PERMIT-UNREASONABLE HARDSHIP APPLICATION

INTRODUCTION

The 2022 California Building Codes, Chapter 11B, Title 24 Accessibility Standards and Federal Americans with Disabilities Act (ADA) accessibility guidelines have specific provisions allowing certain features of a facility to be constructed without providing for full and strict compliance with the minimum requirements in found in order to be eligible for a specific exemption. This handout is provided to help explain the complexities of the State's provisions. Review and applicability of the Unreasonable Hardship provisions are determined on a project-by-project basis.

SECTION 305 ACCESSIBILITY FOR EXISTING BUILDINGS

Scope

The provisions of this division apply to renovations, structural repair, alterations, and additions to existing buildings, including those identified as historic buildings. This division identifies minimum standards for removing architectural barriers and providing and maintaining accessibility to existing buildings and their related facilities.

General

All existing buildings and facilities, when alterations, structural repairs or additions are made to such buildings or facilities, shall comply with all provisions of Division 1 – New Buildings, except as modified by this division. These requirements apply only to the area of specific alteration, structural repair or addition and shall include primary entrance to the building or facility and the primary path of travel to the specific area of alteration, structural repair or addition, and sanitary facilities, drinking fountains, signs and public telephones serving the area.

Exceptions

1. When the total construction cost of alterations, structural repairs or additions does not exceed a valuation threshold of $200,399.00, based on January 2024, "ENR US20 Cities" Average Construction Cost Index of 3372.02 (Engineering News Record, McGraw Hill Publishing Company), and the enforcing agency finds that compliance with this code creates an unreasonable hardship, compliance shall be limited to the actual work of the project. The enforcing agency shall annually update the valuation threshold to a current amount based on the increase in the index since the last figure used. For purposes of this exception, an unreasonable hardship exists where the cost of providing accessible entrance, path of travel, sanitary facilities, public phones and drinking fountains is disproportionate to the cost of the project; that is, where it exceeds 20 percent of the cost of the project without these features. Where the cost of alterations necessary to make these features fully accessible is disproportionate, access shall be provided to the extent that it can be without incurring disproportionate cost. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:
   - 1.1. An accessible entrance
   - 1.2. An accessible route to the altered area
   - 1.3. At least one accessible restroom for each sex
   - 1.4. Accessible telephones
   - 1.5. Accessible drinking fountains
   - 1.6. When possible, additional accessible elements such as parking, storage and alarms.

   The obligation to provide access may **not** be evaded by performing a series of small alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking. If an area has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area or a different area on the same path of travel are undertaken within three years of the original alteration, the total cost of alterations to the areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

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2. Certain types of privately funded, multistory buildings and facilities were formerly exempt from accessibility requirements above and below the first floor under this code, but as of the effective date of this regulation are no longer exempt due to more restrictive provisions in the Federal ADA. In alteration projects involving buildings and facilities previously approved and built without elevators, areas above and below the ground floor are subject to the 20%-percent disproportionally provisions described in Exception 1, above, even if the value of the project exceeds the valuation threshold in Exception 1. *

3. Alterations, structural repairs or additions consisting of one or more of the following shall be limited to the actual work of the project:
   - 3.1. Altering one building entrance to meet accessibility requirements.
   - 3.2. Altering one existing toilet facility to meet accessibility requirements.
   - 3.3. Altering existing elevators to meet accessibility requirements.
   - 3.4. Altering existing steps to meet accessibility requirements.
   - 3.5. Altering existing handrails to meet accessibility requirements.
   - 3.6. Alteration solely for the purpose of removing barriers undertaken pursuant to the requirements of Sections 36.402 and 36.404 through 36.406 of Title III of the Department of Justice regulations promulgated pursuant to the Americans with Disabilities Act (Public Law 101-336, 28 C.F.R. Section 36.402, 28 C.F.R. Section 36.404, 28 C.F.R. Section 36.405, and 28 C.F.R. 36.406) or the accessibility requirements of this code as those requirements or regulations now exist or are hereafter amended, and shall be limited to the actual work of the project. *

4. Projects which consist only of heating, ventilation, air conditioning, reroofing, electrical work not involving placement of switches and receptacles, cosmetic work that does not affect items regulated by this code, such as painting, equipment not considered to be a part of the architecture of the building or area, such as computer terminals, office equipment, etc., are not considered alteration projects for the purposes of accessibility for persons with disabilities and shall not be subject to this code unless they affect the usability of the building or facility. For the purposes of this section, the term “construction cost” does not include building permit fees or discretionary permit fees. The only purpose of this exception is to exclude projects from activating the provisions of this section. The exceptions are not intended to relieve projects from complying with other applicable provisions of this code (e.g., replacement of carpet does not activate the provisions of this section; however, it still must comply with Section 11B-302.2).* * Condensed for clarity. See the California Building Codes Sections 11A AND 11B for full code text.

