



## Accessibility Update: Requirements for Existing Buildings (2 hours)

Course #49-5532

NIAGARA FRONTIER BUILDING OFFICIALS  
30<sup>th</sup> ANNUAL EDUCATIONAL CONFERENCE  
JANUARY 29, 2014



Niagara Frontier  
Building Officials  
Association

## Today's Speaker:

**Dominic Marinelli**  
Accessibility Services  
United Spinal Association  
718.803.3782 #7502  
[dmarinelli@accessibility-services.com](mailto:dmarinelli@accessibility-services.com)  
[www.accessibility-services.com](http://www.accessibility-services.com)



- Private, National Not for Profit Organization
- Established in 1946 as *Eastern Paralyzed Veterans Association*
- Most members have a spinal cord injury or disease
- Name changed in January, 2004 to United Spinal Association

### Headquarters:

Jackson Heights, NY

**Regional Offices:** Philadelphia, Buffalo, Naples, FL & Washington DC

[www.unitedspinal.org](http://www.unitedspinal.org)



- Accessibility Training Programs
  - Plan Review Services
  - Consulting
  - Site Assessments & Reporting
  - 3<sup>rd</sup> Party Inspectors
- [www.accessibility-services.com](http://www.accessibility-services.com)

3

## Key Federal Accessibility Laws



- The Architectural Barriers Act (ABA) -1968
- Section 504 of the Rehabilitation Act (504) -1973
- The Fair Housing Amendments Act (FHA) -1988
- The Americans with Disabilities Act (ADA) -1990



4

## The Americans with Disabilities Act (ADA)



- Created in 1990
  - Covers **State and Local Government Services and Places of Public Accommodation\***
  - Prior to 3/15/12 - Referenced 1991 Americans w/Disabilities Act Accessibility Guidelines (ADAAG) for new construction and alterations
  - Enforced by the United States Department of Justice (DOJ)
- \*Broad civil rights law guarantying equal opportunity for individuals with disabilities in **State and Local Government Services and Public Accommodations.**

5

## The Americans with Disabilities Act (ADA)



- **Title 2 Entities** can include:

- Library's
- Public Schools
- Courts
- Town Halls
- Etc.

State and local government funded agencies are prohibited from discriminating against a qualified individual with a disability.



The Americans with Disabilities Act (ADA)



•Title 2 Entities

- Programs and services must be usable by everyone
- Entities will not have to make each facility accessible to individuals with disabilities as long as equivalent access to the program is ensured.
- “Program Access”
- Exemptions for modifications/accommodations that would result in a fundamental alteration in the nature of a service or program or cause excessive financial and administrative burden.
- “Undue Burden”

The Americans with Disabilities Act (ADA)



•Title 3 Entities can include:

- Restaurants
- Businesses
- Hotels
- Malls
- Leasing Offices
- Etc.

Private entities that own, operate, or lease places of public accommodation may not discriminate on the basis of disability in providing goods and services.



The Americans with Disabilities Act (ADA)



•Title 3 Entities

- Facilitate the removal of barriers created both intentionally and unintentionally that make it impossible for persons with disabilities to move freely within society.
- Entities must remove all structural and architectural barriers to accessibility by persons with a disability if such removal is *readily achievable*.
- “Barrier Removal” – see next slide
- Entities which operate commercial facilities must make newly constructed buildings or altered existing facilities readily accessible to persons with a disability, unless such accessibility is structurally impracticable.
- “New Construction”

The Americans with Disabilities Act (ADA)



•Barrier Removal

-The ADA requires entities providing goods and services to the public to take certain limited steps to improve access to existing places of business. This mandate includes the obligation to remove barriers from existing buildings when it is *readily achievable* to do so. Readily achievable means “easily accomplishable and able to be carried out without much difficulty or expense”.



