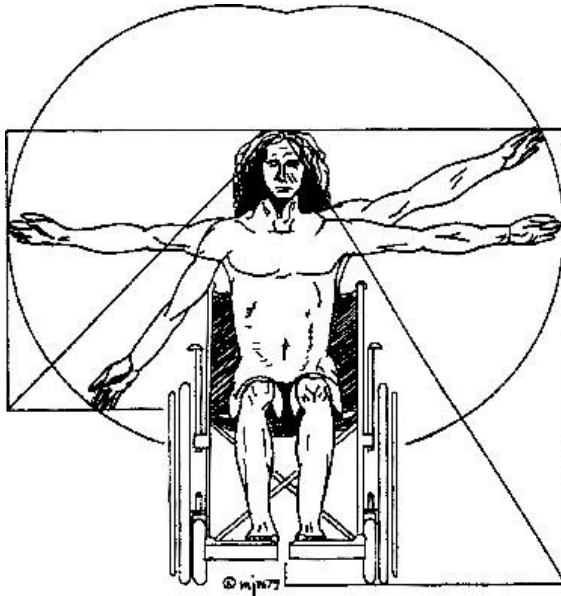


# How Does the ADA Apply to Historical Landmarks and Older Buildings?



Presented by

Mark J. Mazz, AIA and John Torkelson

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The slides in this program complement the verbal presentation and cannot stand alone. Without the verbal presentation, the slides may only partially express the concept or fact. Therefore, a reader who did not attend the presentation may misinterpret the meaning of the slides.



# Course / Learning Objectives

- Learn how Title III “Readily Achievable” applies.
- Learn how Title II “Program Access” applies.
- Learn the exceptions for qualified historic buildings.
- Learn some creative ways to ensure compliance with the Americans with Disabilities Act and the Texas Accessibility Standards.



# Title II: Program Access

- Public Entities:
  - State and local governments
  - Any of its departments, agencies, or other instrumentalities.
- Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.



# ADA Title II:

- Public Rights of Way must comply with Title II of the ADA





# Title II: Program Access:

- Programs, when viewed in their entirety, must be accessible.
- Examples:
  - Two story school with no elevator.
    - If all common (non-employee) spaces are on the first floor and a sufficient number of classrooms are on the first floor, then the second floor can remain inaccessible.
  - A city has 3 swimming pools, none accessible.
    - If one can provide all the programs and amenities and there is public transportation to it, then modify just that pool.





# Title II: Overview of Exceptions

- Not required to fundamentally alter the nature of a service, program, or activity.
- Not required to undergo undue financial and administrative burdens.
- However, they're not off the hook:
  - Public entities must furnish another auxiliary aid that does not result in a fundamental alteration or undue burdens.



# Title II: Program Access

- Cannot exclude individuals with disabilities from services, programs, and activities because their buildings are inaccessible.
- Need not remove all physical barriers in all existing buildings, if all the programs are accessible.
- Can provide the services, programs, and activities through alternative methods.





# Title II: Integrated Programs

- Integration is fundamental to compliance with the ADA.
- May not provide services or benefits through separate or different programs unless necessary to ensure that the benefits and services are equally effective.
- Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.





# Title II: Program Access:

- ADA Title II Action Guide for State and Local Governments:
  - <https://www.adaactionguide.org/>
- Compliance with the ADA: A Self-Evaluation Guide for Public Elementary and Secondary Schools
  - <https://files.eric.ed.gov/fulltext/ED401688.pdf>
- ADA Self-Evaluation (*If ETA ever gets it up and running*) :
  - <https://www.corada.com/ada-self-evaluation-early-access>



# Title II: Program Access:

- Consult with Disability Community
  - State or local accessibility officials,
  - Individuals with disabilities, and
  - Organizations representing individuals with disabilities.





# Budgetary Constraints Considered: Transition Plan:

- The small City of Hyattsville is has a police department and a few recreation facilities.
  - <http://www.hyattsville.org/498/ADA-Transition-Plan>
- The less effort given to the self-evaluation of programs, the more it costs to remediate facilities.



Mark J. Mazz, AIA

## Hyattsville ADA Transition Plan

Prepared by Mark J. Mazz, AIA  
and Arnold & Arnold

April 2, 2012

4016 Jefferson Street, Hyattsville, MD 20781

Architecture

Consulting  
301-440-4276

Barrier-Free Design  
mark.j.mazz@verizon.net

www.markjazz.com

2/3/2021

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### IX. Compilation of Costs

