

Summary of State and Federal Barrier-free Regulations for Existing Buildings

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1.0 EXECUTIVE SUMMARY

The legal obligations to provide access to **persons with disabilities** in existing buildings and facilities are contained in two separate and distinct bodies of law - one state the other federal. The state regulations are contained in the 1995 edition of California Building Code ("CBC") and apply to all buildings and facilities under the jurisdiction of the state code. State law mandates that the local building department act as the enforcing agency for the state's barrier-free laws. Federal regulations are contained in the Americans with Disabilities Act ("ADA") and the accompanying ADA Accessibility Guidelines ("ADAAG") developed by the ATBCB and adopted by the Department of Justice ("DOJ"). The ADA is relatively new and is a complex civil rights law - it is not a building code per se. The Act contains five sections called "Titles"; Title III is the portion of the legislation that applies to buildings owned and operated by the private sector.

Even though design professionals, Architects, and Interior Designers have become increasingly familiar with the technical aspects of ADA, they are by no means legal advisors. The law contains many concepts and terms which have yet to be tested by actual experience or defined in the courts with respect to particular factual situations. The penalties for non-compliance to ADA can be severe. Consequently, competent legal counsel should be consulted with regard to the applicability or interpretation of the Act as it affects each specific situation. On a more positive note, income tax deductions and credits are available for expenses associated with removing qualified architectural barriers. Thus it makes good sense to maintain accurate itemized records of these design and construction expenses. The advise of a competent tax advisor should be sought for additional information and assistance.

As to the specific access provisions of ADAAG, certain types of buildings and facilities are required to perform a self-review to identify and remove architectural and communication barriers that prevent persons with disabilities from having equal access to and enjoyment of publicly available programs and facilities. This **barrier removal** obligation, is a continuous and ongoing one, and independent of any planned or desired alteration. Barrier removal measures undertaken to provide access may be limited to the actual work of removing such barriers and will not trigger additional building modifications, even though removing some barriers may require a building permit to do so.

Under both state and federal law, all planned **alterations** must comply as if the building were newly constructed. Under both laws, certain types of planned alterations to existing buildings will trigger other separate requirements to make further modifications to the building or facility so that persons with disabilities will be able to gain access to the area of alteration, as well as portions of the building that serve the altered area. Collectively, these additional modifications are referred to as "**path of travel modifications**".

Accessibility in qualified historic buildings is still mandated, but complicated by virtue of their special status. In addition to local building authorities, other state and federal agencies will be involved in decisions relating to additions, alterations and modifications of such buildings. Obtaining historic status does not automatically waive state and federal requirements for accessibility.

2.0 THE LEGAL LANDSCAPE - Background Summary of Barrier-free Laws

The legal obligations to provide access for **persons with disabilities** in existing buildings are contained in two separate and distinct bodies of law, one state the other federal. Each of these bodies of law contains specific technical accessibility standards. These separate laws, while based on the same body of technical research, ANSI A117.1, are not identical as to what they require. Despite continuing efforts by the State of California to align the state building code more closely with the federal guidelines, there remain significant differences. In practice, this means that compliance strategies for building design and construction must be based upon a thorough understanding of both laws.

2.1 State of California Accessibility Standards

Since their original adoption in 1970, the State's barrier-free regulations governing access in privately funded buildings have undergone numerous revisions as the body of research upon which they are based has evolved and improved. Until July 1982, state requirements were based upon the 1961 edition of ANSI A117.1 standard, which contained only broad suggestions and guidelines. Since 1982, the state requirements have undergone significant revisions in 1984, 1989, and 1993 becoming more comprehensive with each revision. Until the enactment of the federal Americans with Disabilities Act ("ADA") in January of 1990, California arguably had the most comprehensive set of access regulations in the country.

The current State of California Accessibility regulations are contained in the **California Building Code** ("CBC") Part 2, Title 24 of the California Code of Regulations, as adopted by the State Building Standards Commission on March 5, 1993. This edition of the regulations that took effect on April 1, 1994, attempted to align state regulations more closely with the ADA. The state standards are to be incorporated into all buildings and facilities regulated by the CBC. State law requires that the local building department act as the governmental agency responsible for enforcing the State's accessibility standards. This enforcement process occurs in two ways. The first occurs when plans are submitted for building permit. Plans are reviewed for compliance to state standards, and if found to be in compliance to those standards, a permit will be issued. The second method of enforcement occurs after the permit is issued, during construction. The CBC requires periodic inspections of the construction as it progresses. When construction is complete, if it is found to be in compliance with the applicable state building and accessibility regulations contained in the CBC, then a final inspection and **Certificate of Occupancy** will be issued by the building department. Caution is warranted however, because this is no automatic guarantee that compliance with federal laws has been achieved.

