

UNDERSTANDING ADA: A GUIDE FOR SMALL DEVELOPERS

A VERY BIG THANK YOU TO STEVE JONES

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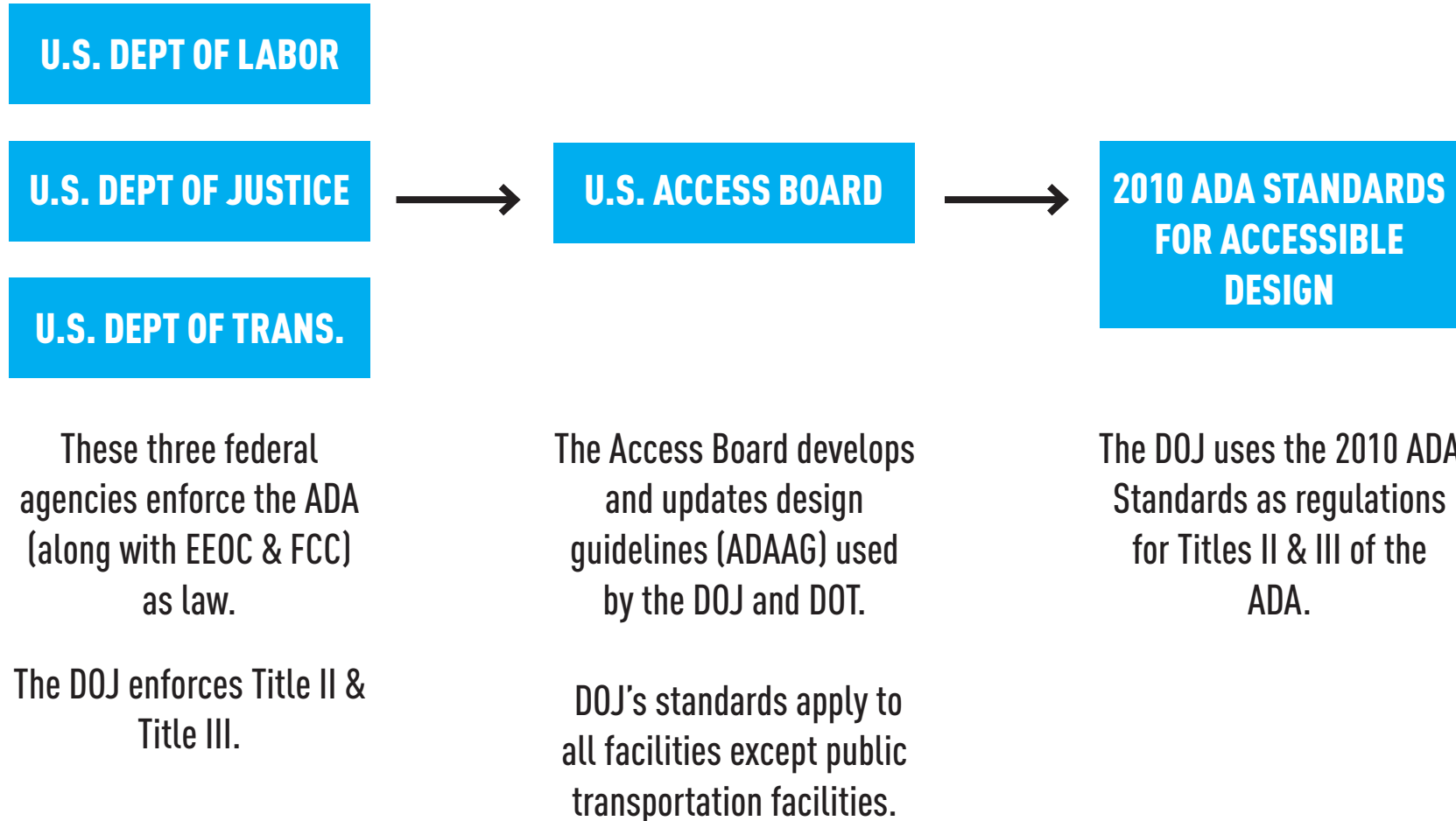
WHAT IS ADA?

The Americans with Disabilities Act (ADA) is a civil rights law passed in 1990 that prohibits discrimination against people with disabilities in employment, transportation, public accommodation, communications, and governmental activities.



WHO ENFORCES THE ADA?

FEDERAL AGENCIES



WHAT PART OF THE ADA SHOULD I BE FAMILIAR WITH?