	Hyattsville Municipal Building	Magruder Park and Community Center	University Christina Church	St. Matthew's Church	Hyattsville Dept. of Public Works	Burlington Park	Centennial Memorial Park	Madre Park	Henrich Playground	Hyatt Park	Cabin MacClanahan Memorial Park	Robert J. King Memorial Park	3585 Hamilton Street	4318 Gallatin Street	Gallatin Street and 41st Avenue*	Gallatin Street and 43rd Avenue*	Nicholson Street and 31st Place*	Total
<b>Project Cost Hyattsville</b>																		
Priority 1 - 4:	\$31,283	\$2,000	\$21,023	\$17,893	\$923	\$0	\$0	\$0	\$0	\$0	\$0	\$8,200	\$0	\$0	\$0	\$0	\$0	\$81,319
Priority 5 - 9:	\$70,450	\$133,693	\$800	\$0	\$230	\$0	\$0	\$0	\$0	\$0	\$0	\$33,330	\$0	\$0	\$0	\$0	\$0	\$268,543
Priority 10 - 14:	\$19,500	\$22,140	\$0	\$0	\$0	\$0	\$0	\$10,300	\$7,773	\$0	\$0	\$1,000	\$0	\$0	\$17,440	\$17,800	\$14,100	\$118,053
Priority 15 - 19:	\$3,990	\$23,960	\$0	\$0	\$0	\$31,450	\$0	\$334	\$1,000	\$44,280	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$105,030
Priority 20 - 25:	\$31,030	\$11,100	\$0	\$0	\$0	\$1,500	\$9,300	\$600	\$5,680	\$3,000	\$12,080	\$0	\$31,430	\$26,460	\$0	\$0	\$0	\$132,200
<b>Subtotal</b>	<b>\$156,233</b>	<b>\$182,893</b>	<b>\$21,823</b>	<b>\$17,893</b>	<b>\$1,173</b>	<b>\$32,930</b>	<b>\$9,300</b>	<b>\$11,230</b>	<b>\$14,753</b>	<b>\$47,280</b>	<b>\$12,080</b>	<b>\$64,330</b>	<b>\$31,700</b>	<b>\$26,460</b>	<b>\$17,440</b>	<b>\$17,800</b>	<b>\$14,100</b>	<b>\$619,129</b>
<b>Project Cost MSHA</b>																		
Priority 1 - 4:	\$4,760	\$660					\$8,050											\$14,470
Priority 5 - 9:	\$0	\$0					\$0											\$0
Priority 10 - 14:	\$0	\$0					\$7,230											\$7,230
Priority 15 - 19:	\$0	\$0					\$2,000											\$2,000
Priority 20 - 25:	\$0	\$0					\$300											\$300
<b>Subtotal</b>	<b>\$4,760</b>	<b>\$660</b>					<b>\$11,830</b>											<b>\$18,030</b>
<b>Project Cost MNCPPC</b>																		
Priority 1 - 4:	\$230																	\$230
Priority 5 - 9:	\$0																	\$0
Priority 10 - 14:	\$0																	\$0
Priority 15 - 19:	\$0																	\$0
Priority 20 - 25:	\$0																	\$0
<b>Subtotal</b>	<b>\$230</b>																	<b>\$230</b>
<b>Project Cost PGDPWT</b>																		
Priority 1 - 4:										\$0								\$0
Priority 5 - 9:										\$0								\$0
Priority 10 - 14:										\$0								\$0
Priority 15 - 19:										\$16,150								\$16,150
Priority 20 - 25:										\$0								\$47,875
<b>Subtotal</b>										<b>\$16,150</b>								<b>\$64,025</b>
<b>Total per site</b>	<b>\$156,233</b>	<b>\$183,493</b>	<b>\$21,823</b>	<b>\$17,893</b>	<b>\$1,173</b>	<b>\$32,930</b>	<b>\$9,300</b>	<b>\$11,230</b>	<b>\$14,453</b>	<b>\$63,430</b>	<b>\$12,080</b>	<b>\$64,560</b>	<b>\$69,325</b>	<b>\$26,460</b>	<b>\$17,440</b>	<b>\$17,800</b>	<b>\$14,100</b>	<b>\$631,430</b>

MSHA = Maryland State Highway Administration  
MNCPPC = The Maryland - National Capital Park and Planning Commission  
PGDPWT = Prince George's County Department of Public Works and Transportation  
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\* The three typical intersections illustrated in the above columns, were surveyed to understand typical existing conditions. Scope parameters to determine City-wide needs will need to be developed by the City Administration to fully address the Transition Plan, with respect to street improvements and prioritization.

# Budgetary Constraints Considered: Transition Plan:



**KEY**

- Proposed solutions - see red item numbers on the Transition Plan spread sheets that follow this page
- Accessible route
- Accessible surface at play equipment (approximate area)



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ADA Transition Plan - April 2, 2012

Hyattsville Municipal Building - Hyattsville Transition Plan								
Address: 4310 Callatin Street								
2010 Standards Citation	Description/Issue/Requirement	Non-Complying Item	Photos	Proposed Solution	Suggested Priority	Projected Cost Hyattsville	Projected Date	Action and Date
59	213.2, 604.5, 609.3	Where flush controls for flush valves are located in a position that conflicts with the location of the rear grab bar, then the rear grab bar shall be permitted to be split or shifted to the open side of the toilet area.	In the First Floor Public Women's Toilet Room, the rear grab bar is blocked by the plumbing pipe for the flush valve.	2299	Install two new grab bars that mount 1 1/2" from wall and on either side of the flush valve pipe.	25	\$820	
60	213.2, 606.5	Pipes under the lavatory must be insulated to protect a person from burns and from sharp or abrasive edges.	In the First Floor Public Women's Toilet Room, the pipes under the lavatory are not insulated completely.	2288	Install removable insulative cover.	25	\$200	
61	213.2, 604.2	Centerline of toilet must be 16" to 18" from sidewall.	In the First Floor Public Women's Toilet Room, the toilet centerline is 19 3/8" from the sidewall.	2289	Using an offset flange relocate the water closet to 18" from the side wall.	25	\$850	
62		<b>First Floor Multipurpose Room (also Voting Location Ward 1)</b>						
63	227.3, *904.4	A 36" wide portion of the service counter must be no higher than 36".	At the Multipurpose Room, the counter is 40 1/4" high.	2161, 2162	Provide 3'-0" long accessible counter mounted with top at 34" above the floor, adjacent to existing counter.	10	\$1,000	
64	*216.4.1, 703.4.1	Door at exit passageways, exit discharge, and exit stairways have exit signs. Therefore, these locations also must have accessible signs mounted in accessible locations. The tactile characters on the signs must be mounted between 48" and 60" above the floor.	The exit signs at the Multipurpose Room exit doors do not have Braille characters.	2150, 2159, 2154	Install new exit signs with both text and Braille letters. Mount with text located between 48" and 60" above the floor.	6	\$500	
65	*216.4.1, 703.4.1	Door at exit passageways, exit discharge, and exit stairways have exit signs. Exit signs must have Braille characters.	The exit signs at the Multipurpose Room exit doors are mounted between 35" and 38" above the floor.	2150, 2154, 2159	Corrected with solution for item 64	6	see item 64	
66		<b>First Floor Kitchen</b>						
67	206.5, 404.2.4	The pull side of the door requires a forward approach. Therefore, the maneuvering space must be 60" deep and must extend 18" to the side of the latch.	At the kitchen door, the maneuvering space is 14" beside the latch side of the door.	2202	Remove base cabinet and cut back countertop to provide required clear floor space at door approach.	10	\$1,500	
68	206.5, 404.2.7	The door hardware must be operable without tight grasping, tight pinching, or twisting of the wrist.	The kitchen door has a knob that requires tight grasping and twisting to operate.	2199	Replace knob lockset with lever mortise set.	10	\$800	
69	205, *309.3	Operable part must be within reach. This Operable part requires a side reach over an obstruction more than 34" tall. Therefore, the operable part must be within 46" of the floor and the obstruction must be lowered to 34" tall.	Light switches, the garbage disposal switch and outlets are located over 36" tall counters, and are 49" above the floor.	2195	Lower electrical controls and relocate when positioned over a countertop higher than 34" above the ground.	10	\$3,900	

Note: Item numbers indicated in red are keyed to the aerial site map for the facility. The aerial site map is on the first page of each facility section.

