

ACCESSIBLE PUBLIC RIGHTS-OF-WAY

APRIL Conference

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Jan Garrett, JD
Deputy Director of ADA Programs
Pacific ADA Center



Thank You

Thank you to Natalie Sparrow, MPH, ADAC, CASp, ADA Coordinator for the City of Los Angeles, for the development of most of the presentation content.

Disclaimer

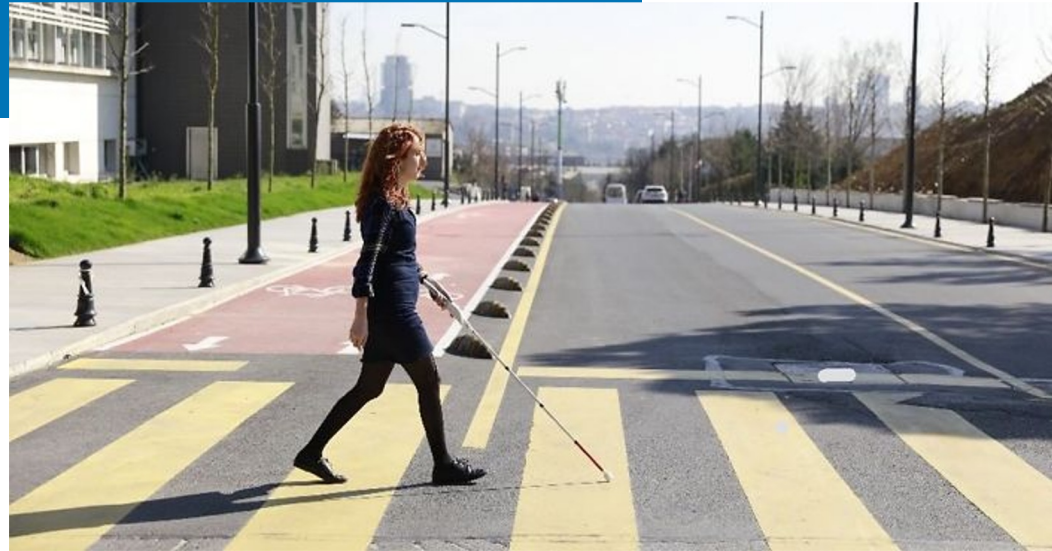
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Outline – Accessible PROW