TITLE II (State & Local Government)

The Department of Justice regulations that implement the ADA for state and local governments

Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state or local governments. It clarifies the requirements of section 504 of the Rehabilitation Act of 1973, as amended, for public transportation systems that receive federal financial assistance, and extends coverage to all public entities that provide public transportation, whether or not they receive federal financial assistance. It establishes detailed standards for the operation of public transit systems, including commuter and intercity rail (e.g., AMTRAK). This title outlines the administrative processes to be followed, including requirements for self-evaluation and planning; requirements for making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination; architectural barriers to be identified; and the need for effective communication with people with hearing, vision and speech disabilities. This title is regulated and enforced by the U.S. Department of Justice.

TITLE III (Public Accommodations)

The Department of Justice regulations that implement the ADA for businesses and non-profit service providers (public accommodations and commercial facilities)

This title prohibits private places of public accommodation from discriminating against individuals with disabilities. Examples of public accommodations include privately-owned, leased or operated facilities like hotels, restaurants, retail merchants, doctor's offices, golf courses, private schools, day care centers, health clubs, sports stadiums, movie theaters, and so on. This title sets the minimum standards for accessibility for alterations and new construction of facilities. It also requires public accommodations to remove barriers in existing buildings where it is easy to do so without much difficulty or expense. This title directs businesses to make "reasonable modifications" to their usual ways of doing things when serving people with disabilities. It also requires that they take steps necessary to communicate effectively with customers with vision, hearing, and speech disabilities. This title is regulated and enforced by the U.S. Department of Justice.

WHAT DOES THE ADA REQUIRE?

The ADA requires that **all newly constructed facilities** housing places of public accommodation, as well as commercial facilities such as office buildings, **be accessible**.

WHAT DOES **PUBLIC ACCOMMODATION** MEAN?

A facility whose operations affect commerce and fall within at least one of the following 12 categories:

1. Places of lodging (e.g., inns, hotels, motels, except for owner-occupied establishments renting fewer than six rooms)
2. Establishments serving food or drink (e.g. , restaurants and bars)
3. Places of exhibition or entertainment (e.g. , motion picture houses, theaters, concert halls, stadiums)
4. Places of public gathering (e.g. , auditoriums, convention centers, lecture halls)
5. Sales or rental establishments (e.g. , bakeries, grocery stores, hardware stores, shopping centers)
6. Service establishments (e.g. , laundromats, dry-cleaners, banks, barber shops, beauty shops, travel services, shoe repair services, funeral parlors, gas stations, offices of accountants or lawyers, pharmacies, insurance offices, professional offices of health care providers, hospitals)
7. Public transportation terminals, depots, or stations (not including facilities relating to air transportation)
8. Places of public display or collection (e.g. , museums, libraries, galleries)
9. Places of recreation (e.g. , parks, zoos, amusement parks)
10. Places of education (e.g. , nursery schools, elementary, secondary, undergraduate, or postgraduate private schools)
11. Social service center establishments (e.g. , day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies)
12. Places of exercise or recreation (e.g. , gymnasiums, health spas, bowling alleys, golf courses).

WHAT STANDARDS MUST FACILITIES FOLLOW?

PLACES OF PUBLIC ACCOMMODATION

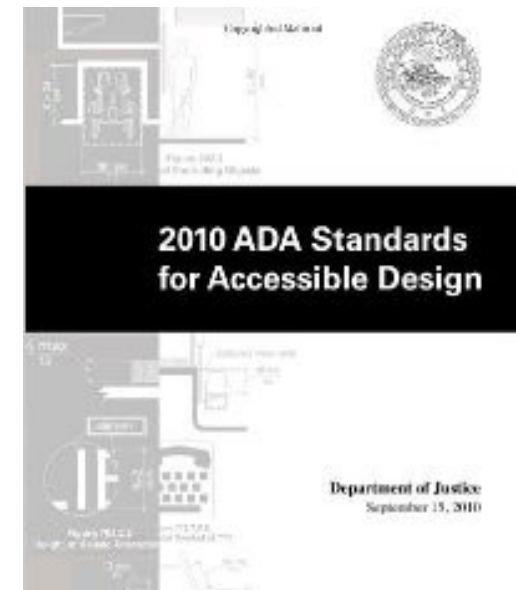
must follow the 2010 ADA Standards for Accessible Design for barrier removal, new construction and alterations.

COMMERCIAL FACILITIES

must follow the 2010 ADA Standards for Accessible Design for new construction and alterations.

2010 ADA STANDARDS FOR ACCESSIBLE DESIGN

set minimum requirements – both scoping and technical -- for newly designed and constructed or altered public accommodations and commercial facilities to be readily accessible to and usable by individuals with disabilities.



MUST EVERY FEATURE OF A NEW FACILITY BE ACCESSIBLE?