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ADA Transition Plan - April 2, 2012

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Hyattsville Accessibility Transition Plan



100\_2197  
Hyattsville Municipal Building

Hyattsville Municipal Building and Ward 1 Voting Location



100\_2198  
Hyattsville Municipal Building



100\_2199  
Hyattsville Municipal Building

Page 19 of 78



100\_2200  
Hyattsville Municipal Building



100\_2201  
Hyattsville Municipal Building



100\_2202  
Hyattsville Municipal Building



100\_2203  
Hyattsville Municipal Building



100\_2204  
Hyattsville Municipal Building



100\_2205  
Hyattsville Municipal Building



100\_2206  
Hyattsville Municipal Building



100\_2207  
Hyattsville Municipal Building



100\_2208  
Hyattsville Municipal Building

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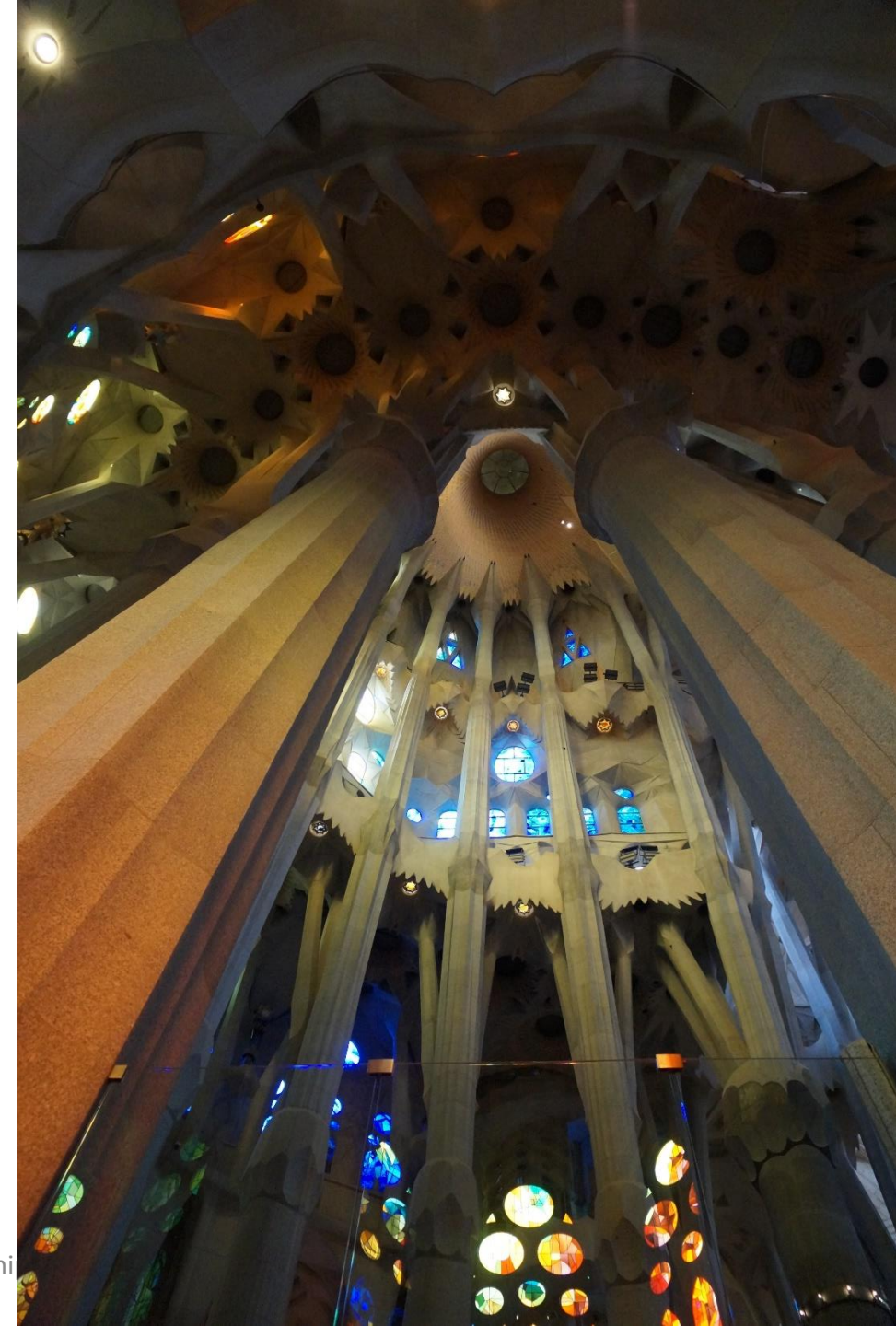
# Title III: Readily Achievable

- Public Accommodations (private entities that own, operate, or lease.)
- Commercial Facilities.



# Who is not Covered by Title II or III?

- Entities controlled by religious organizations.
- Private clubs, except to the extent that the facilities of the private club are made available to customers or patrons of a place of public accommodation.





# Title III: Overview of Requirements

- The ADA requires barrier removal in existing Places of Public Accommodation:
  - Remove barriers in existing facilities where readily achievable.
    - Provide alternative measures when removal of barriers is not readily achievable.
  - Maintain accessible features of facilities and equipment.
  - Furnish auxiliary aids when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

# Title III: Readily Achievable

- Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."
- Examples of barrier removal measures include --
  - Installing ramps,
  - Making curb cuts at sidewalks and entrances,
  - Rearranging tables, chairs, vending machines, display racks, and other furniture,
  - Widening doorways,
  - Installing grab bars in toilet stalls, and
  - Adding raised letters or Braille to elevator control buttons.

# Title III: Readily Achievable

- Should comply with alterations provisions in ADAAG if possible.
- If not, then other safe measures must be taken.

# Title III: Readily Achievable

- Remove barriers in this order:
  - Provide access to the facility entrance.
  - Provide access to the goods and services.
  - Provide access to the toilet facilities.
  - Remove all other barriers.