2.2 The Americans with Disabilities Act ("ADA")

The purpose of the ADA is to address the concerns of the estimated 43 million Americans with one or more physical or mental disabilities, that may substantially limit one or more of the major life activities. This legislation is federal civil rights law, which guarantees accessibility to buildings, facilities and programs for **persons with disabilities** and prohibits discrimination against those persons based upon their disability. The Act consists of five sections or "Titles". Title I of the legislation addresses employment practices; Title II covers programs, services, and activities of

state and local government; Title III covers public accommodations and commercial facilities; Title IV deals with telecommunications issues; and Title V is miscellaneous.

Title III of the Act distinguishes between **Places of Public Accommodation** on the one hand and **Commercial Facilities** on the other. A place of public accommodation is a building or facility operated by a private entity that falls into one or more of twelve specific categories. The list is broad and comprehensive including facilities that range from motels, to laundromats to daycare centers - see Appendix 1 for the entire listing. A **commercial facility** is defined rather broadly as, "facilities that are intended for non-residential use by a private entity whose operation affects commerce" - primarily these are places of employment, and not providers of goods and services available to the general public.

The ADA exempts the following facilities from compliance with the federal accessibility guidelines:

- i) Federal Government Buildings - federal facilities are already covered by similar legislation that has been in effect since 1968;
- ii) Religious Organizations - religious organizations and facilities managed and controlled by them have NO obligations under the ADA;
- iii) Private Clubs - The Act does not apply to private clubs and establishments exempted from coverage under Title II of the Civil Rights Act of 1964; and
- iv) Private residences - neither single family residences nor multi-family dwellings have any obligations under the ADA. However, multi-family projects must meet the accessibility requirements of the Fair Housing Amendments Act of 1988, which includes minimum accessibility guidelines.

The Department of Justice ("DOJ") in Washington D.C. is the federal agency responsible for enforcing Title III of the law through the adoption of technical guidelines and court action to enforce the guidelines. These design and construction guidelines, developed and published by the Architectural & Transportation Barriers Compliance Board ("ATBCB"), are called the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"). Since the ADA is civil rights legislation and not a building code per se, the enforcement provisions are vastly different from all other government regulations affecting buildings. There is no agency that possesses plan review authority or has construction inspection obligations. All enforcement is handled after the fact. Consequently, there is no authority with the power to grant exceptions from the ADA. The Department of Justice, will however handle specific inquiries regarding ADA compliance. The legal remedies and procedures available to those being discriminated against are found in the Civil Rights Act of 1964. The U.S. Attorney General's office is responsible for investigating alleged violations of the Act and will investigate only upon receipt of a complaint. The first step is conciliation, the second litigation.

Currently, the State of California is in the process of revising their accessibility guidelines to conform to the technical aspects of ADAAG. At this time, the DOJ has not accepted the California standards as equivalent to the ADA, and there remains considerable difference in several significant areas. If and when the state regulations are certified as "equivalent", then compliance to the state regulations would provide a "presumption of compliance with ADA" in the event a complaint is filed with the Department of Justice. Quite a bit of confusion exists, even in the local code enforcement community, with respect to "equivalency". Local building officials may choose to provide help and guidance with respect to ADA requirements. These opinions are merely advisory in nature and are not legal mandates. Though they may attempt to persuade you

otherwise, local officials have no authority whatsoever, to enforce or interpret this federal law.

3.0 BARRIER REMOVAL UNDER THE AMERICANS WITH DISABILITIES ACT

The ADA specifically requires that public accommodations perform a self-review of their buildings and facilities and attempt to remove existing features that may act as barriers to persons with disabilities, thus preventing them from full and equal enjoyment of the facility.

The ADAAG stipulates that architectural and communication barriers in existing Places of Public Accommodation must be removed to the extent that such removal is determined to be "**readily achievable**" - which is defined as "easily accomplishable and able to be carried out without much difficulty or expense" - see Appendix 1. Both state and federal sources list specific examples of types of modifications that may be undertaken to remove barriers to the disabled, see also "**barrier removal, examples of**" in Appendix 1. Each entity will be affected differently depending upon several variables. What is readily achievable for one entity may not be for another. In addition, the obligation to assess and remove barriers is a continuous and on-going one. The circumstances of what constitutes readily achievable may change over time. Barriers that were once not easily removed, may in the future become removable. Barrier removal in and of itself does not trigger additional "**path of travel modifications**" either under state or federal law, and the scope of barrier removal may be limited to the actual work of the project.

After the enactment of ADA, public accommodations had until January 26, 1992, to complete the removal of "**readily achievable**" barriers without being concerned about litigation in federal court. Subsequent to the January 1992 deadline, any person denied access based upon their disability or any person denied access due to their association with a disabled person can litigate in federal court to have barriers removed, policies modified or auxiliary aids or services implemented. The existence of a "Plan to Remove Architectural and Communication Barriers" will be viewed by the courts as a "**good faith effort**" on the part of a public accommodation to comply with ADA.