No, there are some exceptions and exempted spaces.

Certain nonoccupiable spaces such as elevator pits, elevator penthouses, and piping or equipment catwalks need not be accessible. There are also certain exempted spaces, such as raised areas less than 300 sq.ft. and mezzanines in one story buildings. See ADAAG 4.1.1(5)(b) for more detailed information.

ELEVATOR EXEMPTION

36.401(d)

Elevators are generally not required in facilities **under three stories**
OR with fewer than 3,000 square feet per floor, unless the building is a shopping center or mall; the professional office of a health care provider; a terminal, depot, or other public transit station; or an airport passenger terminal.

WHAT ABOUT BUILDINGS BUILT BEFORE THE ADA?

36.402(a)(1)

For places of public accommodation / commercial facilities that existed on or before January 26, 1992, any alterations undertaken after this date shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities.

Translation: An existing building not undergoing alterations is not obligated to the same standards as a building undergoing alterations, but rather is obligated to 'readily achievable barrier removal.'

WHAT DOES “READILY ACHIEVABLE” MEAN?

“ ... easily accomplishable and able to be carried out without much difficulty or expense.” (§36.104)

You should:

- Identify existing barriers
- Create a plan to address these barriers
- Address said barriers as your resources permit (barrier removal is ongoing)

Priorities for barrier removal:

- Getting in (parking, exterior routes, entrance, etc.)
- Areas where goods and services are available
- Restrooms
- Other elements

WHAT IS AN ALTERATION?

36.402(b)(1)

A change to a place of public accommodation or a commercial facility that **affects or could affect the usability** of the building or facility or any part thereof.

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, re-roofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.**

WHAT IS AN ALTERATION & WHAT IS NORMAL MAINTENANCE?

Factors to consider in determining whether changes are alterations under the 2010 Standards:

- The overall **cost** of the change relative to the size (physical and financial) of the facility or relevant part thereof. Large and expensive changes or significant reconfiguration are alterations.
- The **scope** of the change (including what portion of the facility or relevant part thereof was modified).
- The **reason** for the change (including whether the goal is maintenance or improvement, and whether it is to change the purpose or function of the facility).
- Whether the change **affects** only the facility's surfaces such as painting and floor covering or also structural attachments and fixtures that are part of the facility.

MUST EVERY FEATURE OF AN ALTERED FACILITY BE ACCESSIBLE?

In short, no.

SO WHAT DO I NEED TO UNDERSTAND?

36.403(a)

An alteration that affects or could affect the usability of or access to an area of a facility that contains 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, including individuals who use wheelchairs, unless the cost and scope of such alterations is **disproportionate** to the cost of the overall alteration.

UNDERSTANDING THE ABOVE STATEMENT IS IMPERATIVE! LET'S BREAK IT DOWN.

And remember: the law is there to protect equal access, and this should never be undermined by technicalities.

PRIMARY FUNCTION AREA

WHAT IS A PRIMARY FUNCTION AREA?

36.403(b)

A primary function is a major activity for which the facility is intended.

Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.

WHY IS IT IMPORTANT?

When alterations affect the usability of or access to a primary function area, an accessible path of travel to the altered area must also be provided. The bathrooms, telephones, and drinking fountains serving that area are considered part of the path of travel.

Translation: Only alterations affecting primary function areas trigger an expanded scope of work, and then only to improve accessibility to the primary function area and amenities serving the area.

WHAT DO ALTERATIONS INCLUDE?

36.403(c)(1)

Alterations that affect the usability of or access to an area containing a primary function include, but are not limited to –

- (i) Remodeling merchandise display areas or employee work areas in a department store;
- (ii) Replacing an inaccessible floor surface in the customer service or employee work areas of a bank;
- (iii) Redesigning the assembly line area of a factory; or
- (iv) Installing a computer center in an accounting firm.

MORE IMPORTANTLY, WHAT IS NOT INCLUDED?

For the purposes of this section, normal maintenance, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.

MAXIMUM EXTENT FEASIBLE

WHAT DOES 'MAXIMUM EXTENT FEASIBLE' MEAN?

36.402(c)

The phrase “to the maximum extent feasible” applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration.

In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).

WHY IS IT IMPORTANT?

36.402(a)(1)

Any alteration to a place of public accommodation or a commercial facility, after January 26, 1992, shall be made so as to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Translation: If accessibility standards would require something “technically infeasible”, the alteration should accommodate accessibility only as is feasible and appropriate. For example, altering a load-bearing structural member would be considered technically infeasible.

HOW DO I DOCUMENT FEASIBILITY?