# Title III: Readily Achievable

- *Readily achievable* means easily accomplishable and able to be carried out without much difficulty or expense.
  - Cost of the action needed
  - Overall financial resources of the company and parent company
  - Legitimate safety concerns



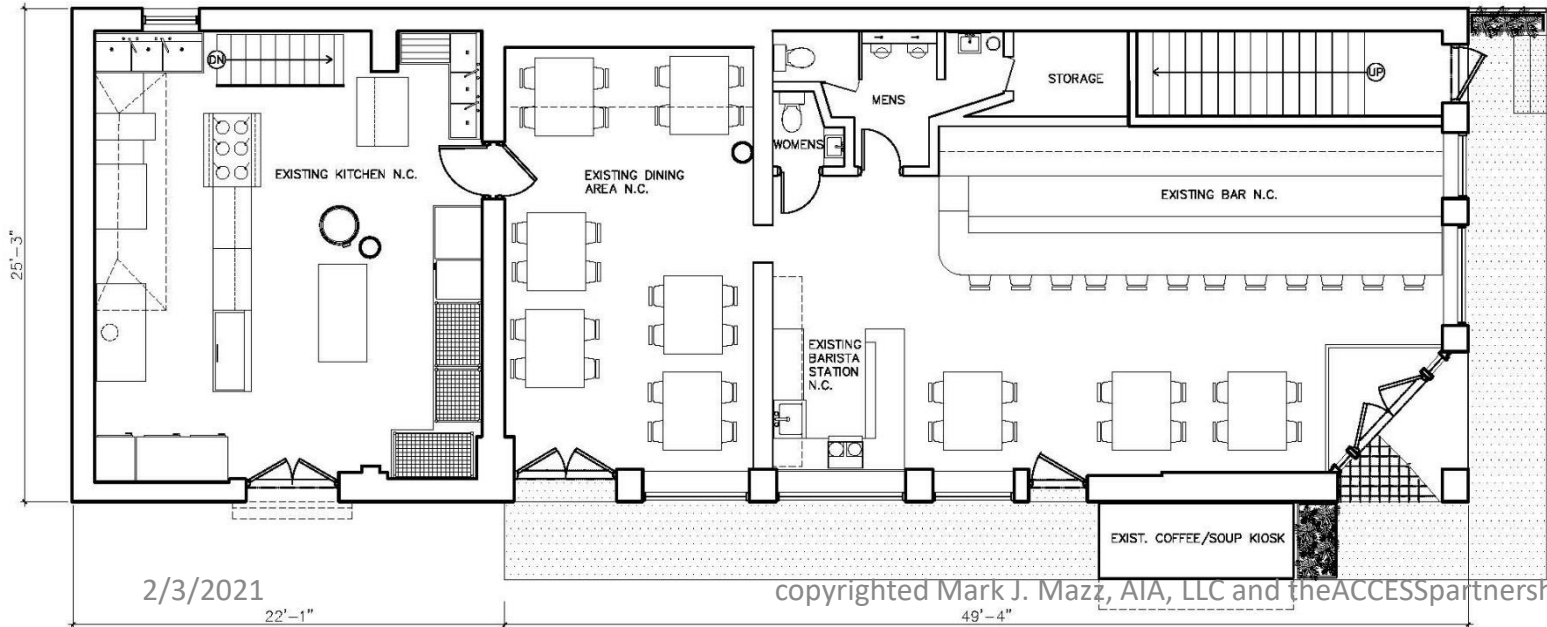
# Title III: Readily Achievable

- Examples:
  - Installing ramps;
  - Making curb cuts in sidewalks;
  - Rearranging tables, chairs, vending machines, display racks, and other furniture;
  - Eliminating a turnstile or providing an alternative accessible path;
  - Installing accessible door hardware;
  - Installing grab bars in toilet stalls;
  - Rearranging toilet partitions to increase maneuvering space;
  - Insulating lavatory pipes under sinks to prevent burns;
  - Installing a raised toilet seat;
  - Creating designated accessible parking spaces





# Title III: Readily Achievable



# Texas Accessibility Standards

**202.5 Alterations to Qualified Historic Buildings and Facilities.** Alterations to a qualified historic building or facility shall comply with 202.3 and 202.4. *Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places or are designated as a Recorded Texas Historic Landmark or State Archeological Landmark shall comply to the maximum extent feasible with this part. If it is determined that it is not feasible to provide physical access to an 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 these requirements.*

**EXCEPTION:** Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply *when approved by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code.*

**Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception.** State Historic Preservation Officers are State appointed officials who carry out certain responsibilities under the National Historic Preservation Act. State Historic Preservation Officers consult with Federal and State agencies, local governments, and private entities on providing access and protecting significant elements of qualified historic buildings and facilities. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (206.2.1 Exception 1 and 206.2.3 Exception 7); entrances (206.4 Exception 2); and toilet facilities (213.2 Exception 2). When an entity believes that compliance with the requirements for any of these elements would threaten or destroy the historic significance of the building or facility, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception is permitted *when approved by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code.*



# Historic Preservation

- A qualified historic building or facility is:
  - Listed in or eligible for listing in the National Register of Historic Places; or
  - Designated as historic under an appropriate State or local law.



# Who Makes the Determination?

- Alterations to Qualified Historic Facilities are subject to Section 106 of the National Historic Preservation Act:
- The State Historic Preservation Officer or Advisory Council on Historic Preservation makes the determination.

# Who Makes the Determination?

- If the facility is not Subject to Section 106:
- The State Historic Preservation Officer makes the determination.

# Procedure

- Certified in accordance with section 101(c) of the National Historic Preservation Act of 1966 (16 U.S.C. 470a (c)) and implementing regulations (36 CFR 61.5),
- The responsibility may be carried out by the appropriate local government body or official.



# Historic Preservation

- Shall comply with the Alterations Requirements unless it is determined that compliance with the requirements for:
  - Accessible routes (exterior and interior),
  - Ramps,
  - Entrances, or
  - Toilets
- Would threaten or destroy the historic significance of the facility.
- In which case specific alternative minimum requirements may be used for the feature.