1. **Introduction**
2. **Why It Matters**
3. **What's Required**



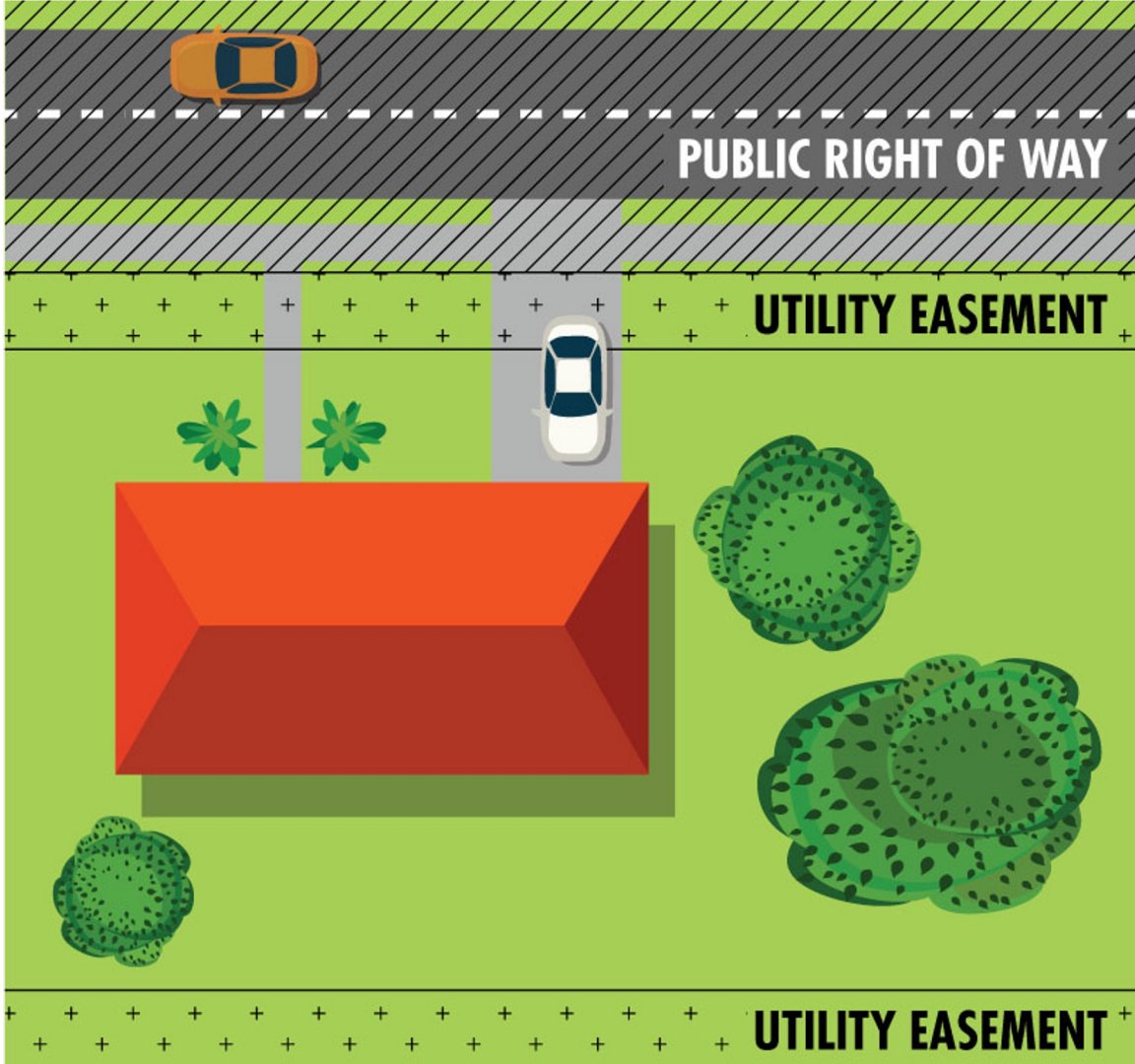
1. Introduction



The Public Right-of-Way

- Public land or property, usually in interconnected corridors, that is acquired for or dedicated to transportation purposes. (*PROWAG Proposed Rule R105.5*)
- Everything between right-of-way limits, including travel lanes, medians, planting strips, sidewalks, and other facilities. (9-12-06)





Public Right of Way - Pedestrian Facilities

- Sidewalks
- Shared Use Paths
- Curb Ramps
- Crosswalks
- Pedestrian Push Buttons
- Accessible Pedestrian Signals



Public Right of Way - Pedestrian Facilities (cont.)

- Bus Boarding Areas
- Street Furniture
- On-Street Parking
- Passenger Loading Zones
- Pedestrian Overpasses and Underpasses
- At-Grade Rail Crossings