No particular decision making process is required to determine that an accessibility improvement is not technically feasible, but the best practice is to document the decision to explain the decision in any later compliance review.

WHAT IF MY BUILDING IS HISTORIC?

36.405(a)

Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 et seq) or are designated as historic under State or local law, shall comply to the **maximum extent feasible** with this part.

36.405(b)

If it is determined that it is not feasible to provide physical access to a historic property that is a place of public accommodation in a manner that will **not threaten or destroy the historic significance** of the building or the facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

FOR EXAMPLE:

Exceptions for Qualified Historic Facilities

(where compliance would threaten or destroy a facility's historic significance)

Vertical access to stories above or below the accessible story is not required (§206.2.3, Ex. 7).



At least 1 unisex **toilet room** or 1 men's and 1 women's room is required to comply (§213.2, Ex. 2).



At least 1 **accessible route** is required from a site arrival point to an accessible entrance (§206.2.1, Ex. 1).

At least 1 **public entrance** is required to be accessible (if that would also threaten the historic significance, access can be provided to a non-public entrance but a notification or remote monitoring system is required for locked entrances) (§206.4, Ex. 2).



If an accessible entrance (a ramp or lift) would threaten the historic significance of the structure, access can be provided to a non-public entrance with the addition of a doorbell or remote monitoring system at the public entry.

PATH OF TRAVEL

WHAT IS THE PATH OF TRAVEL?

36.403(e)

(1) A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

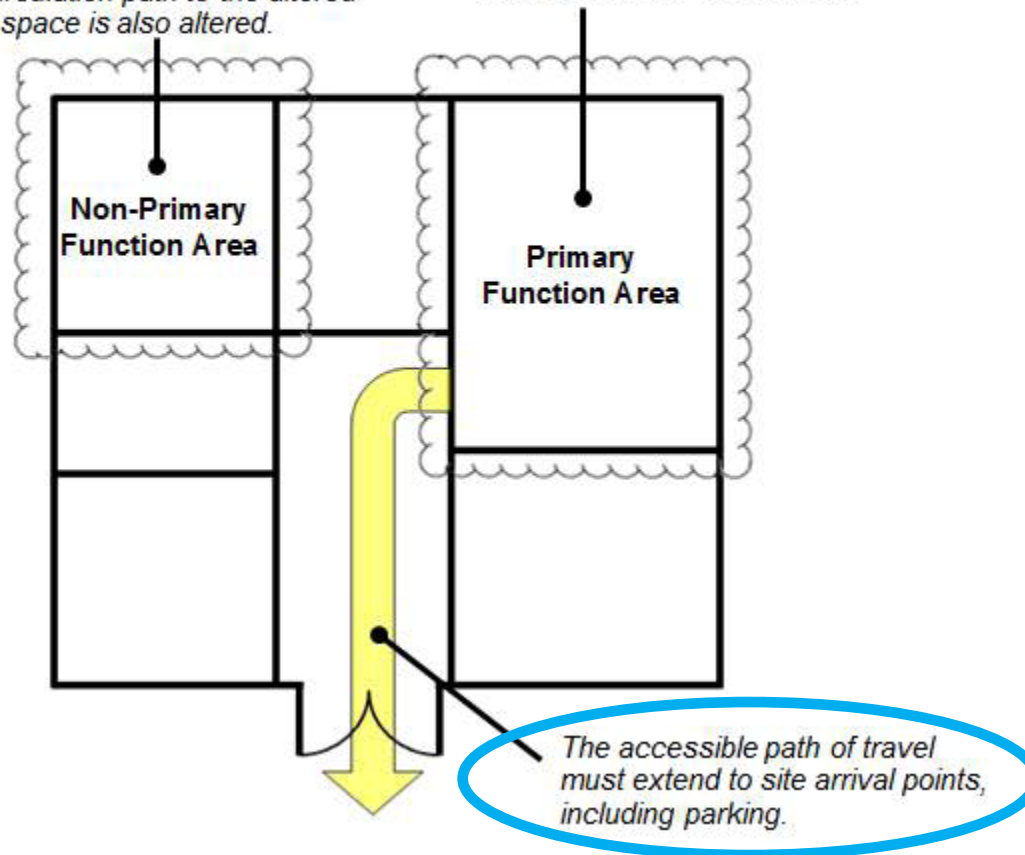
(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

(3) For the purposes of this part, the term “path of travel” also includes the restrooms, telephones, and drinking fountains serving the altered area.

WHERE DOES IT BEGIN?

Altered elements and spaces are required to comply. In areas not containing a primary function, an accessible route to an altered element or space is required only when the circulation path to the altered element or space is also altered.