# Historic Preservation

- Consult with Disability Community
  - State or local accessibility officials,
  - Individuals with disabilities, and
  - Organizations representing individuals with disabilities.
- Helpful Guidance:
  - <https://www.nps.gov/tps/how-to-preserve/briefs/32-accessibility.htm#:~:text=Historic>



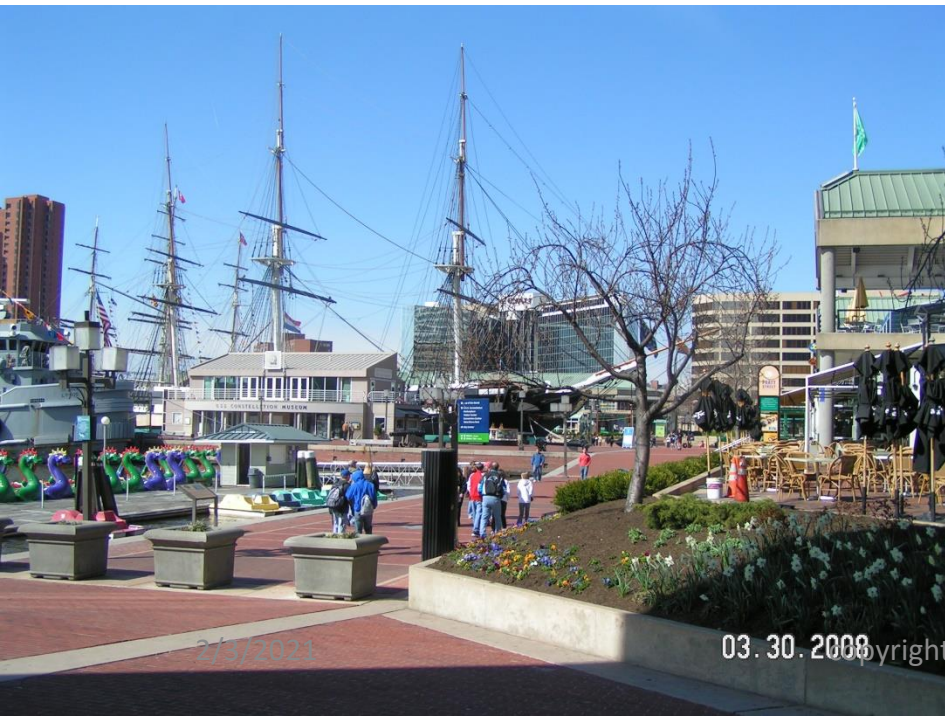


# Historic Preservation – Minimum Requirements

- If it is determined that compliance with the requirements for:
  - Accessible routes (exterior and interior),
  - Ramps,
  - Entrances, or
  - Toilets
- Would threaten or destroy the historic significance of the facility.
- Then . . .







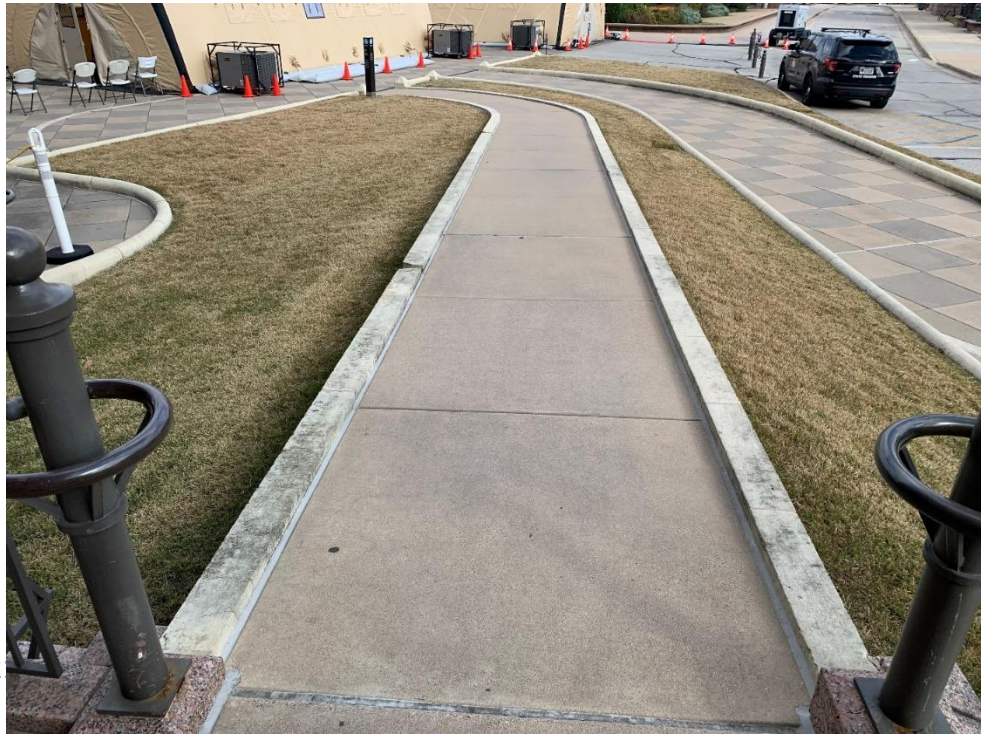


# Historic Preservation – Minimum Requirements

- Ramps:
  - A ramp with a slope no greater than 1:6 for a run not to exceed 2'-0" may be used as part of an accessible route to an entrance.









