercise machines and exercise equipment shall not be required to comply with *Section 11B*-309.

***11B*-206.2.2 Within a site.** At least **one accessible route** shall connect accessible buildings, accessible facilities, **accessible elements**, and accessible spaces that are on the same site.

11B-308.1.1 Electrical switches. *Controls and switches intended to be used by the occupant of a room or area to control lighting and* ***receptacle outlets****, appliances or cooling, heating and ventilating equipment,* ***shall comply with Section 11B-308 except the low reach shall be measured to the bottom of the outlet box and the high reach shall be measured to the top of the outlet box.***

11B-308.1.2 Electrical receptacle outlets. *Electrical receptacle outlets on branch circuits of 30 amperes or less and communication system receptacles shall comply with Section 11B-308 except the low reach shall be measured to the bottom of the outlet box and the high reach shall be measured to the top of the outlet box.*

***11B*-309.1 General.** Operable parts shall comply with *Section 11B*-309.

***11B*-309.2 Clear floor space.** A clear floor or ground space complying with *Section 11B*-305 shall be provided.

***11B*-309.3 Height.** Operable parts shall be placed within one or more of the reach ranges specified in *Section 11B*-308.

***11B*-309.4 Operation.** Operable parts shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate operable parts shall be 5 pounds (22.2 N) maximum.

Exception: Gas pump nozzles *and electric vehicle connectors* shall not be required to provide operable parts that have an activating force of 5 pounds (22.2 N) maximum.

2- **Per CBC 2016, Chapter 11B-208 Parking Spaces (p.522), 11B-208.1 "*… For the purposes of this section, electric vehicle charging stations are not parking spaces*", therefore by definition a parking space is exempt from the requirements applicable to EVCS.**

DSA Response:

Electric vehicle charging stations are not parking spaces is a correct statement. However while an EV needs to be in a parked state to charge; charging, and not parking, is the primary purpose of an EVCS. Scoping for the required number of accessible EVCS is in Section 11B-228.3.2 Minimum number and Table 11B-228.3.2.1 Electric Vehicle Charging Stations for Public Use and Common use.

3- **Per DSA 2017 Accessibility Training CLA0-AT-0917 (p.41) ELECTRICAL VEHICLE CHARGING SPACE (EV Space) "When properly signed per local ordinance, EVCS charging time limits apply to all users" (2 hour limit shown as an example), therefore parking spaces based on a 24 hour period do not meet this definition and would be exempt from the requirements applicable to EVCS.**

DSA Response:

When properly signed per local ordinance, EVCS charging time limits apply to all users is a correct statement. Electrical vehicle charging spaces are "zones reserved for special types of vehicles" per California Vehicle Code. However, the CBC requires accessibility at parking spaces per Section 11B-208 and accessibility at electric vehicle charging stations per Section 11B-228.3.

Susan Moe
Senior Architect » Access Code & Policy

DSA
DIVISION OF THE STATE ARCHITECT
DEPARTMENT OF GENERAL SERVICES