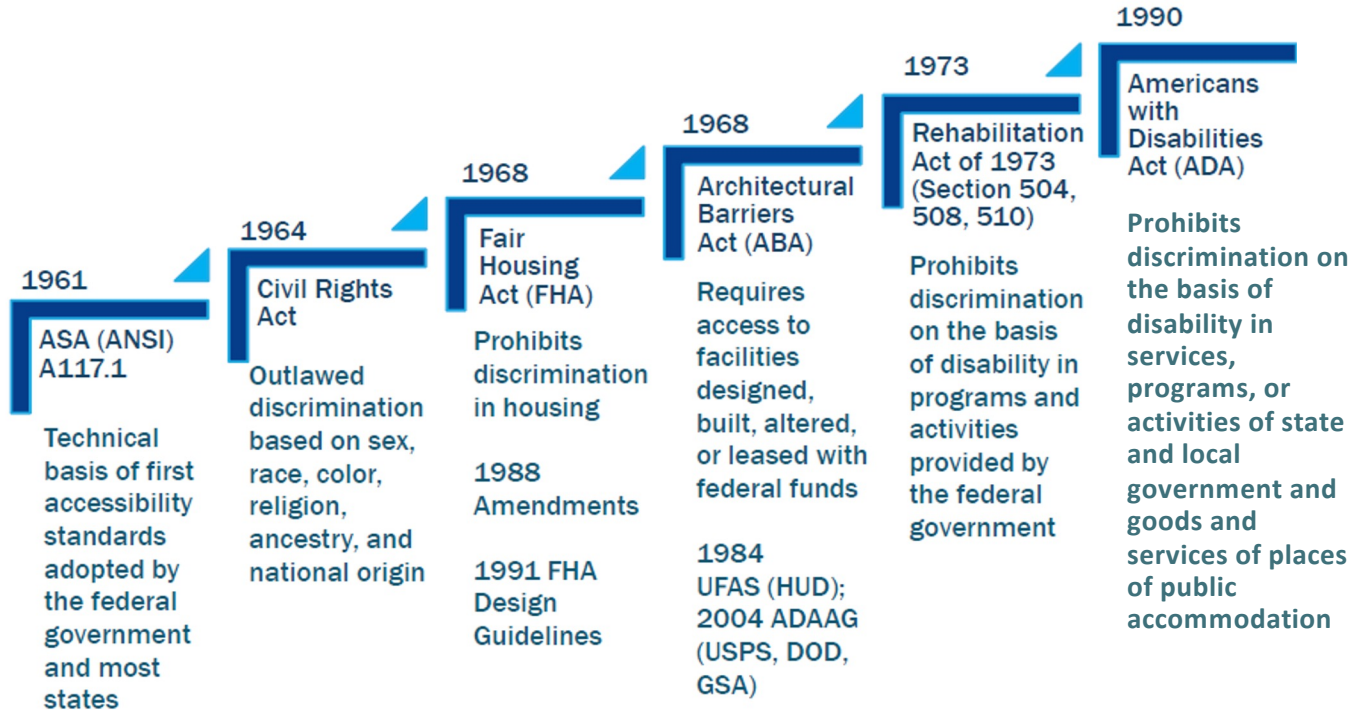




2. Why It Matters

Why?

Required by Federal Law



Americans With Disabilities Act (ADA)

Title II (28 CFR Part 35):

- Applies to all State and local government entities.
- Existing facilities are subject to Title II's program accessibility standard.
- Includes accessibility requirements for new construction and alterations after January 26, 1992.

Title III (28 CFR Part 36):

- Applies to Places of Public Accommodations and Commercial Facilities operated by private entities.
- Existing facilities and services are subject to readily achievable barrier removal
- Includes accessibility requirements for new construction occupied after January 26, 1993 and alterations after January 26, 1992.

ADA Title II Subpart A



- Applies to all State and local government entities.
- Says you cannot discriminate against people with disabilities even if you do not receive federal funding (funding Section 504 required).
- Implemented by US DOJ's ADA title II regulation, which adds to the non-discrimination requirements Section 504.
- Enforced by USDOJ.

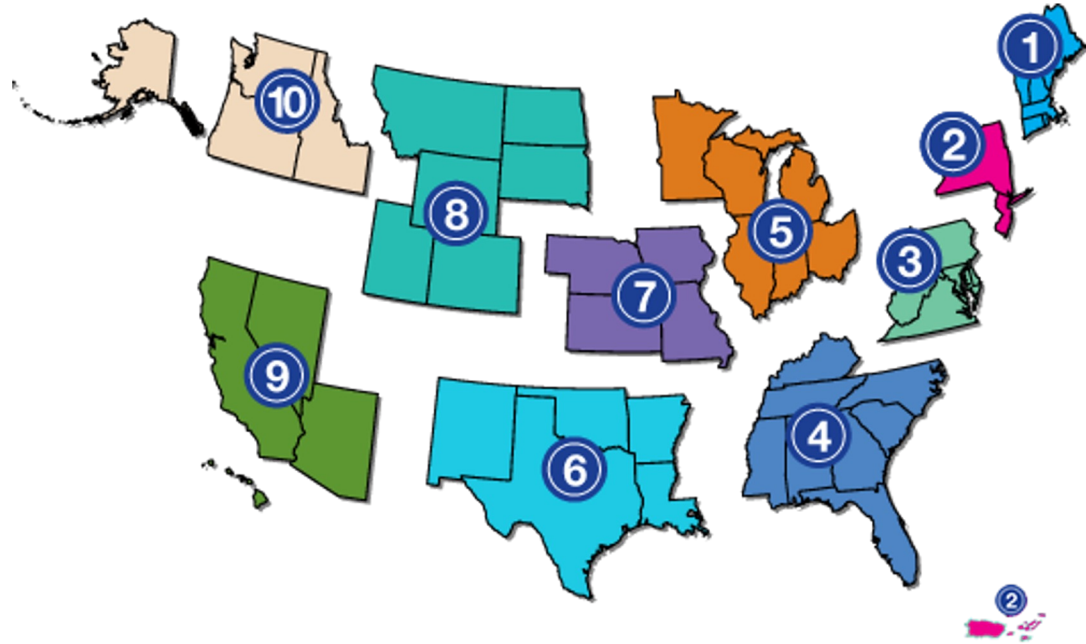
ADA Title II Subpart B



- Covers public transportation services, programs, and activities of public entities.
- Clarifies the requirements of Section 504 for public transportation entities that receive Federal financial assistance.
- Extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance.
- Implemented by US DOT's ADA title II regulations at 49 CFR Parts 27, 37, and 38.
- Enforced by FTA