The Americans with Disabilities Act (ADA)



•Readily Achievable

-Since 1991, existing buildings have been required to make their facilities accessible to a degree that is readily achievable. This does not necessarily mean full compliance with the guidelines, but steps should be taken to determine what can be done to make the space more accessible for people with disabilities.

The degree of access is going to depend on the resources of the entity. Even small initiatives, like re-arranging displays or furnishings, signifies some effort to fulfill the ADA requirements to remove barriers. Other small changes can include providing signage. If the resources are available, larger initiatives such as alterations, should be done to achieve compliance.

The Americans with Disabilities Act (ADA)



•Structurally Impracticable

-Rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.  
-Required to comply in other aspects or features to the maximum extent practicable.



Under the ADA – there is no such thing as “grandfathered”!



-Title 2 Entities must provide “Program Access” unless it’s an “Undue Burden”

-Title 3 Entities must undergo “Barrier Removal” when readily achievable and “New Construction” and “Alterations” should comply with the 2010 ADA Standards for Accessible Design.

13

## The Americans with Disabilities Act (ADA)



### •2010 ADA Standards for Accessible Design

-2010 Regulations were published September 15, 2010.  
-2010 Regulations became effective on March 15, 2011.

-New Standard was permitted as of September 15, 2010.  
-New Standard became mandatory on [March 15, 2012](#).

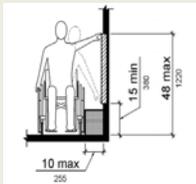
-The new regulations include a general [safe harbor](#) under which those elements in covered facilities built or altered in compliance with the 1991 Standards are not required to be brought into compliance with the 2010 Standards until those elements are scheduled for alteration(s).

-The [safe harbor](#) does not apply to those elements in existing facilities that were not governed by the 1991 Standards, but are now governed by the new regulations.

14

## Example of Safe Harbor

Unobstructed Side Reach Range - 48 inches maximum for high side reach and 15 inches aff for low reach (as opposed to 54 inches for high reach and 9 inches for low reach in 1991 ADAAG.)



15

– The “safe harbor” does not apply to those elements in existing facilities that were not governed by the 1991 Standards, but are now governed by the new regulations.

- i.e. swimming pools, play areas, recreational boating facilities, fishing piers and platforms, and others.
- As to Title II, the new regulations also provide additional requirements for detention and judicial facilities and covered residential dwelling units.



## 2010 ADA Standards Recreation Facilities (234 - 243)



### Not eligible for Safe Harbor Protection-

- amusement rides (234)
- recreational boating facilities (235)
- exercise machines (236)
- fishing piers and platforms (237)
- golf facilities (238)
- miniature golf facilities (239)
- play areas (240)
- saunas and steam rooms (241)
- swimming pools, wading pools, and spas (242)
- shooting facilities with firing positions (243)

17

## ADA - Tax Incentives for Improving Accessibility

To assist businesses with complying with the ADA, Section 44 of the IRS Code allows a tax credit for small businesses and Section 190 of the IRS Code allows a tax deduction for all businesses. The tax credit is available to businesses that have total revenues of \$1,000,000 or less in the previous tax year or 30 or fewer full-time employees.

- Section 44 of IRS Code
- Tax credit maximum credit \$5,000
- Tax deduction –maximum \$15,000



[www.ada.gov/taxincent.htm](http://www.ada.gov/taxincent.htm)

18

## The Building Code

- In addition to the previously mentioned Federal laws that impact accessibility, the state/local building code also typically applies accessibility requirements to commercial and multi-family residential construction.

ADA

ABA

Section 504

Fair Housing Act

State Building Code



19

## New York State Requirements NYS

### Scoping Requirements:

“What, Where & How Many”

*Chapter 11 - Building Code of NYS*




### Technical Requirements:

“How”

ICC/ANSI A117.1-2003



### State, Local & Federal Funds: Section 504, The ABA & The 2010 ADA Standards for Accessible Design Residential Scoping-



**GENERALLY:**

- 5% of the units must comply with 4.34 of the Uniform Federal Accessibility Standards (UFAS) – HUD § and ADA Title II Housing
- 2% of the Units must have accessible communication features – HUD § & ADA Title II Housing
- Applies to Municipal Housing Authorities, College Dorms, other federally-funded dwellings or dwellings constructed by recipients of federal funds.