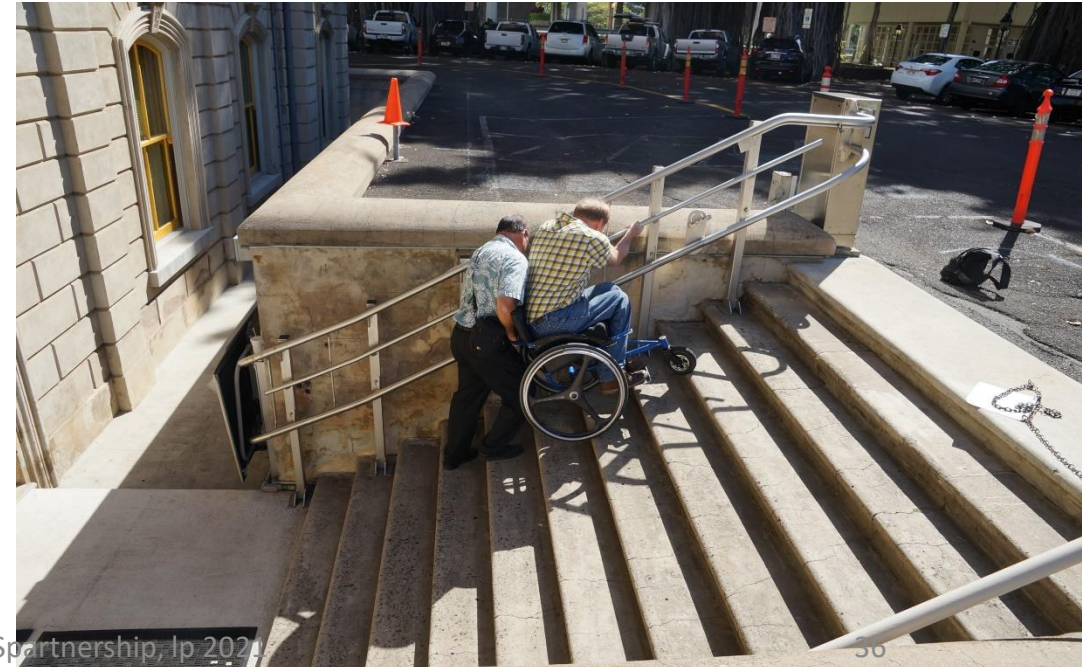
# Temporary Ramps





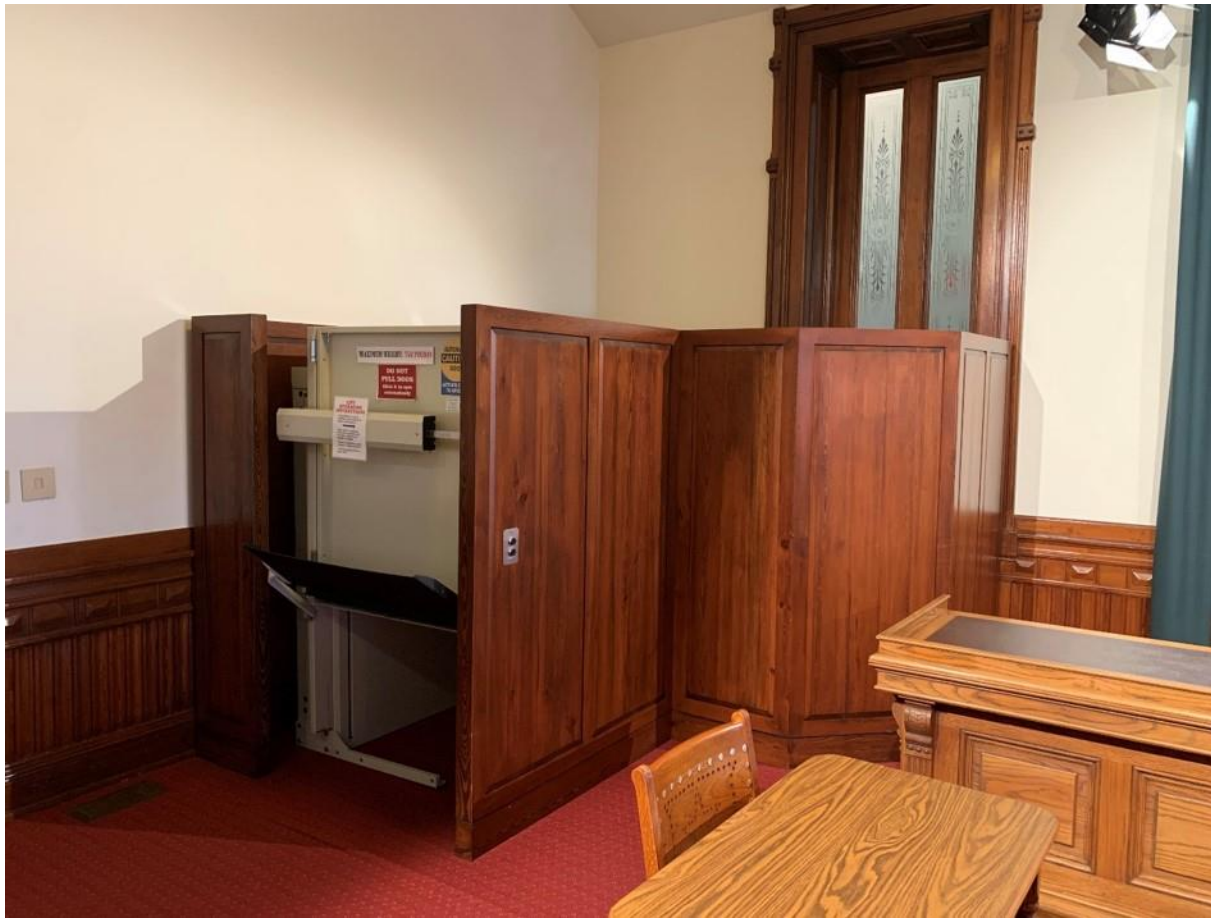
# Historic Preservation – Minimum Requirements

- Entrances:
  - Use a non-public entrance that is unlocked.
  - Provide directional signage.
  - Provide a notification system. Where security is a problem, remote monitoring may be used.



# Minimum Requirements: Accessible Routes

- Access shall be provided to all levels of a building or facility whenever practical.



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# Minimum Requirements: Accessible Routes

- Accessible routes from an accessible entrance to all publicly used spaces on at least one floor.



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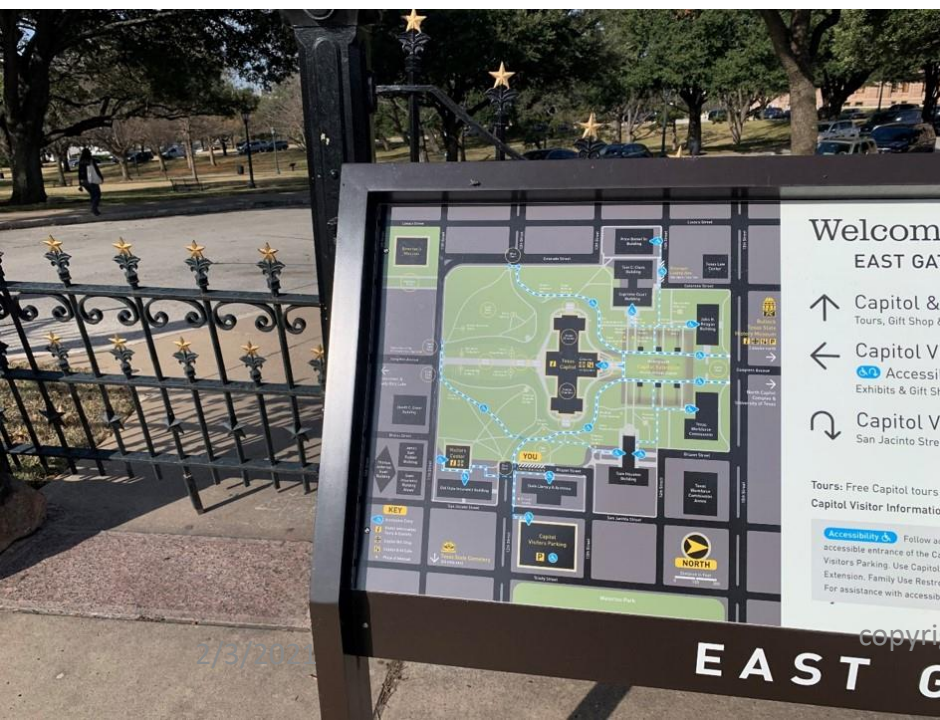






# Directional Signage

- Directional signs are required when not all entrances are accessible.