Why? Laws

It's Required by
Some State & Local
Laws/Ordinances



*Contact your Regional Center
for Guidance

Why? Reduces Liability

Class Action Cases/Settlements

- DC (2022) **Ongoing Case**
- New York City (2019).....**\$1.5 Billion**, 10 years
- Portland (2018)**\$113 Million**, 12 years
- Long Beach (2017).....**\$200 Million**, 30 years
- Los Angeles (2016)**\$1.4 Billion**, 30 years
- Oregon DOT (2016).....**\$23 Million**, 15 years
- Denver (2016)**1,500 Curb Ramps** a Year
- Caltrans (2010)**\$1.1 Billion**, 30 years
- Chicago (2007)**\$50 Million**, 5 years

Why? Reduces Money Spent

INDIVIDUAL PLAINTIFFS:

Barden v. Sacramento (2003). **20% of transp. budget** for 30 years

INJURY SETTLEMENTS:

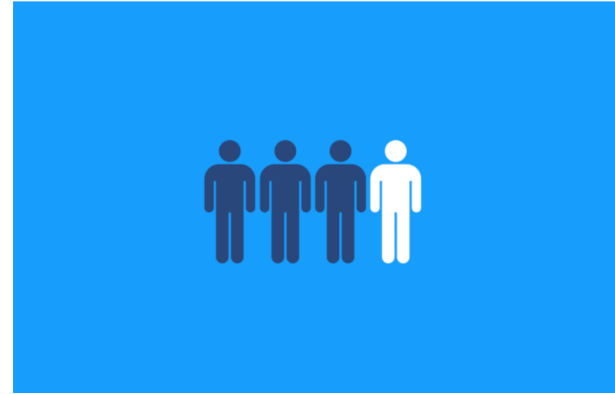
San Diego ('13-'18) **\$11 Million** in Sidewalk Settlements

DOJ PROJECT CIVIC ACCESS: Merced County, CA (2015)

- **Within 3 months** identify and report all roads and walkways that have been constructed or altered since January 26, 1992.
- **Within 3 years**, construct curb ramps at all walkways that meet curbs.

Why? It's
Common
Sense

**61 Million Adults
in the U.S. Have a Disability**



1 in 4 People



Why? Disparate Impacts

“Titles I, II, and III of the ADA are meaningless if people with disabilities are not afforded the opportunity to travel on and between the streets.”

(House Report 485, 101st Congress, 2nd Session 84, 1990)



Why? Pedestrians with Disabilities Face Barriers and Higher Mortality

The mortality rate for pedestrians using wheelchairs was **36% higher** than the overall population pedestrian mortality rate.

(Kraemer & Benton, BMJ, 2015)

People with disabilities are 2x more likely to be unemployed and 4x more likely to be unhoused. *(U.S. Bureau of Labor Statistics, 2022)*







So, what's the problem?

Ableism



What's Required?

Accessibility Obligations in the PROW

STATUTE / LAW

42 U.S.C § 12101, et seq
Americans with Disabilities Act
1990

IMPLEMENTING REGULATIONS

28 CFR Part 35

TECHNICAL STANDARDS

**ADA Standards for
Accessible Design** (2010)

**Public Right of Way
Accessibility Guidelines**

ADA Title II – Program Accessibility

A public entity shall **operate each service, program, or activity so that the service, program or activity when viewed in its entirety, is readily accessible to and usable by individuals with disabilities**



ADA Title II – Program Accessibility Limits

This does not:

1. Necessarily require an entity to **make each of its existing facilities accessible**
2. Require an entity to take action that would **threaten or destroy historic significance** of a historic property
3. Require an entity to take action that would **fundamentally alters the nature of the program or pose an undue financial and administrative burden.**