*** Condensed for clarity. See the California Building Codes Sections 11A AND 11B for full code text.**

TECHNICALLY INFEASIBLE Chapter 2

Where it is technically infeasible in the area of alteration to make existing toilet facilities code compliant and to install separate toilet facilities for each sex, then the installation of at least one unisex toilet/facility per floor being altered, located in the same area as the existing toilet facilities, will be permitted. Such a facility shall meet the requirements of section 11A-9A,11B-601

EXPENDITURES FOR UNREASONABLE HARDSHIP COMPLIANCE

When an exemption is approved for partial compliance, the costs of the accessible upgrades are in addition to the value of the original alteration or improvement cost.

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DETERMINING PRIMARY OBLIGATIONS IN ALTERATIONS AND IMPROVEMENTS

It is extremely important to understand the difference between what is required for the "Specific Area of Alterations" and what modifications are required for the "Primary Path of Travel". These are totally separate issues and must be dealt with separately.

SPECIFIC AREA OF ALTERATION, STRUCTURAL REPAIR, OR ADDITIONS.

The cost must include every item necessary to complete the desires alteration, including electrical, plumbing, mechanical, carpeting, paint, ceiling tiles, lever handled hardware, walls, partitions, etc. If the planned alteration includes installation of new restrooms, these restrooms are considered part of the "Specific Area of Alteration".

PRIMARY PATH OF TRAVEL

This part determines what modifications will be necessary to provide an accessible path of travel to the specific area of alteration.

The "Path of Travel" is defined as: A passage that may consist of walks and sidewalks, curb ramps and pedestrian ramps, lobbies and corridors, elevators, other improved areas, or a necessary combination therefore, that provided free and unobstructed access to and egress from a particular area of location for pedestrian and/or wheelchair users. A path of travel includes a continuous, unobstructed way of pedestrian passage by means of which connect a particular area with an exterior approach (Including sidewalk, streets and parking areas), an entrance to the facility, and other parts of the facility. In existing buildings, when alterations, structural repairs or additions are made, the term "Path of Travel" also includes the sanitary facilities, telephones, drinking fountains and signs serving the altered area (11B-202.4)

SINGLE PATH

It is only necessary to provide a single primary path of travel to the area of specific alteration. This path of travel should be the most direct common route from the area of specific alteration to the primary entrance and out to the exterior approaches and must include access to the sanitary facilities, drinking fountains, and public telephones serving the area of specific alteration.

COMPLIANCE

Determination of Unreasonable Hardship is based solely on the 2022 California Building Code accessibility requirements of Section 11B and the specifically adopted codes as amended by the City of Covina Municipal Code. The exemption and subsequent plan review approvals have not been reviewed for Federal ADA compliance. It is the applicant's responsibility to check with your Design Professional or Lawyer as needed to determine ADA applicability and compliance requirements.

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PROJECT INFORMATION:

Project address: _____

Project description: _____

Use of Building _____ No. of Stories _____ Type of Construction _____

Project Valuation $ _____

The 2024 Current adjusted Valuation Threshold as determined by DSA in the state of California is $200,399.00

APPLICANT INFORMATION:

Name: _____

Address: _____

SPECIFY FULL COMPLIANCE OF ACCESSIBILITY FEATURE UPGRADES TO BE PROVIDED AND COST UNDER FOLLOWING PRIORITY:

1. **Accessible Path of Travel to building or facility Elements and Entrance** (including entry doorway, door hardware, etc.)

_____ Complies or $ _____

2. Accessible Routh/Path of Travel (to/within Area or Alteration, Structural Repair or Addition

_____ Complies or $ _____

3. **Accessible Restrooms for each sex**

_____ Complies or $ _____

4**. Accessible Drinking Fountain(s) and Public Telephone(s)**

_____ NA/Complies or $ _____

5. **Additional Accessible Elements/Features** (parking, storage, alarms, etc.)

_____ Complies or $ _____

Total cost of providing accessible path of travel features for this Project: **TOTAL** $ _____

Adjusted Construction Cost of Project: $ _____

(Note: The cost of alterations to path of travel elements above shall not be included in the adjusted construction cost.)

Compliance Cost Percentage: _____ %

(Note: Minimum 20% required, regardless of unreasonable hardship determination.)