Even though Commercial facilities do not have the same obligation to remove "**readily achievable**" barriers, they are nevertheless obligated to comply with the requirements for path of travel modifications when alterations are made to existing facilities, as described below.

4.0 ACCESSIBILITY IN EXISTING BUILDINGS AND FACILITIES

Most existing buildings present a degree of complexity not found in buildings which have been newly designed and constructed. In addition to the desired changes that are the basis for undertaking a **remodel** or **renovation** of a building in the first place, there are further modifications that are mandated by state and federal laws. Consequently it is important to distinguish between the mandated features for the **specific alteration project**, and those additional features that are required as a result of undertaking an **alteration**. These two sets of issues are totally separate and distinct from each other, and must be understood as individual requirements.

4.1 The Area of Specific Alteration

Both the State of California and ADA require that when alterations, structural repairs, or additions are made to existing buildings or facilities, that the **specific alteration project** be designed and constructed so as to conform completely with the requirements for new construction, as if the project were being created from scratch. All improvements within the specific alteration project must be "readily accessible to and usable by persons with disabilities to the maximum extent feasible". Incorporating accessibility features into newly constructed buildings is generally much easier than remodeling, however, the requirements for the **specific alteration project** are generally concise and straightforward. Both California and the Federal government recognize that there are certain types of construction activities that are not considered **alterations** that directly affect the usability of a facility by persons with disabilities, and thus do not trigger the need for additional accessibility modifications. See "**Alteration**" in Appendix 1, for a complete listing of the changes that may be undertaken by themselves, or together, that may be limited to the actual work of the project without consideration for accessibility.

The first step in the process is to determine the construction costs associated only with the desired improvements. These specific alteration project costs must include every item necessary to complete the desired alteration, including electrical, plumbing, air-conditioning, roofing, and interior finishes, even though some of this work may be "**exempt work**" which would otherwise not require a permit. Under most circumstances, the activities of the specific alteration project will trigger additional modifications to other building features that allow access to the altered area as well as areas that serve the altered area. Collectively, these "extra" modifications are known as "**path of travel modifications**". The extent of obligation to provide additional accessible features is based largely upon the costs associated with the specific alteration project. However, there are noteworthy differences between the state and federal requirements regarding path of travel obligations.

4.2 Path of Travel Modifications

Once the area of specific alteration is designed to comply, then the second step in the process is to determine what modifications will be necessary to provide an accessible path of travel to the altered area; and what the associated costs will be to make these modifications. See "**Accessible Route**" and "**Path of Travel**" in Appendix 1. The path of travel includes not only elements such as

aisles, doors, ramps and corridors, but also features such as toilet rooms, drinking fountains and telephones that serve the altered area. It should be noted that both the state and federal regulations require only a single path of travel, but that it should be a direct and common path from the entrance. Additionally, both regulations require an accessible exterior path between the entrance and the public right of way.

In buildings constructed in the last few years, it is possible that many, if not all, of the path of travel features already comply. Of course, it is also possible that in older buildings numerous architectural barriers exist, and that many accessible features are grossly deficient if they exist at all. The amount of modification required necessarily depends upon the degree of non-compliance that is found to exist. The major difference between the state and federal regulations is how they treat the limitation on required modifications - how we know when it's okay to stop making changes.

4.2.1 Americans With Disabilities Act

Alteration or remodeling begun after January 26, 1992, by either a **public accommodation** or a **commercial facility**, must, to the maximum extent feasible, be readily accessible to and usable by persons with disabilities. Under ADA, if the altered space is a "primary function", then an accessible path of travel, including restrooms, drinking fountains, telephones and auxiliary spaces serving that altered area must be readily accessible, except where the cost of such path of travel modifications are "**disproportionate**" to the overall project. The Act stipulates that a "**disproportionate cost**" occurs at 20%. In other words, the cost of creating an accessible path of travel to an improved space, need not exceed 20% of the cost of the intended improvement.

4.2.2 State of California Accessibility Standards

The State of California has adopted the concept of disproportionality, but treats that concept differently depending upon the actual dollar value of the specific alteration project. Simply put, if the project is below a threshold value it is treated one way, if above the threshold it is treated another. In 1981, California established this threshold, called the "**Valuation Threshold**", at \$50,000, and provided that the threshold be recalculated annually based upon a specific construction industry index. As of July 1998, the valuation threshold is \$87,000.

For projects where the cost of the specific alteration is below \$87,000 the permit applicant (Owner) may apply for an "**unreasonable hardship**" when the cost of making alterations to the path of travel exceeds 20% of the cost of the specific alteration. The local building department is the agency responsible for making the final determination as to whether an unreasonable hardship should or should not be granted. If granted such hardship, the 20% becomes a maximum limit and the applicant is only required to spend up to that amount making accessibility modifications. It should be noted that as of April 1, 1994, there are no longer any total exemptions from making path of travel modifications, even with a finding of unreasonable hardship.