Alterations made to areas containing a primary function also require an accessible path of travel to the extent that it is not "disproportionate" to the cost.



WHAT IF I'M A TENANT AND NOT THE BUILDING OWNER?

36.403(d)

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.

Translation: The landlord is not required to make path of travel improvements if a tenant is making improvements to just their space.

DISPROPORTIONALITY (THE 20% RULE)

WHAT IS THE 20% RULE?

36.403(f)(1)

Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

Translation: Costs exceeding 20% of the applicable costs (alteration costs to the primary function area) are considered disproportionate.

HOW DO I CALCULATE IT?

If one were to spend \$100,000 to alter a primary function area, one would have to spend up to an additional \$20,000 towards creating an accessible path of travel to the altered area and the restrooms, telephones, and drinking fountains. Any expenses of creating an accessible path of travel in the alteration of the primary function area in excess of the 20% would be considered disproportionate and therefore not required.

$$\text{NET ALTERATION COSTS} * 20\% = \text{MAXIMUM PATH OF TRAVEL COSTS}$$

Note that alteration costs should only include costs that are planned that in no way increase the accessibility of the primary function area, or to already accessible elements.

WHAT COUNTS TOWARDS MY NET ALTERATION COSTS?

Only alterations **that affect the usability of or access to the primary function area** of the building / facility being altered should be applied towards your construction cost.

Examples of exempt costs include:

- Alterations to windows
- Hardware
- Controls
- Electrical outlets
- Lighting
- Signage
- Normal maintenance
- Re-roofing
- Painting
- Wallpapering
- Asbestos removal
- Changes to mechanical & electrical systems (HVAC)
- Installation or alteration of fire protection systems (IBC)

$$\begin{array}{r} \text{OVERALL COSTS} \\ - \text{EXEMPT COSTS} \\ \hline \text{NET ALTERATION COSTS} \end{array}$$

These items are permissible only if allowable under the established criteria, and as enforced by the DOJ. If you have specific questions about non-contributing costs, contact your state ADA representative.

WHAT COUNTS TOWARDS MY PATH OF TRAVEL COSTS?

36.403(f)(2)

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

- Providing an **accessible entrance** and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;
- Making **restrooms** accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
- Providing accessible **telephones**, such as relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY);
- Relocating an inaccessible **drinking fountain**

These expenses also consist of items such as walls, flooring, ceiling, painting, doors, door hardware, moving electrical and/or mechanical systems to work with revised layouts. Accessible elements contained within the spaces such as grab bars, water closets, pipe insulation, and accessible controls are also included in the expenses. Relocating existing items such as grab bars, lavatories, and accessories may also be included.

WHAT HAPPENS IF MY PATH OF TRAVEL COSTS EXCEED 20%?

36.403(g)(1)

When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

WHICH PATH OF TRAVEL ELEMENTS SHOULD BE PRIORITIZED?

36.403(g)(2)

In choosing which accessible elements to provide, priority should be given to those **elements that will provide the greatest access**, 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 or a single unisex restroom;
- (iv) Accessible telephones;
- (v) Accessible drinking fountains; and
- (vi) When possible, additional accessible elements such as parking, storage, and alarms.

If your 20% cost is not enough to cover the first priority (an accessible entrance), you would do upgrades until you reach your maximum required cost. For example, if achieving required maneuvering clearances at your front door would require reconfiguring the building and exceed your 20% cost requirement, you could instead provide an automatic door opener. The cheapest means necessary to attain the goal (access) is acceptable as long as it meets the requirements. It would be a good idea to document a plan to finish those improvements as part of a future renovation.