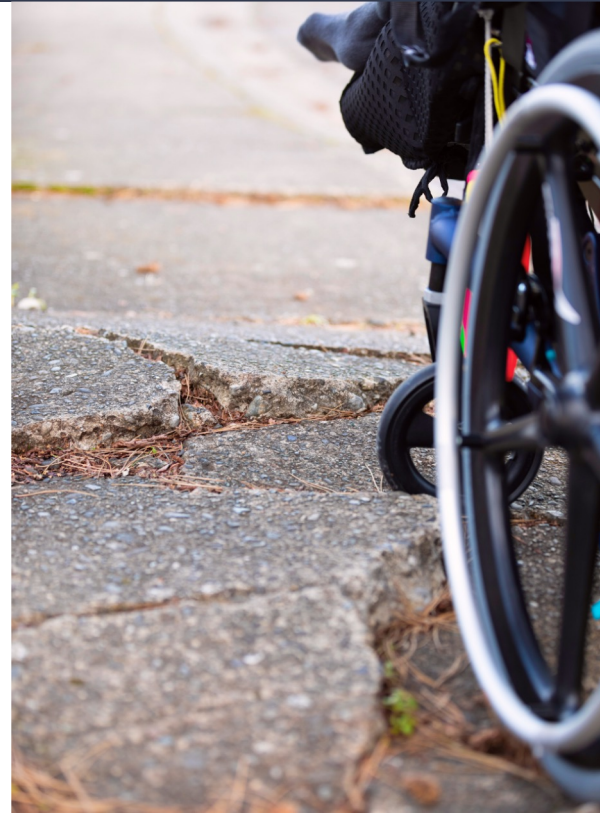
- 28 CFR § 35.150 (ADA Title II Regulations)

Program Accessibility Applies to Sites & PROW

- Services, programs, or activities' includes almost everything that a public entity does
- Sidewalks are subject to program accessibility regulations

ADA Title II – Pedestrian Facilities

No qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in or **be denied the benefits of the services, programs, or activities of a public entity**, or be subjected to discrimination by any public entity. - 28 CFR § 35.149 (ADA Title II Regulations)

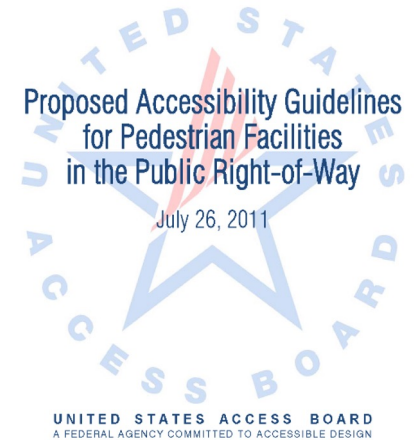


Federal Rulemaking on Public Right of Way Accessibility Guidelines (PROWAG)

On July 26, 2011, the US Access Board issued proposed guidelines on accessible public rights-of-way for public comment.

PROWAG includes revisions that were made in response to public comments received on earlier drafts of the rule the Board released in 2002 and 2005.

September 7, 2023 – PROWAG Final Rule Became Effective



Technical Requirements

- Within an individual governing standard, **specific requirements** shall take precedence over general requirements.
- Where there is a difference between requirements of governing standards, the requirement that provides the **most restrictive (accessible) condition** prevails.

- DOJ Title II TA 1.4200, Title III TA 1.8200

Example – Sidewalk Width

	ADAS (2010)	State ?	PROWAG
Requirement (Minimum)	Clear width of 36 inches *	Clear width of 48 inches *	48 inches*
Provided Exception	32" for a length of 24" max. If separated by segments min. 48" long x 36" wide.	36" if terrain, right of way restrictions	Where sidewalks are wider than 4', only a portion is required to comply

* An accessible route with a clear width less than 60 inches shall provide passing spaces at intervals of 200 feet maximum.



Example – Sidewalk Running Slope

	ADAS (2010)	State?	PROWAG
Requirement (Maximum)	5.0%	5.0%	Grade of adjacent street
Exception	-	Grade of adjacent street	-



Accessible Pedestrian Signals

- All new and altered pedestrian signal heads installed at crosswalks must include “accessible pedestrian signals” (APS)
- All APS must have audible and vibrotactile features indicating the walk interval to allow street crossing by a blind person.
- Pedestrian push buttons must be located within a reach range.
- Walk speed 3.5 feet per second; 7-second minimum walk interval

Existing Facilities

There is no “Grandfather” Clause

Pre-ADA Facilities are Not “Grandfathered In”

When viewed in their entirety,
they must be readily accessible to
and usable by people with
disabilities



Existing Facilities – Transition Plans



“A public entity that employs 50 or more persons **must develop a transition plan by July 26, 1992,** setting forth the steps necessary to complete such changes.”