### Accessibility laws are often cumulative.

**Note to Designers:**  
**Building officials enforce the code, while designers are responsible for meeting all applicable requirements.**






## 2010 ADA Standards Existing Structures:

### Additions & Alterations

23

## Additions – 202.2

- Each addition to an existing building or facility shall comply with the requirements for new construction.
- Each addition that affects or could affect the usability of or access to an area containing a primary function shall comply with 202.4.

24

## 202.3 - Alterations

- Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Chapter 2.
- EXCEPTIONS: 1. Unless required by 202.4, where elements or spaces are altered and the circulation path to the altered element or space is not altered, an *accessible* route shall not be required.

25

## 202.3 – Alterations – Exceptions Continued-

2. In alterations, where compliance with applicable requirements is technically infeasible, the alteration shall comply with the requirements to the maximum extent feasible.
3. Residential dwelling units not required to be accessible in compliance with a standard issued pursuant to the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, as amended, shall not be required to comply with 202.3.

26

## 202.3.1 Alterations

- **Prohibited Reduction in Access.** An alteration that decreases or has the effect of decreasing the accessibility of a building or facility below the requirements for new construction at the time of the alteration is prohibited.
- **202.3.2 Extent of Application.** An alteration of an existing element, space, or area of a building or facility shall not impose a requirement for accessibility greater than required for new construction.

27

## Technically Infeasible:

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 strict compliance with the minimum requirements for new construction and that are necessary to provide accessibility

28

## 202.4 Alterations- Primary Function Areas

An alteration that affects or could affect the usability of, or access to, an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, **the path of travel to the altered area and the restrooms, telephones, and drinking fountains** serving the altered area are readily accessible to and usable by individuals with disabilities unless the cost and scope of such alterations is **disproportionate**.

29

## Primary Function Area



**In other words: Alterations to a Primary Function Area must result in an accessible route, toilet rooms, drinking fountains, telephones....unless:**

1. The costs of providing the accessible route is not required to exceed **20 percent** of the costs of the alterations affecting the area of primary function.
2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets and signs.
3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems, installation or alteration of fire-protection systems, and abatement of hazardous materials.
4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of an existing building, facility or element.

31

**Costs that may be counted as expenditures required to provide an accessible path of travel may include:**

- 1.1 Costs associated with providing an accessible entrance
- 1.2 Costs associated with making restrooms accessible
- 1.3 Costs associated with providing accessible telephones
- 1.4 Costs associated with relocating an inaccessible drinking fountain

*Note that Department of Justice ADA regulations "give credit" for providing other accessible elements like accessible parking, alarm systems, and storage facilities.*

32

## More Alterations

### §36.403 (d) Landlord/tenant

**Landlord/tenant:** If a tenant is making alterations as defined in § 36.402 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord's authority, if those areas are not otherwise being altered.

33

## 202.5 - Historic Buildings

Alterations to a qualified historic building or facility shall comply with 202.3 and 202.4.

- EXCEPTION: Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for **accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility**, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply.

34

## Existing Structures

NYS

- Existing Building Code of New York State



1103.2.2. Existing Buildings. Existing Buildings shall comply with the *Existing Building Code of New York State*.

## Level 1 Alterations

### 403.1 Scope

Alterations include the removal and replacement of the covering of existing materials, elements, equipment, or fixtures that serve the same purpose.

403.2 Application. Level 1 alterations shall comply with the provisions of Chapter 6.

## Level 2 Alterations

### 404.1 Scope

Level 2 alterations include the reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment.