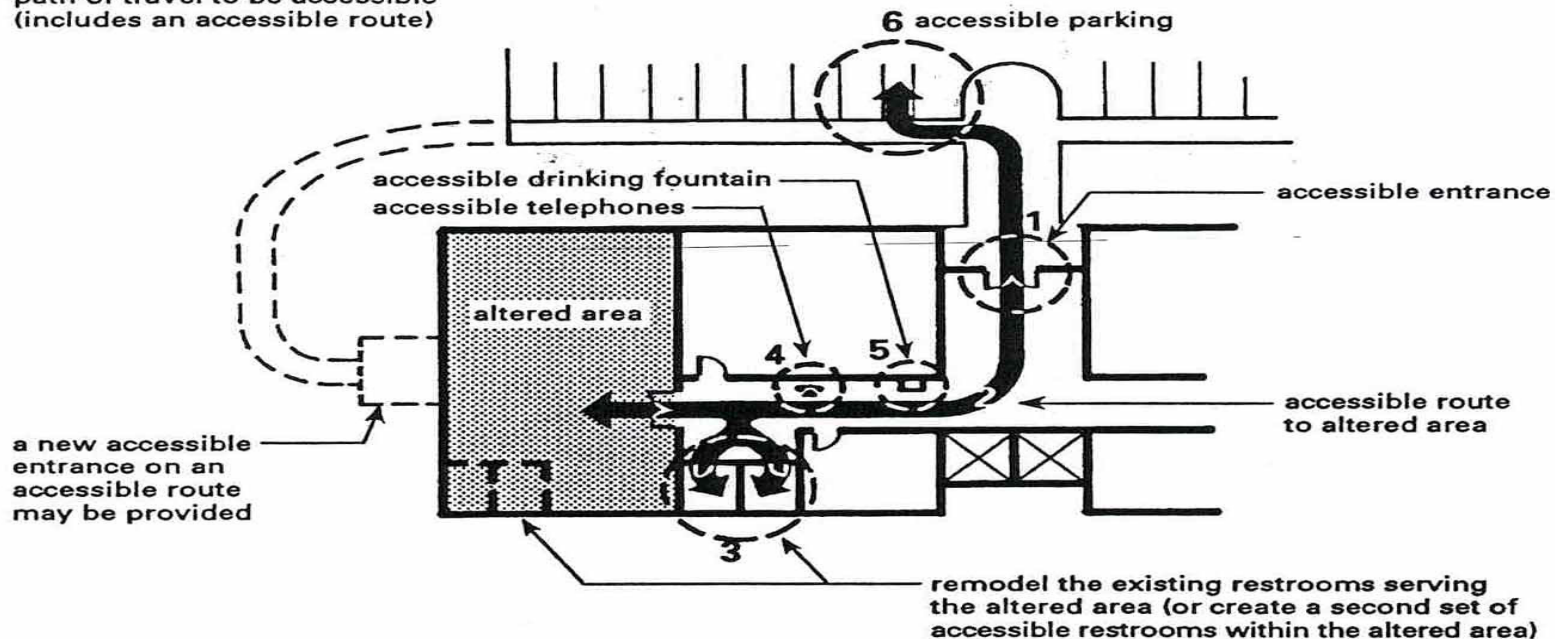
WHICH PATH OF TRAVEL ELEMENTS SHOULD BE PRIORITIZED?

1. entrance
2. route to primary function area
3. elements serving the primary function area

Priorities for Providing Accessible Path of Travel and Accessible Elements When Disproportionate Costs Exist:

1. an accessible entrance,
2. an accessible route to the altered area,
3. at least one accessible restroom for each sex, or an accessible unisex restroom
4. accessible telephones,
5. accessible drinking fountains, and
6. additional accessible elements such as parking, storage, and alarms.

alteration to primary function area triggers the requirement for the path of travel to be accessible (includes an accessible route)



WHAT DOES AN ACCESSIBLE ENTRANCE INCLUDE?

- Providing access to your entrance from site arrival points (public sidewalks, parking areas, passenger loading zones, public transportation). It's not necessarily an "or" situation, HISTORIC REQUIRES NO MORE THAN 1 ACCESSIBLE ROUTE FROM A SITE ARRIVAL POINT TO AN ACCESSIBLE ENTRANCE.
- Entrance Doors; ideally the main, public entrance. If using an alternative accessible entrance, it must be able to be used independently and open (unlocked) during the same hours as the main entrance. If not all entrances are accessible, provide a sign for the accessible entrance.

HOW DO I DOCUMENT MY 20% COSTS?

Documentation should be coordinated with your AHJ (authority having jurisdiction). Some AHJ's have forms to fill out.

NAU WORKSHEET	
ADA path of travel improvements, 20% Disproportionate costs	
NAU Project Number: _____	
Project Name: _____	
Name, Title of person completing this worksheet: _____	
#1 Net Construction Cost of "Alteration" to the "Primary Function" areas (1')	#2 Required 20% cost (2')
\$ _____ Overall Costs - Exempt Costs = Net Costs	\$ _____ Net Costs - 80% = 20% Disproportionate Costs
28 CFR 35.151(b)(4)(iv) (B), (1) thru (6): In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order (3')	
#4 Costs associated with providing An accessible entrance; (4')	+\$ _____
#5 Costs associated with providing An accessible route to the altered area; (5')	+\$ _____
#6 Costs associated with providing At least one accessible restroom for each sex or a single unisex restroom; (6')	+\$ _____
#7 Costs associated with providing Accessible telephones; (7')	+\$ _____
#8 Costs associated with providing Accessible drinking fountains; (8')	+\$ _____
#9 Costs associated with providing additional accessible elements such as parking, storage, and alarms. (9')	+\$ _____
#10 Total cost of accessible element upgrades to the "path of travel" (10')	= \$ _____

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NAU WORKSHEET ADA path of travel improvements, 20% Disproportionate costs

https://nau.edu/uploadedFiles/Administrative/Finance_and_Administration/Facility_Services/Documents/FS-Toolbox/Plan_Review,_Permit/FS%2035A%20WORKSHEET%20ADA%20path%20of%20travel%20improvements%2020percent%20Disproportionate%20costs%205-10-2012.docx

LET'S REVIEW.