Where the specific alteration project cost exceeds the valuation threshold, the permit applicant

can still apply for and receive a determination of unreasonable hardship. However, the major difference is that the obligation to spend an additional 20% on path of travel modifications becomes a minimum limit instead of a maximum limit. If the applicant receives a determination of unreasonable hardship, then the minimum additional path of travel expenses will be 20% of the alteration project. It is at the building department's discretion to determine how much over this 20% constitutes a hardship upon reviewing the particular facts and circumstances involved. If the applicant does not apply for or fails to receive a determination of unreasonable hardship, then all of the path of travel modifications will have to be made regardless of cost. Caution is warranted however, because a determination of **unreasonable hardship** based solely on cost is no guarantee that federal obligations have been met.

5.0 ACCESSIBILITY IN QUALIFIED HISTORIC BUILDINGS

The general requirement for alterations in qualified historic buildings is that they must comply with all of the applicable state and federal accessibility regulations, except when it is determined by the appropriate government agency/official that the requirements for an accessible route will threaten or destroy a building's historic significance. This general rule prompts three specific questions:

- i) Which buildings are eligible to be considered qualified historic structures?
- ii) Who is the governing agency or official that makes the decision as to whether a building's significance will be threatened or destroyed? And how long might this take?
- iii) What alternative modifications are available after a determination of potential harm has been made?

Obviously, the requirements for path of travel alterations do not disappear merely because the building has "historic status". Common misperception is that because a historic building is somehow "sacred", that access by persons with disabilities is somehow lessened or forgotten by virtue of the building's newly acquired sanctity. In fact, it appears to me that it is slightly more difficult to achieve a reasonable degree of accessibility, because of the "competing interests" of historic preservation. Instead of simply finding the money to make alterations, now we must not only find the money, but preserve historical character as well.

APPENDIX 1 - DEFINITIONS

ACCESSIBILITY - The combination of various design elements in a building or area which allows access, circulation and the full use of buildings and facilities by persons with disabilities. Certain accessible features are mandated by state and federal law.

ACCESSIBLE ROUTE - A continuous unobstructed path connecting all accessible elements and spaces of a building or facility that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by persons with other disabilities, and that also is consistent with the definition of "**Path of Travel**". Interior accessible routes may include corridors, floors, ramps, elevators, lifts and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps and lifts.

AGENCY PROCESSING - also sometimes referred to as permit processing; is that portion of professional services where the design professional assists the Owner in obtaining legally required approvals from governmental enforcing agencies prior to commencement of construction. Such services usually include the submittal of working drawings and specifications as well as the filing of various applications. See also "**Enforcing Agency**".

ALTERATION - is any change, addition, structural repair or modification in construction or occupancy to the interior or exterior of a building. Alterations include, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Most alteration projects will require building permits, unless the work is specifically exempt from the permit process, see "**Exempt Work**". The distinction of what actually constitutes an "alteration" while apparently unimportant, does in fact have some very significant consequences. Both the California Building Code and the ADA recognize that specific activities, while they may require a permit, DO NOT trigger the need for compliance to "**Barrier-free**" regulations. The following activities are NOT considered "**Alterations**", and may be undertaken WITHOUT making any additional modifications to accommodate persons with disabilities, unless these activities affect usability:

- i) normal maintenance;
- ii) re-roofing;
- iii) alterations to heating, ventilation or air-conditioning;
- iv) electrical work not involving placement of switches and receptacles;
- v) repairs to plumbing system;
- vi) hazardous material abatement;
- vii) retrofit or installation of fire sprinkler systems;
- viii) cosmetic work, including painting, papering and similar finish work; and
- ix) barrier removal undertaken to comply with ADA.

AMERICANS WITH DISABILITIES ACT ("ADA") - U.S. Public Law 101-336; is comprehensive federal civil rights legislation enacted on July 26, 1990, intended to prohibit discrimination against persons with disabilities in places of public accommodation, employment, telecommunications and state and local government. Failure to design and construct buildings that provide accessibility to persons with disabilities is considered to be a form of discrimination under this law. The Act is subdivided into the following five (5) sections, called Titles:

- i) Title I Employment
- ii) Title II Public Entities (state and local government facilities)
- iii) Title III Public Accommodations & Services
- iv) Title IV Telecommunications
- v) Title V Miscellaneous

AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES ("ADAAG") - The guidelines published by the Architectural and Transportation Barriers Compliance Board and adopted by the Department of Justice ("DOJ") as the minimum standards to ensure that buildings and facilities are accessible in terms of architecture, design, and communication to "**persons with disabilities**". Alternatives to the ADAAG requirements may be permitted when determined as equal in accessibility and usability.