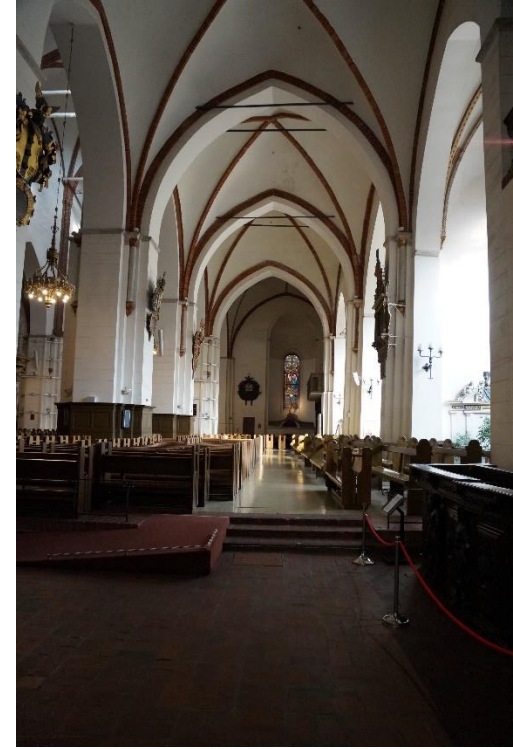
# Historic Preservation – Minimum Requirements

- Accessible Routes:
  - Access shall be provided to all levels of a building or facility whenever practical.
  - Accessible routes from an accessible entrance to all publicly used spaces on at least one floor.



# Historic Preservation – Minimum Requirements

- Toilets:
  - At least one compliant toilet facility shall be provided along an accessible route.
  - It may be a Unisex toilet.





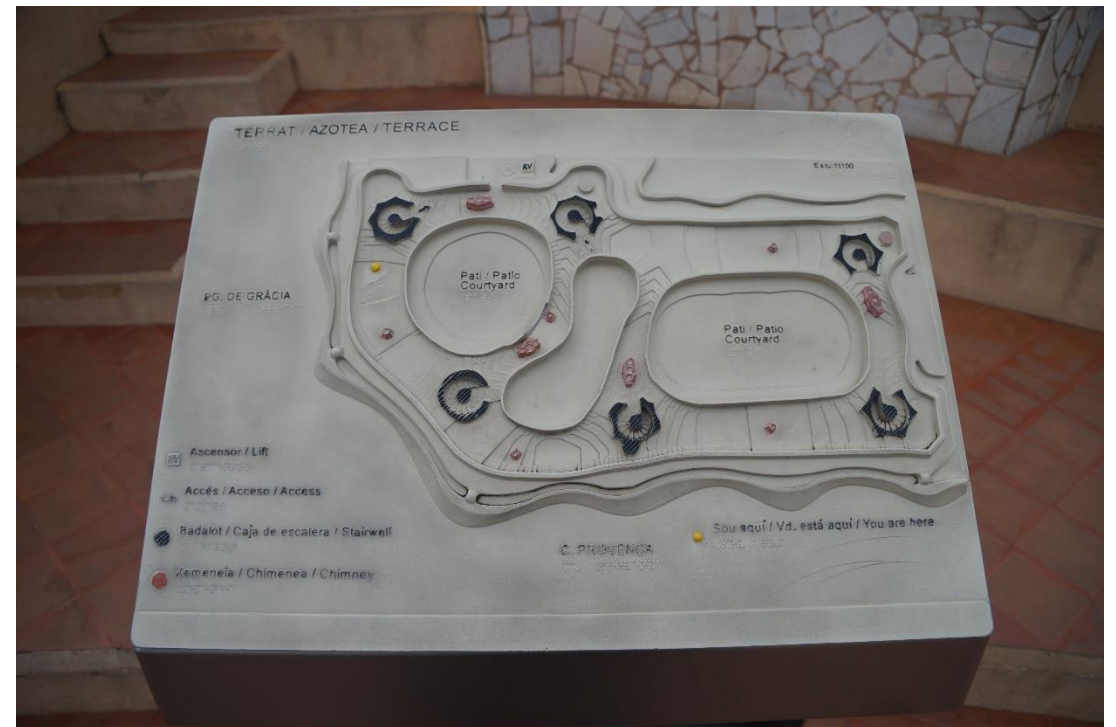
# Historic Preservation – Minimum Requirements

- Toilets:
  - At least one compliant toilet facility shall be provided along an accessible route.
  - It may be a Unisex toilet.



# Historic Preservation –Minimum Requirements

- Displays and written information, documents, etc., should be located where they can be seen by a seated person.
- Exhibits and signage displayed horizontally (e.g., open books), should be no higher than 44” above the floor surface.



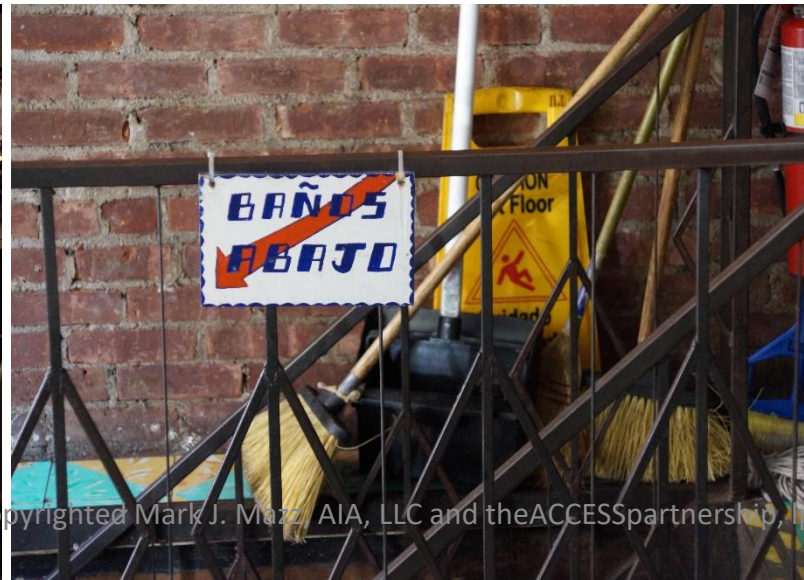


# Interpretative Exhibits





# Alterations:



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# Title II: Alterations

- Ensure that the altered portions are accessible.
- The elevator exemption in ADAAG is not allow for Title II facilities.