404.2 Application. Level 2 alterations shall comply with the provisions of Chapter 6 (Level 1) as well as Chapter 7

## Level 3 Alterations

### 405.1 Scope

Level 3 alterations apply where the work area exceeds 50 percent of the aggregate area of the building

405.2 Application Level 3 alterations shall comply with the provisions of Chapter 6 and 7 (Level 1 & 2 ) as well as Chapter 8

## NYS Existing Building Code

- **605.1** A building, facility, or element that is altered shall comply with the applicable provisions in Sections 605.1.1 through 605.1.12, Chapter 11 of the *Building Code of New York State*, and ICC A117.1 unless technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent technically feasible.

## Technically Infeasible

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 structural 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 for new construction and that are necessary to provide accessibility

## Exceptions:

- 1. The altered element or space is not required to be on an accessible route unless required by Section 605.2.
- 2. Accessible means of egress required by Chapter 10 of the *Building Code of New York State* are not required to be provided in existing buildings and facilities.
- 3. Type B dwelling or sleeping units required by Section 1107 of the *Building Code of New York State* are not required to be provided in existing buildings and facilities.

- **605.1.1 Entrances**
- **605.1.2 Elevators**
- **605.1.3 Platform lifts**
- **605.1.4 Ramps**
- **605.1.5 Dining areas**
- **605.1.6 Performance areas**
- **605.1.7 Jury boxes and witness stands**
- **605.1.8 Dwelling or sleeping units**
- **605.1.9 Toilet rooms.**
- **605.1.10 Dressing, fitting and locker rooms**
- **605.1.11 Thresholds**
- **605.1.12 Extent of application**

### 605.1.1 Entrances

- Where an alteration includes alterations to an entrance, and the building or facility has an accessible entrance on an accessible route, the altered entrance is not required to be accessible unless required by Section 506.2. Signs complying with Section 1110 of the *Building Code of New York State* shall be provided.

### Elevators, Lifts & Ramps

- **605.1.2 Elevators.** Altered elements of existing elevators shall comply with ASME A17.1, A17.1a, A17.1s and ICC A117.1. Such elements shall also be altered in elevators programmed to respond to the same hall call control as the altered elevator.
- **605.1.3 Platform lifts.** Platform (wheelchair) lifts complying with ICC A117.1 and installed in accordance with ASME A18.1 shall be permitted as a component of an accessible route.
- **605.1.4 Ramps.** Where steeper slopes than allowed by Section 1010.2 of the *BCNYS* are necessitated by space limitations, the slope of ramps in or providing access to existing buildings or facilities shall comply with Table 506.1.4.

- **605.1.5 Dining areas.** An accessible route to raised or sunken dining areas or to outdoor seating areas is not required provided that the same services and decor are provided in an accessible space usable by any occupant and not restricted to use by people with a disability.
- **605.1.6 Performance areas.** Where it is technically infeasible to alter performance areas to be on an accessible route, at least one of each type of performance area shall be made accessible.
- **605.1.7 Jury boxes and witness stands.** In alterations, accessible wheelchair spaces are not required to be located within the defined area of raised jury boxes or witness stands and shall be permitted to be located outside these spaces where ramp or lift access poses a hazard by restricting or projecting into a required means of egress.

- **605.1.8 Dwelling or sleeping units.** Where Group I-1, I-2, I-3, R-1, R-2 or R-4 dwelling or sleeping units are being altered, the requirements of Section 1107 of the *BCNYS* for accessible or Type B units and Chapter 9 of the *BCNYS* for accessible alarms apply only to the quantity of the spaces being altered.
- **605.1.9 Toilet rooms.** Where it is technically infeasible to alter existing toilet and bathing facilities to be accessible, an accessible unisex toilet or bathing facility is permitted. The unisex facility shall be located on the same floor and in the same area as the existing facilities.