☐ **The owner/agent for this project at the above referenced property does hereby attest that ALL existing path of travel features in Section 11B202.4 will meet either the current or immediately preceding edition (2022 CBC, with Supplements) of the California Building Code.**

☐ **The total adjusted construction cost of this project is less than the current Valuation Threshold, and a minimum of 20% of the adjusted construction cost will be spent to provide Section 11B202.4 compliance to the exis ting path of travel to the greatest extent possible.**

☐ **The full cost of compliance for the required accessible elements in Section 11B202.4 creates an unreasonable hard ship, and therefore this project is requesting an unreasonable hardship determination**

I have reviewed the above-described features and their cost, and they are an accurate description of the work being provided.

_____ _____

Signature of Applicant Date

_____ _____

Signature of Building Official Date Date

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NOTICE TO APPLICANTS FOR COMMERCIAL BUILDING PERMITS

DISABILITY ACCESS REQUIREMENTS AND RESOURCES

Under federal and state law, compliance with disability access laws is a serious and significant responsibility that applies to all California building owners and tenants with buildings open to the public. The following agencies provide information about your legal obligations and how to comply with disability access laws:

DEPARTMENT OF GENERAL SERVICES
Division of the State Architect, CASp Program
www.dgs.ca.gov/dsa
www.dgs.ca.gov/casp

DEPARTMENT OF REHABILITATION
Disability Access Services
www.dor.ca.gov
www.rehab.cahwnet.gov/disabilityaccessinfo

DEPARTMENT OF GENERAL SERVICES
California Commission on Disability Access
www.ccda.ca.gov
www.ccda.ca.gov/resources-menu/

CERTIFIED ACCESS SPECIALIST INSPECTION SERVICES

Compliance with state and federal construction-related accessibility standards ensures that public places are accessible and available to individuals with disabilities. By engaging in the services of a Certified Access Specialist (CASp) before you move into a newly constructed facility or alter your current facility, you will benefit from the advantages of compliance and benefit from legal protections under the Construction-Related Accessibility Standards Compliance Act (CRASCA, Civil Code 55.51-55.545).

Although your new facility may have already been permitted and approved by the building department, it is important to obtain CASp inspection services after your move-in because unintended access barriers and violations can be created, such as placing your furniture and equipment in areas required to be maintained clear of obstructions. For planned alterations, a CASp can review your improvement plans and provide an access compliance evaluation of your facility's public accommodation areas that may not be part of the alteration.

A CASp is a professional certified by the State of California to have specialized knowledge on the applicability of accessibility standards. CASp inspection reports prepared according to CRASCA entitle business and facility owners to specific legal benefits in the event that a construction-related accessibility claim is filed against them. To find a CASp, visit www.apps2.dgs.ca.gov/DSA/casp/casp_certified_list.aspx.

GOVERNMENT TAX CREDITS, TAX DEDUCTIONS AND FINANCING

State and federal programs below are available to assist businesses with access compliance and access expenditure.

Disabled Access Credit for Eligible Small Businesses

FEDERAL TAX CREDIT - Internal Revenue Code Section 44 provides a federal tax credit for small businesses that incur expenditures for the purpose of providing access to people with disabilities. Please refer to Internal Revenue Service (IRS) Form 8826: Disabled Access Credit at www.irs.gov.

STATE TAX CREDIT - Revenue and Taxation Code Sections 17053.42 and 23642 provide a state tax credit similar to the federal Disabled Access Credit, with exceptions. Please refer to Franchise Tax Board (FTB) Form 3548: Disabled Access Credit for Eligible Small Businesses at www.ftb.ca.gov.

Architectural and Transportation Barrier Removal Deduction

FEDERAL TAX DEDUCTION - Internal Revenue Code Section 190 allows businesses of all sizes to claim an annual deduction for qualified expenses incurred to remove physical, structural and transportation barriers for persons with disabilities. Please refer to IRS Publication 535: Business Expenses at www.irs.gov.

California Capital Access Financing Program

STATE FINANCE OPTION - The California Capital Access Program (CalCAP) Americans with Disabilities Act (CalCAP/ADA) financing program assists small businesses with financing the costs to alter or retrofit existing small business facilities to comply with the requirements of the federal ADA. Learn more at www.treasurer.ca.gov/cpcfa/calcap/.

FEDERAL AND STATE LEGAL REQUIREMENTS ON ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES AMERICANS WITH DISABILITIES ACT OF 1990 (ADA) - The ADA is a federal civil rights law that prohibits discrimination against individuals with disabilities and requires all public accommodations and commercial facilities to be accessible to individuals with disabilities. Learn more at www.ada.gov.

CALIFORNIA BUILDING CODE (CBC) - The CBC contains the construction-related accessibility provisions that are the standards for compliant construction. A facility's compliance is based on the version of the CBC in place at the time of construction or alteration. Learn more at www.bsc.ca.gov