BARRIER-FREE DESIGN - literally refers to design without architectural barriers. As a design approach, Barrier-free design attempts to eliminate building features that may act as barriers and therefore prevent portions of the general population from being able to fully use and enjoy a facility. Some examples of architectural barriers would include; drinking fountains unusable to a person in a wheelchair, stairs that do not have adequate handrails, and washroom faucets that require tight grasping to operate. See also "**Universal Design**".

BARRIER REMOVAL - Under the ADA, architectural and communication barriers are to be removed in existing public accommodations if "**readily achievable**" with minimal difficulty or expense. Modification of compliance regulations may be available for existing public accommodations that are not available for new construction. The established order of priority for removing barriers along the "**path of travel**" is as follows:

- i) first, access to the facility from public sidewalks, parking and transportation;
- ii) second, access to areas of the facility providing goods and services to the public;
- iii) third, accessible toilet rooms;
- iv) fourth, other measures necessary to provide access to goods, services or other accommodations.

ADA compliance places a continuing obligation on public accommodations to assess and remove accessibility barriers, as the circumstances of what constitutes "**readily achievable**" barrier removal changes over time. The Act does not allow an entity to exempt itself from barrier removal merely because such activity may be expensive or difficult. The "readily achievable" standard must be used to make such determinations. There are NO "grandfather" clauses under this portion of the Act. When barrier removal is not "readily achievable", then alternative methods shall be utilized. The obligation to remove barriers DOES NOT extend to "commercial facilities" or to facility areas used exclusively as employee work areas.

BARRIER REMOVAL ALTERNATIVES - Where barrier removal is not "**readily achievable**", the public accommodation must provide an alternative method of accommodation to individuals with disabilities such as display rearrangement, relocation of activities to accessible locations, retrieval of merchandise from inaccessible shelves, curb service, home delivery or other auxiliary aids and services which are readily achievable.

BARRIER REMOVAL, EXAMPLES OF - Even though CBC Sec 1134B 2.1.3.6 contains the following list of barrier removal examples, this is by no means an exhaustive listing:

- i) installing ramps;
- ii) making curb cuts in sidewalks and entrances;
- iii) repositioning shelves;
- iv) rearranging tables, chairs, vending machines, display racks, and other furniture;
- v) repositioning telephones;
- vi) adding raised markings on elevator control buttons;
- vii) installing flashing alarm lights;
- viii) widening doors;
- ix) installing offset hinges to widen doorways;
- x) eliminating turnstiles or providing an alternate accessible path;
- xi) installing accessible door hardware;
- xii) installing grab bars in toilet stalls;
- xiii) rearranging toilet partitions to increase maneuvering space;
- xiv) insulating lavatory pipes under sinks to prevent burns;
- xv) installing a raised toilet seat;
- xvi) installing a full-length bathroom mirror;
- xvii) repositioning the paper towel dispenser in a bathroom;
- xviii) creating designated accessible parking spaces;
- xix) installing accessible paper cup dispenser at an existing accessible water fountain; and
- xx) removing high-pile, low-density carpeting.

CALIFORNIA BUILDING CODE ("CBC") - Amendments to the Uniform Building Code adopted by the State

Building Standards Commission that regulate building design and construction in the state of California.

CALIFORNIA STATE ACCESSIBILITY STANDARDS - The state of California "**barrier-free**" regulations are contained in the California Building Code which is Part 2, Title 24 of the California Code of Regulations. The current standards were adopted by the State Building Standards Commission on March 5, 1993, and took effect on April 1, 1994. These standards are to be incorporated into all buildings and facilities regulated by the California Building Code. Commonly, design professionals refer to these requirements as Title 24 accessibility requirements. The local building department is the governmental agency responsible for enforcing the provisions of the California Building Code, which includes both "**life-safety**" and "**barrier-Free**" regulations.

CERTIFICATE OF OCCUPANCY - Upon completion of construction or change in occupancy, the building official having jurisdiction is required to perform a final inspection to determine whether construction complies with applicable laws and ordinances. If the project is found to comply, then the building official issues a written statement containing the building address, name of owner, building permit number, and description of the building or portion thereof for which the certificate is issued. The building official has the authority to suspend or revoke a certificate of occupancy when it is determined that the building is in violation of any ordinance or provision of the state building code.

CLIENT - typically the client is thought of as the person, firm, or organization that hires a design professional to perform professional services, and the one designers are supposed to satisfy. More precisely however, there exist three types of clients, each of which has their own agenda and expectations - the **Client of Record**, is the entity that actually hires the professional and is generally responsible for providing design direction; the **Client of Fact**, are those persons who actually use the building or facility; and the **Client of Exposure**, are those persons who may never actually use a building or facility, but are exposed to the building as part of their day-to-day existence (such as driving by a building on the way to work, or the curious window shopper). How designers acknowledge and respond to the needs and expectations of these three distinct clients is a major component of their overall design philosophy.