- **605.1.10 Dressing, fitting and locker rooms.** Where it is technically infeasible to provide accessible dressing, fitting, or locker rooms at the same location as similar types of rooms, one accessible room on the same level shall be provided. Where separate sex facilities are provided, accessible rooms for each sex shall be provided. Separate sex facilities are not required where only unisex rooms are provided.
- **605.1.11 Thresholds.** The maximum height of thresholds at doorways shall be 3/4 inch (19.1 mm). Such thresholds shall have beveled edges on each side.
- **605.1.12 Extent of application.** An alteration of an existing element, space, or area of a building or facility shall not impose a requirement for greater accessibility than that which would be required for new construction. Alterations shall not reduce or have the effect of reducing accessibility of a building, portion of a building, or facility.

### 605.2 Alterations affecting an area containing a primary function

Where an alteration affects the accessibility to, or contains an area of, primary function, the route to the primary function area shall be accessible. The accessible route to the primary function area shall include toilet facilities or drinking fountains serving the area of primary function.

## Exceptions:

- 1. The costs of providing the accessible route are not required to exceed 20 percent of the costs of the alterations affecting the area of primary function.
- 2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets and signs.
- 3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems, installation or alteration of fire protection systems, and abatement of hazardous materials.
- 4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of an existing building, facility or element.

## Level 2 Alterations

### 404.1 Scope

Level 2 alterations include the reconfiguration of space, the addition or elimination of any door or window, the reconfiguration or extension or any system, or the installation of any additional equipment.

**404.2 Application.** Level 2 alterations shall comply with the provisions of Chapter 6 (Level 1) as well as Chapter 7

## SECTION 706 ACCESSIBILITY

- **706.1 General.** A building, facility, or element that is altered shall comply with Section 506.

**706.2 Stairs and escalators in existing buildings.** In alterations where an escalator or stair is added where none existed previously, an accessible route shall be provided in accordance with Sections 1104.4 and 1104.5 of the *Building Code of New York State*.

**706.3 Dwelling units and sleeping units.** Where Group I-1, I-2, I-3, R-1, R-2 or R-4 dwelling units or sleeping units are being added, the requirements of Section 1107 of the *Building Code of New York State* for accessible units or Type B units and Chapter 9 of the *Building Code of New York State* for accessible alarms apply only to the quantity of spaces being added.

## Level 3 Alterations

### 405.1 Scope

Level 3 alterations apply where the work area exceeds 50 percent of the aggregate area of the building

**405.2 Application** Level 3 alterations shall comply with the provisions of Chapter 6 and 7 (Level 1 & 2 ) as well as Chapter 8

## SECTION 806 ACCESSIBILITY

- **806.1 General.** A building, facility or element that is altered shall comply with Section 606.

**806.2 Type B units.** Where more than four Group R-2 or R-3 dwelling units or sleeping units are being altered, 25 percent shall comply with Section 1107.6 of the *Building Code of New York State*.

**Exception:** Buildings without elevator service where the lowest story containing Group R-2 or R-3 dwelling units is not the ground floor.

## Change of Occupancy

### 406.1 Scope.

Change of occupancy provisions apply where the activity is classified as a change of occupancy as defined in Chapter 2.

**406.2 Application.** Changes of occupancy shall comply with the provisions of Chapter 9.

### Definition

Change of Occupancy. In the purpose or level of activity within a building that involves a change in application of the requirements of this code.

### Change of Occupancy

- **906.1 General.** Accessibility in portions of buildings undergoing a change of occupancy classification shall comply with Section 812.5.
- **912.8 Accessibility.** Existing buildings or portions thereof that undergo a change of group or occupancy classification shall have all of the following accessible features:

- 1. At least one accessible building entrance.
- 2. At least one accessible route from an accessible building entrance to primary function areas.
- 3. Signage complying with Section 1110 of the *Building Code of New York State*.
- 4. Accessible parking, where parking is provided.
- 5. At least one accessible passenger loading zone, where loading zones are provided.
- 6. At least one accessible route connecting accessible parking and accessible passenger loading zones to an accessible entrance.