- 28 CFR § 35.150 (c) (ADA Title II Regulations)

Achieving Program Accessibility

Existing Facilities – The Plan

Transition Plan

1. **List of the physical barriers**
2. **Detailed outline of the methods to remove the barriers**
3. **Schedule**
4. **Name of the official responsible for the plan's implementation.**

**Recommended to*

review the plan every 3 years

Achieving Program Accessibility

Existing Facilities – Curb Ramps

Transition Plan – Curb Ramps

If a **public entity** has responsibility or authority over streets, roads, or walkways, its transition plan **shall include a schedule for providing ramps** or other sloped areas where pedestrian walks cross curbs.

- 28 CFR 35.150 (d)

Achieving Program Accessibility

Existing Facilities – Curb Ramp Location Priorities

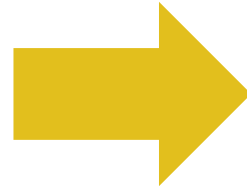
Transition Plan – Curb Ramps II **Priority Locations:**

- Walkways serving state and local government facilities
- Transportation
- Places of public accommodation
- Walkways serving other areas

Entities may want to have an ongoing procedure for installing curb ramps upon request by individuals with disabilities

New Construction

Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity after January 26, 1992, **shall be designed and constructed so the facility is readily accessible to and usable by individuals with disabilities.**



- **Facilities Built New After 1992 Must Comply**
- **New Facilities "Trigger" Other Requirements**

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Curb Ramps Are Required

Newly constructed streets must contain curb ramps at any intersection having curbs or other barriers.- *28 CFR § 35.151 (i)(1)*

Newly constructed pedestrian walkways must contain curb ramps at intersections to streets - *28 CFR § 35.151 (i)(2)*

New Construction Example 1 – Scenario

- A new crosswalk is created
- There are no existing curb ramps

What's required?



New Construction Example 1 – Answer

- New Marked Crosswalk
- Provide Curb Ramps to Serve the Crosswalk



New Construction Example 2 – Scenario

- Older adult resident requests new bus shelter at an existing bus stop
- There is no existing accessible route
- There is no bus boarding area



New Construction Example 2 - Answer

Required Improvements:

- An Accessible Route to the Shelter = Curb Ramp
- Wheelchair Clear Floor Space within the Shelter = Boarding Area
- An Accessible Route from Clear Floor Space to Bus Loading Pad = Sidewalk
- 60 x 96 boarding / alighting area



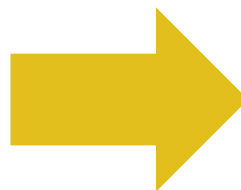
Achieving Program Accessibility Alterations Alterations

An alteration is a **modification to an existing facility that affects or could affect the usability** of all or part of the facility.

Alterations to Existing Facilities

Each facility or part of a facility altered by, on behalf of, or for the use of a public entity after January 26 , 1992:

- where the alteration affects or could affect usability
- **must**, to the maximum extent feasible, **be altered to be readily accessible to and usable by individuals with disabilities**



- **Facilities Altered After 1992 Must Comply**
- **Altered Facilities "Trigger" Other Requirements**

How Alterations Are Now Defined in PROWAG

Any portion of a pedestrian facility that is altered must be altered to comply with these guidelines regardless of the intended “scope of the project” by the entity that makes the alteration.

How Alterations Are Now Defined in PROWAG II

Facilities and portions of facilities that are “added” to an existing, developed public right-of-way are “alterations,” and are subject to the requirements for altered facilities.

Connecting Altered Facilities to A Circulation Path

Altered facilities must be connected to an existing pedestrian circulation path by a pedestrian access route

Achieving Program Accessibility – Roadway Alterations – Curb Ramps

- https://www.fhwa.dot.gov/civilrights/programs/ada/doj_fhwa_ta.cfm
- <https://www.ada.gov/doj-fhwa-ta-supplement-2015.html>
- *Kirola v. City and County of San Francisco (USDC, Northern District, Case No. 4:07-cv-03685-SBA).*

Altered streets, must contain curb ramps at any intersection having curbs or other barriers.- 28 CFR § 35.151 (i)(1)



Achieving Program Accessibility

What Are Roadway Alteration Activities?

Alterations of streets, roads, or highways include reconstruction, rehabilitation, resurfacing, widening, and similar projects.

1. Milling an existing street or road and overlaying it with materials
2. New layer of asphalt or other surface material with or without milling
3. Open-graded surface course

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Roadway Alteration Activities (cont)

Alterations of streets, roads, or highways include reconstruction, rehabilitation, resurfacing, widening, and similar projects.