COMMERCIAL FACILITIES - Are buildings or facilities that are intended for nonresidential use by a private entity and whose operations will affect commerce. Examples include manufacturing facilities, industrial facilities, office buildings, and other places where employment occurs.

COMMON USE - refers to those interior or exterior rooms, spaces, elements or features that are made available for the use of a restricted group of people. For example, spaces or rooms used *only* by the employees of a business, occupants of an office building, or residents of a homeless shelter. See also "**Public Use**".

DISPROPORTIONATE COST - The cost of providing an accessible "**path of travel**" to an altered area will be considered disproportionate when the cost associated with path of travel alterations exceeds 20 percent of the cost of the area of specific alteration.

EGRESS - a verb that means to exit or to leave. As applied to buildings it refers to the ability of the occupants to exit from a building safely in an emergency situation. The building code defines a "**means of egress**" as a continuous and unobstructed path of exit travel from any point inside a building or facility to the public right of way. This exit path may be vertical as well as horizontal and include any number of elements and features such as intervening rooms, doorways, aiseways, hallways, corridors, passageways, balconies, lobbies, stairs and ramps. An accessible means of egress is one that complies with the state and federal barrier-free regulations and DOES NOT include stairs, steps, or escalators. Areas for evacuation assistance or evacuation elevators may be included as part of an accessible means of egress.

ENFORCING AGENCY - is the specific local, state or federal department or administrative agency that is required by law to enforce and administrate laws and regulations adopted by the legislative branch of government.

The local building department is the governmental agency responsible for enforcing the provisions of the California Building Code, which includes both "**life-safety**" and "**barrier-Free**" regulations.

ENTRANCE - Any access point to a building or portion of a building used for the purposes of entering. An entrance includes the approach walk, the vertical access leading to the entry doors, entry doors and gates, and door hardware on entry doors and gates.

EXEMPT WORK - Section 106.2 "Work Exempt from Permit", of the California Building Code contains a list of construction activities and "**alterations**" that are exempt from the permitting process. This means that the work may be undertaken at any time without having to obtain a permit from the local building department prior to commencement of such work. However, even though a permit is not required for the following alterations, the work must still comply to any applicable "**life-safety**" requirements contained in the Code:

- i) movable cases, counters and partitions not over 5 feet 9 inches tall;
- ii) painting, papering and similar finish work;
- iii) floor coverings; and
- iv) interior window treatments.

EXISTING BUILDING - is a building erected prior to the adoption of this code, or one for which a legal building permit has been issued.

EQUIVALENT FACILITATION - is an alternate means of complying with the literal requirements of these standards and specifications that provides access in terms of the purpose of these standards and specifications. In determining equivalent facilitation, consideration shall be given to means that provide for the maximum independence of persons with disabilities while presenting the least risk of harm, injury or other hazard to such persons or others.

GOOD FAITH EFFORT - The courts will give consideration to any good faith effort to comply with the ADA in assessing an owner's actions. No building or business owner is excused or relieved of their responsibility from ADA compliance for lack of knowledge, not receiving technical assistance, or who has not willfully, intentionally, or recklessly disregarded the law. Implementation of a plan to remove existing accessibility barriers for persons with disabilities could be considered a "good faith" effort in complying with the ADA.

INTERNATIONAL SYMBOL OF ACCESSIBILITY - commonly referred to as a "handicapped sign". The symbol adopted by the Rehabilitation International 11th World Congress. This symbol depicts a wheelchair user in white outline on a blue background. The internationally recognized symbol indicates that buildings and facilities are accessible to persons with disabilities.

JURISDICTION - the legal authority or power to administer laws and regulations. In the context of professional design services this is a reference to the specific governmental agencies that have the authority to regulate the **life-safety** aspects of a project. See also "**Enforcing Agency**".

LIFE-SAFETY - refers to those aspects and features of buildings that protect and safeguard human life, health and well-being during emergency situations such as fire and earthquake. Building codes regulate the design and construction of buildings in an effort to insure that minimum life-safety considerations are integrated into the completed building.

MODEL CODE - a nationally recognized document developed and published by one of three different private

sector organizations that is intended for incorporation or adoption for use by state and local government agencies in developing building code standards within their "**jurisdiction**".

NEW CONSTRUCTION - Full accessibility to persons with disabilities is required for building permits issued after January 26, 1992, and for first occupancies which occur after a January 26, 1993. Compliance is required on "**alterations**" and the "**path of travel**" after January 26, 1992.

OCCUPANCY - is the purpose for which a building, or a portion of a building, is used or designed to be used.

PATH OF TRAVEL - A passage that may consist of walks and sidewalks, curb ramps, pedestrian ramps, lobbies, corridors, elevators, or other improved areas, that provides free and unobstructed access to and egress from a particular area or location for pedestrian and/or wheelchair users.