- 7. Where more than four Groups R-2 or R-3 dwelling units or sleeping units are being constructed, twenty-five percent shall comply with Section 1107.6 of the *Building Code of New York State*.

**Exception:** Buildings without elevator service where the lowest story containing Group R-2 or R-3 dwelling units is not the ground floor.

Where it is technically infeasible to comply with the new construction standards for any of these requirements for a change of group or occupancy, the above items shall conform to the requirements to the maximum extent technically feasible. Changes of group or occupancy that incorporate any alterations or additions shall comply with this section and Sections 506.1 and 905.1 as applicable.

### Additions

#### 407.1 Scope.

Provisions for additions shall apply where work is classified as an addition as defined in Chapter 2.

#### 407.2. Application.

Additions to existing buildings shall comply with the provisions of Chapter 9.

### Definition

Addition. An extension or increase in the floor area, number of stories, or height of a building or structure.

## **Additions**

### **SECTION 1005 ACCESSIBILITY**

**1005.1 Minimum requirements. Accessibility provisions for new construction shall apply to additions. An addition that affects the accessibility to, or contains an area of, primary function shall comply with the requirements of 605**

## **Historic Buildings**

### **408.1 Scope.**

Historic Buildings provisions shall apply to buildings classified as historic as defined in Chapter 2.

### **408.2 Application.**

Except as specifically provided for in Chapter 11, historic buildings shall comply with applicable provisions of this code for the type of work being performed.

## **Definition**

**Historic Building.** Any building or structure that is listed in the State or National Register of Historic Places; designated as historic property under local or state designation law or survey; certified as a contributing resource within a National Register listed or locally designated historic district; or with an opinion or certification that the property is eligible to be listed on the National or State Register of Historic Places either individually or as a contributing building to a historic district by the State Historic Preservation Officer or the Keeper of the National Register of Historic Places.

## **Section 1004 Alterations**

**1104.1 Accessibility requirements.** The provisions of Section 506 shall apply to buildings and facilities designated as historic structures that undergo alterations, unless technically infeasible. Where compliance with the requirements for accessible routes, ramps, entrances or toilet facilities would threaten or destroy the historic significance of the building or facility, as determined by the code enforcement official or the State Historic Preservation Officer, the alternative requirements of Sections 1004.1.1 through 1004.1.1 for that element shall be permitted.

### **1104.1 Site arrival points**

At least one main entrance shall be accessible.

### **1004.1.2 Multilevel buildings and facilities**

An accessible route from an accessible entrance to public spaces on the level of the accessible entrance shall be provided.

### 1104.1.3 Entrances

At least one main entrance shall be accessible.

Exceptions:

- 1.If a main entrance cannot be made accessible, an accessible nonpublic entrance that is unlocked while the building is occupied shall be provided; or
- 2.If a main entrance cannot be made accessible, a locked accessible entrance with a notification system or remote monitoring shall be provided.

### 1004.1.4 Toilet and bathing facilities

Where toilet rooms are provided, at least one accessible toilet room shall be provided for each sex, or a unisex toilet room complying with Section 1109.2.1 of the *Building Code of New York State* shall be provided.

### 1104.1.5 Ramps

The slope of a ramp run of 24 inches maximum shall not be steeper than one unit vertical in eight units horizontal (12- percent slope).

### Section 1005 Change of Occupancy

1005.15 Accessibility requirements.

The provisions of Section 812.5 shall apply to buildings and facilities designated as historic structures that undergo a change of occupancy, unless technically infeasible. Where compliance with the requirements for accessible routes, ramps, entrances or toilet facilities would threaten or destroy the historic significance of the building or facility, as determined by the code enforcement official or the State Historic Preservation Officer, the alternative requirements of Sections 1004.1.1 through 1004.1.5 for those elements shall be permitted.

## Thank You for Attending!

Please visit:

[www.accessibility-services.com](http://www.accessibility-services.com)

for information about our consulting & training services.