4. Micro-surface and thin lift overlays
5. Cape seal
6. In-place asphalt recycling

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Curb Return and Sidewalk Alterations

Altered pedestrian walkways
must contain curb ramps at
intersections to streets - *28 CFR § 35.151 (i)(2)*



Achieving Program Accessibility

Crosswalk Alterations

Altered crosswalks require curb ramps be provided and accessible. -

DOJ/DOT Joint Technical Assistance



Achieving Program Accessibility

Alteration

v.

Maintenance

Define *Maintenance*

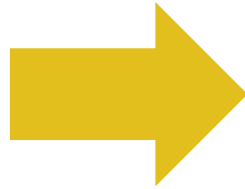
Maintenance is work that preserves an element and prolongs its usable life, in a routine and scheduled fashion.

Maintenance activities do not affect or potentially affect the usability of the facility.

The combination of several maintenance treatments occurring at or near the same time may qualify as an alteration.

Can I Stop the Work Before the Intersection?

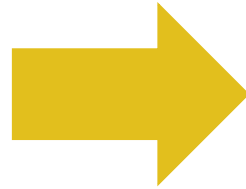
Remember the new
definition of alteration in
PROWAG



**Required pedestrian
facilities must be
included within the
project's scope of work**

Can I Address the Curb Ramps Later?

The curb ramp installation work can be contracted separately, but the work must be coordinated such that the curb ramp work is completed prior to, or at the same time as, the completion of the rest of the alteration work.



The curb ramps must be completed prior to or at the same time as the alteration work.

* Emergency repair projects can proceed. Curb ramps shall be completed immediately after.

Crosswalk Example

- Existing storm drain pipe is replaced.
- Limits of trench extend into the existing crosswalk.
- Trench fill repaves/reconstructs the entire crosswalk.

What's Required?



Crosswalk Example Answer

The Crosswalk has been Altered

- The **crosswalk** shall be accessible
- **Curb ramps** serving the crosswalk shall be accessible
- **Pedestrian push buttons** (when provided) shall be accessible



Alteration Example Parking

- Roadway has curb adjacent on-street metered parking.
- Project rehabs roadway and adds a bike lane between curb and parking.
- On-street parking is now adjacent to bike lane.



What's Required?

Alteration Example Parking Answer

The Roadway has been Altered

- **Crosswalks** shall be accessible
- The **curb ramps** within the limits of the work shall be accessible

The Parking has been Altered

- **On-street accessible parking** shall be provided



Are There Any Exceptions?

1. Safe Harbor
2. Structural Impracticability
3. Technical Infeasibility
4. Historic Preservation

* Remember, there is no “Grandfathering”

Safe Harbor

Path of travel elements constructed prior to March 15, 2012 and meet the requirements of the 1991 ADA Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) are not required to be reconstructed to current accessibility requirements as part of a roadway alteration project.

- This exception does not apply to newly constructed or altered facilities – only to the associated path of travel elements.

Structural Impracticability – New Construction

Full compliance is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements.

- Rare circumstances when the **unique characteristics of terrain** prevent the incorporation of accessibility features. *28 CFR Part 35, Sec. 35.151(a)*
- This exception **should not be applied in situations which a facility is located on “hilly” terrain or on a plot of land upon which there are steep grades.** In such circumstances, accessibility can be achieved without destroying the physical integrity of a structure, and is required in the construction of new facilities.” <https://www.ada.gov/1991standards/1991standards-archive.html>

Structural Impracticability – New Construction II

Compliance is still required to the extent that it is not structurally impracticable. Any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

If providing accessibility is structurally impracticable to individuals with certain disabilities (e.g., those who use wheelchairs), shall still be ensured to persons with other types of disabilities, (e.g., those who use crutches or who have sight, hearing, or mental impairments)

Technical Infeasibility – Alterations

An alteration of a building or a facility, that has little likelihood of being accomplished because the **existing structural conditions require the removal or alteration of a load-bearing member** that is an essential part of the structural frame, **or because other existing physical or site constraints prohibit** modification or addition of elements, spaces or features that are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility. *ADAS 106.5 Defined Terms.*

Where full compliance is determined to be technically infeasible, the alteration **shall comply with the requirement to the maximum extent feasible.**

28 CFR Part 35, Sec. 35.151(b)(1)

ADA Is A Civil Rights Law

Remember you're utilizing an exception to a **civil rights law** – do so cautiously!

Maintaining Accessible Features Examples



Maintaining Accessible Features

Maintain in working order features of facilities that are required to provide ready access to individuals with disabilities. (28 CFR § 35.133)

Isolated or temporary interruptions in access due to maintenance and repair of accessible features are not prohibited.