36.403(a)

An alteration that affects or could affect the usability of or access to an area of a facility that contains 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, including individuals who use wheelchairs, unless the cost and scope of such alterations is **disproportionate** to the cost of the overall alteration.

...and now we know disproportionate means **exceeding 20% of net alteration costs to the primary function area.**

But remember, the law is there to protect equal access, and this should not be undermined by technicalities.

MORE INFORMATION

- <https://www.access-board.gov/attachments/article/999/alterations.pdf>
- <https://www.ada.gov/smbusgd.pdf>
- <https://www.ada.gov/taman3.html>

PRESENTATION PDF AVAILABLE ON:

- www.kronbergwall.com/blog/

HISTORIC DISTRICTS: DIFFERENT FLAVORS

LOCAL HISTORIC DISTRICTS:

- Local control
- Locals determining what to do with your building
- Often a tool of exclusion
- Lots of requirements and limitations
- Better at protecting buildings and limiting development
- We are generally not fans of local historic districts

EXAMPLE: Historic District Guidelines for a Neighborhood in Atlanta

Druid Hills Local Historic District Design Manual		
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NATIONAL HISTORIC DISTRICTS:

- No restrictions on what property owners may do (except for federally funded projects)
- No local control
- Tax credit options can help finance renovation
- We are big fans of national historic districts

KWA OFFICE (FORMER AME CHURCH)



Reynoldstown Historic District
Fulton County, GA

15/68

TYPICAL HOUSING STOCK



REYNOLDSTOWN HISTORIC DISTRICT
FULTON COUNTY, GEORGIA

16/68

CORNER STORE



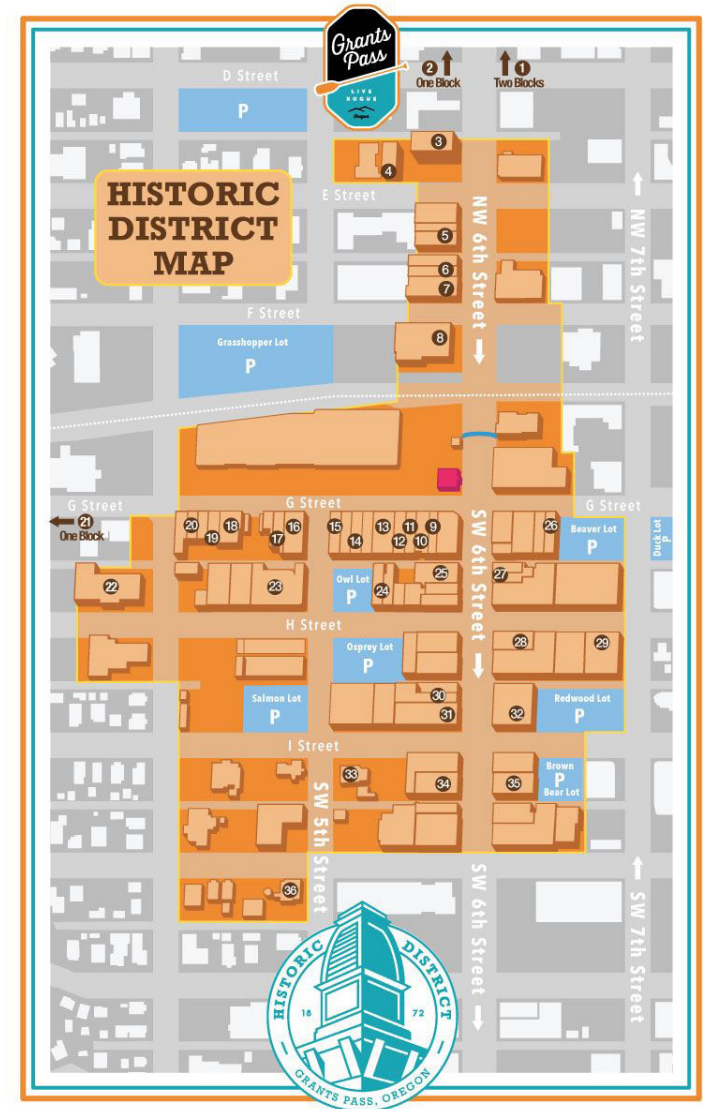
REYNOLDSTOWN HISTORIC DISTRICT
FULTON COUNTY, GEORGIA

27/68

NATIONAL HISTORIC DISTRICTS:

- A group of buildings, properties, or sites that have been designated as historically or architecturally significant
- Federal level: designated by US Dept of Interior under the NPS
- An “honorary status” with some federal financial incentives (tax credits)!
- Building classification types: contributing or non-contributing

Value: there are no restrictions, but you qualify for tax credits and can use the IEBC!