PATH OF TRAVEL MODIFICATIONS - Where an alteration project requires an accessible path of travel to the altered area, then elements along the path of travel shall be modified to provide access to the maximum extent possible without incurring "**disproportionate cost**". Where a determination of unreasonable hardship has been received, it means that all of the modifications will not be made. In choosing which elements to provide, priority shall be given to those elements that provide the greatest access, by providing code compliance in the following order:

- i) An accessible entrance;
- ii) An accessible route to the altered area;
- iii) At least one accessible restroom for each sex;
- iv) Accessible telephones;
- v) Accessible drinking fountains;
- vi) When possible, additional accessible elements such as storage and alarms.

PENALTIES - Several types of legal remedies are available under the ADA. The court will mandate injunctive relief on proven discrimination. The Justice Department can also file suit where there is reasonable cause to believe someone has engaged in a pattern or practice of discrimination in violation of the ADA. Up to \$ 50,000 penalty on the first violation and up to \$ 100,00 on subsequent violations may be assessed along with the correction of the violation. Civil action became permissible after January 26, 1992. Certain qualified small businesses were given an additional six to twelve month time period to achieve compliance. The additional time period did not apply to new construction. The courts are authorized to award attorney fees and litigation expenses to the prevailing party. Consideration will be given to an offender for any "**good faith effort**" in complying with the ADA.

PERSONS WITH DISABILITIES - means a person who has, or is regarded as having a physical or mental impairment that substantially limits one or more major life activities such as; caring for one's self, performing manual tasks, walking, seeing, hearing, and speaking.

PRIVATE CLUB - Under the ADA, a private club is exempt from having to comply with ADAAG standards, since clubs are exempt from coverage under Title II of the Civil Rights Act of 1964 when the club is not open to the public other than its members. Private club qualification is based on various factors.

PUBLIC ACCOMMODATION, PLACE OF - includes, but is not limited to, any building, portion thereof or facility operated by a private entity that can be categorized into one or more of the following categories:

- i) places of lodging;
- ii) establishments serving food or drink;
- iii) places of exhibition or entertainment;
- iv) places of gathering;
- v) sales or rental establishments;
- vi) service establishments;

- vii) stations used for public transportation;
- viii) places of public display or collection;
- ix) places of recreation;
- x) places of education;
- xi) social services center establishments; or
- xii) places of exercise or recreation.

PUBLIC USE - refers to those interior or exterior rooms, spaces, elements or features that are made available to the general public, regardless of whether those spaces are publicly owned by the taxpayers or owned by businesses in the private sector. See also "**Common Use**".

RAMP - A walking surface which has a slope parallel to the direction of travel equal to or greater than 1:20 gradient (5%).

READILY ACHIEVABLE - the limitation on a "**public accommodation**" for the removal of architectural and communication barriers. It means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable the factors to be reviewed and considered include:

- i) the nature and cost of the action needed;
- ii) the overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation; including crime prevention measures; or the impact otherwise of the action upon the operation of the site;
- iii) the geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;
- iv) if applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type and location of its facilities; and,
- v) if applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions or the workforce of the parent corporation or entity.

What is readily achievable for a large, profitable company may not be readily achievable for an economically marginal company. Realistically, the majority of circumstances that affect achievability will be financial. However, any decisions about what is readily achievable must be capable of being defended using the five listed criteria. This is not legal advice. A competent lawyer should be consulted regarding any and all specific legal questions.

REHABILITATION - the process of repairing an existing building or interior space to bring it into good condition with minimal changes to the building's components and features. The Secretary of the Interior's Standards for Rehabilitation has the following definition: "The act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use, while preserving those portions or features of the property which are significant to its historical, architectural and cultural values."

RELIGIOUS ENTITY - a religious organization including a place of worship. Under the ADA, religious organizations, their places of worship, and any facilities operated by them are specifically exempt from compliance to ADAAG standards. California however, DOES NOT exempt religious facilities from providing accessibility to "**persons with disabilities**".

REMODEL - the process of modifying an existing building or interior space for current use. Typically, remodels include replacing some of the existing elements and features such as kitchen cabinets and plumbing fixtures with new materials or adding new features that did not previously exist. A finished remodel may or may not be stylistically consistent with the existing conditions. Depending upon the scope of the proposed changes, a remodel may or may not be considered an "**alteration**" according to the building code.

RENOVATION - the process of cleaning, changing, repairing or replacing the worn out or damaged elements and features of an existing building for modern use, so that it is functionally equivalent to a new building . This term implies that the project is more than just a rehabilitation, but not as extensive as a full-blown restoration.

RESTORATION - the process of returning, as nearly as possible, an existing building, interior or object to its condition at a particular time in history, using the same construction materials and methods as the original. This term implies that the intent of making changes is to rediscover and respect the stylistic qualities of one of the earlier conditions. Typically, the period of greatest historical significance or aesthetic integrity is chosen, where the building has a long history of alterations to it. For buildings that have a strong historical style this is often times more than just a repair or replacement of historically accurate features; it may mean removing previous alterations that have damaged the integrity of the original design, and replacing missing period work.