Maintaining Accessible Features (cont)

Where a public entity must provide an accessible route, the route must remain accessible and not blocked by obstacles.

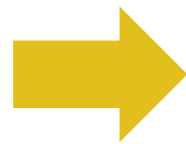
An isolated instance of placement of an object on an accessible route, however, would not be a violation, if the object is promptly removed.



Temporary Facilities

“These **requirements** shall **apply to temporary** and permanent buildings and **facilities.**”

- ADAS 201.3 (2010)



- **Temporary Facilities Must Comply**
- **Temporary Facilities Must not Reduce Access to Existing Facilities**

Alternate Pedestrian Access Routes

Must have:

- Signs
- Surface that is not less accessible than the surface of the temporarily closed path
- Clear width of 48"
- Curb ramp or blended transition at a curb
- Detectable edging
- Pedestrian signal heads

PROWAG Section R303



Example – Temporary Facilities

- Pandemic grips the world and indoor dining is prohibited.
- Businesses establish new dining areas on PROW sidewalks.
- Cities establish permitting process for new dining areas.

What's Required?



Movable Elements – Owner Notice

Provide info to Property Owner to reduce likelihood of noncompliance due to movable elements (trash cans, tables, etc)



Pedestrian Traffic Control – Not Accessible



Resources

US DOT 2006 ADA Standards for Transportation Facilities

<https://www.access-board.gov/guidelines-and-standards/transportation/facilities/ada-standards-for-transportation-facilities>

US DOJ 2010 ADA Standards

<http://www.ada.gov/regs2010/2010ADAStandards/2010ADAstandards.htm>

2023 PROWAG Final Rule

<https://www.federalregister.gov/documents/2023/08/08/2023-16149/accessibility-guidelines-for-pedestrian-facilities-in-the-public-right-of-way>

Resources II

US DOT / Federal Transit Administration Civil Rights ADA Regulations

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/ada-regulations>

US DOT / FHWA Civil Rights ADA Guidance

<https://www.fhwa.dot.gov/civilrights/programs/ada/resources.cfm>

ACCESSIBLE SHARED STREETS

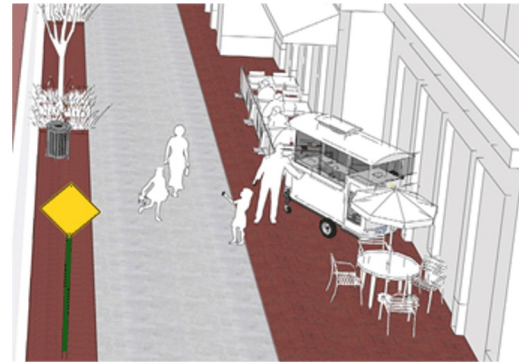
NOTABLE PRACTICES AND CONSIDERATIONS FOR
ACCOMMODATING PEDESTRIANS WITH VISION DISABILITIES



U.S. Department of Transportation
Federal Highway Administration

OCTOBER 2017

Publication Number: FHWA-HEP-17-266



Source:

https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/accessible_shared_streets/index.cfm#s

US DOT - FHWA Office of Civil Rights Guidance/Technical Assistance

Americans with Disabilities Act (ADA) × +

fhwa.dot.gov/civilrights/programs/ada/resources.cfm

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Federal Highway Administration

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Guidance/Technical Assistance

Points of Contact

Sharon Field
ADA Program Team Leader
(202) 366-4634
sharon.field@dot.gov

Jenna Shelton
Pathways Intern
(202) 366-3664
Jenna.Shelton@dot.gov

Maria Thomas
Program Analyst

Guidance

- [State DOT Transition Plan Attributes Review Guide](#)
- [Department of Justice/Department of Transportation Joint Technical Assistance1 on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing](#)
 - [Glossary of Terms for DOJ/FHWA Joint Technical Assistance on the ADA Title II Requirements to Provide Curb Ramps When Streets Roads or Highways are Altered Through Resurfacing](#)
 - [Q and As Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing](#)
 - [Webinar: ADA Requirements when Roads are Resurfaced: Questions and Answers, March 1, 2016](#)
 - [Presentation \(PDF, 515 KB\)](#)
 - [Transcript](#)
 - [Chat Transcript](#)
- [Notice of availability of the Access Board's November 2005 Draft Public Rights-of-Way Accessibility Guidelines](#)

Source: <https://www.fhwa.dot.gov/civilrights/programs/ada/resources.cfm>

Thank You!