NATIONAL REGISTER OF HISTORIC PLACES

Criteria for Listing

- Property must meet the National Register Criteria for Evaluation ([link](#))
- Age and Integrity: at least 50 years old, appearance should be similar to how it looked in the past
- Significance: associated with important events, activities or developments, significant architectural / landscape / engineering history or achievement

Listing and Ownership, what it does not mean

- Listing on the National Register places no restrictions on what a non-federal owner/funder may do with their property up to and including destruction
- Listing does not lead to public acquisition or require public access
- A property will not be listed if the owner of an individual property, or majority of property owners (for districts), object
- Listing does not automatically invoke local historic district zoning or local landmark designation. That is a completely separate process.

NATIONAL REGISTER OF HISTORIC PLACES

Listing and Ownership, what it does mean

- Listing does give official recognition of the district's significance
- Listing does satisfy the prerequisite for receiving various kinds of federal benefits (federal grants, tax incentives, etc)
- Listing does provide protection only if there is federal involvement (federal ownership or federal funds)
- You can leverage Chapter 12 of the IEBC

SHPO: STATE HISTORIC PRESERVATION OFFICE

How your state can help with historic districts:

- Some SHPO offer technical assistance and matching grants for communities
- Local governments and non-profit organizations may apply for matching grants from SHPO to conduct surveys of historic resources (identify sites, record physical characteristics, evaluate significance, determine eligibility for listing on National Register)

New Hampshire has a tax break for historic properties!

SMALL SCALE REDEVELOPMENT IS NOT IMPOSSIBLE!

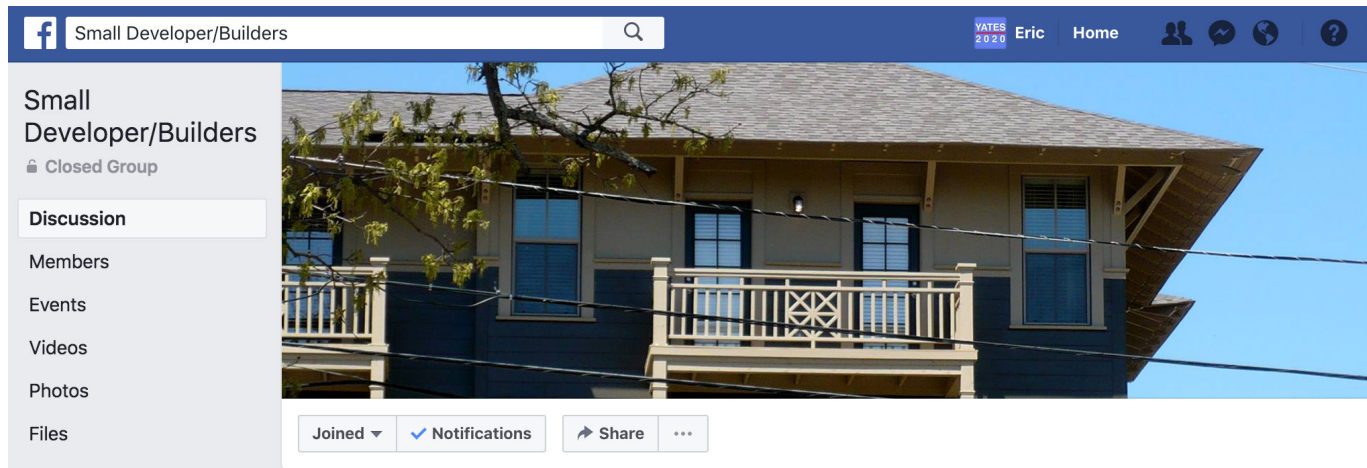


If you understand the hurdles and solutions to these hurdles, and you can make it happen!

OTHER SOURCES: Check 'em out!



<http://www.incrementaldevelopment.org/>



<https://www.facebook.com/groups/smalldevelopersandbuilders/?ref=bookmarks>

Now you're ready to get going.

THANK YOU!



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