RE-USE - sometimes referred to as "adaptive re-use", the process of changing an existing, often historic building to accommodate a new function. Often times the use, character or style of the new function is radically different from the original. Examples of radical departure would include converting a warehouse into a restaurant, changing a Victorian residence into a law office, or remodeling a barn into a rustic bed & breakfast. Re-use may include extensive remodeling, restoration and/ or renovation of both the interior and exterior elements of the existing building.

SPECIFIC ALTERATION PROJECT - Under both the CBC and ADA, any alteration, structural repair or addition to an existing building or facility shall comply with the standards for new construction contained in CBC Chapter 11 and ADAAG. When projects are considered "**alterations**" then some sort of path of travel modifications will most certainly be required.

STAIRWAY - As defined by the CBC, a stairway consists of two or more risers in succession.

TAX DEDUCTIONS AND CREDITS - A \$ 15,000 income tax deduction per year is allowed for expenses associated with qualified architectural barrier removal. A business with 30 or fewer employees and less than one million in gross receipts may be eligible for a tax credit on costs relating to ADA compliance. This is not tax advice. A competent tax advisor should be consulted for additional information and assistance.

TECHNICALLY INFEASIBLE - as used in the ADA means, with respect to an **alteration** of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which 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 which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

UNIVERSAL DESIGN - sometimes referred to as "inclusive design". This design approach is more broad than "**Barrier-free Design**", because Universal Design attempts to develop solutions and features that, to the greatest extent possible, can be used by everyone regardless of age, size, or ability. The intent is to use the natural diversity of the human population as the basis for creating design solutions. Universal design strategies would include; installing several drinking fountains at different heights, adjustable shelving and countertops that can be set at different heights, designs that are easily adaptable for the future needs of the occupants. This term applies appropriately to those situations where the designer voluntarily exceeds the minimum requirements mandated by state and federal laws. Designs that merely comply with the requirements of law are NOT truly Universal in spirit.

UNDUE BURDEN - Excessive expense or difficulty may create an undue burden. Unfortunately, the Justice Department has not established any specific guidelines for what constitutes an undue burden. Determination factors which may be considered are similar to those used in determining what constitutes "**readily achievable**".

UNREASONABLE HARDSHIP - as used in the CBC Sec 222.4, exists when the "**Enforcing Agency**" finds that compliance with the barrier-free regulations would make the specific work of the project affected by the regulations unfeasible, based on an overall evaluation of the following factors:

- i) the cost of providing access;
- ii) the cost of all construction contemplated;
- iii) the impact of the proposed improvements on financial feasibility of the project;
- iv) the nature of accessibility which would be gained or lost;
- v) the nature of the use of the facility under construction and its availability to persons with disabilities.

The details of any findings of unreasonable hardship shall be recorded and entered into the files of the enforcing agency. While receiving a determination of unreasonable hardship helps prioritize path of travel modifications, it also has the potential to create a false sense of security that federal obligations have been met in the process.

VALUATION THRESHOLD - In 1981, California established a \$ 50,000 construction cost threshold to determine when specific requirements apply to existing buildings. The cost threshold was based on the January 1981 "ENR US 20 Cities" average construction cost index of 3372.02 as contained in Engineering News Record published by McGraw Hill Publishing Company. The cost threshold value is re-calculated annually based upon the monthly escalating ENR index. In 1991, the valuation threshold was \$ 70,729.56, as of Dec 2004 it is approximately \$ 101,000.

Sources

1. Grant, Dorothy L. and Thomas M. Grant, ADA Compliance Guidelines California Access Code, Second Edition San Diego, 1993.
2. Gibbens, Michael P., CalDAG '96 Interpretive Manual and Checklist, Second Edition, Canoga Park, 1996.

APPENDIX 2 - LIST OF ABBREVIATIONS

ADA	Americans with Disabilities Act of 1990
ADAAG	Americans with Disabilities Act Accessibility Guidelines
AIA	American Institute of Architects
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
ATBCB	Architectural & Transportation Barriers Compliance Board
ATM	Automated Teller Machine
CABO	Council of American Building Officials
CBC	California Building Code
CEC	California Electrical Code
CCR	California Code of Regulations
CMC	California Mechanical Code
CPC	California Plumbing Code
dB	Decibels of Sound
DOJ	Department of Justice
lbs	Pounds of Force
NEC	National Electrical Code
OSA/AC	Office of State Architect - Access Compliance Section
SBSC	State Building Standards Commission
TDD	Telecommunications Display Device
UBC	Uniform Building Code
UPC	Uniform Plumbing Code
UMC	Uniform Mechanical Code