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# Titles II & III: Alterations to a Primary Function Area

- A Primary Function Area is part of the purpose for the facility.  
Examples:
  - Lobby of a bank
  - Classroom
  - Office
- Path of Travel is the accessible route to a primary function area including its appendages, Examples:
  - Toilet rooms
  - Telephones,
  - Drinking fountains



# Texas Accessibility Standards

## **68.101. State Leases.**

(c) Buildings or facilities that are leased or occupied in whole or in part for use by the state, shall meet the following requirements of TAS:

(1) New construction shall comply with TAS 201.1.

(2) Additions shall comply with TAS 202.2.

(3) Alterations shall comply with TAS 202.3 and 202.4

**(4) Historic buildings or facilities shall comply with TAS 202.5.**

(5) Existing buildings and facilities are ones that have not been constructed, renovated, or modified since April 1, 1994. In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

(A) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 208 and 502.

(B) An accessible route from the parking area(s) shall comply with TAS 206 and 402.

(C) At least one entrance serving the leased space shall comply with TAS 206.4.5 and 404.

(D) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 213 and 603.

(E) Signage at toilet rooms or bathrooms shall comply with TAS 703. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 703.1, 703.2.4, 703.2.5, 703.6.2 and 703.7, indicating the location of the nearest accessible toilet room or bathroom within the facility.

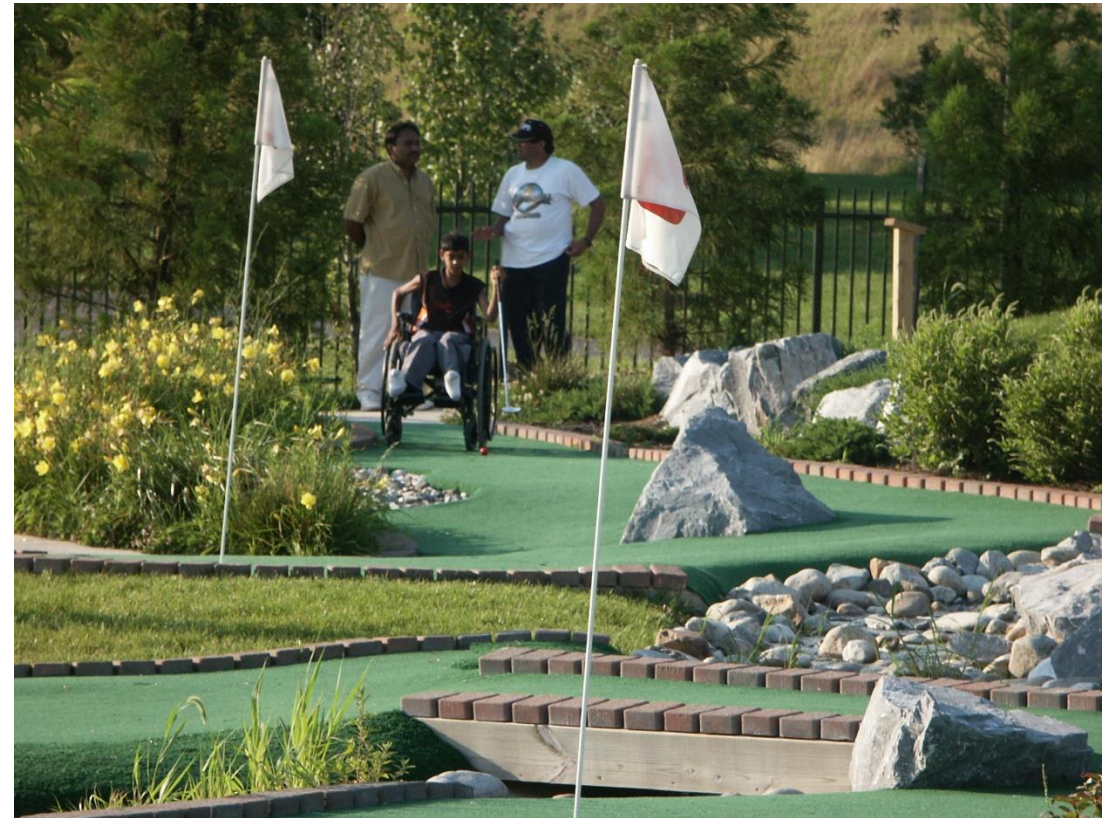
(F) If drinking fountains are required by the lease agreement, or are provided to serve the leased area, at least one fountain shall comply with TAS 602. If more than one drinking fountain is provided, at least 50% shall comply with TAS 602.

(G) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 704.

(H) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 201.1.

# Titles II & III: Alterations

- Alterations - Technically Infeasible:
  - Little likelihood of being accomplished because existing conditions would require removing or altering an essential part of the structural frame; or
  - Existing physical or site constraints **prohibit** full compliance





# ADA Standards

- Title III Regulations, sample:
  - Sec.36.403 Alterations: Path of travel.
- (3) (f) Disproportionality. (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.

# Texas Accessibility Standards

**202.4 Alterations Affecting Primary Function Areas.** In addition to the requirements of 202.3, an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the parking areas, rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope. *For purposes of ensuring compliance with requirements of Texas Government Code, Chapter 469, all determinations of maximum extent feasible and disproportionality are made by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code. If elements of a path of travel at a subject building or facility that have been previously constructed or altered in accordance with the April 1, 1994 Texas Accessibility Standards (TAS) they will enjoy safe harbor and are not required to be retrofitted to reflect the incremental changes in the 2012 TAS solely because of an alteration to a primary function area served by that path of travel. Those elements would be subject to compliance with the 2012 TAS only when the elements of a path of travel are being altered.*

EXCEPTIONS:

1. Residential dwelling units shall not be required to comply with 202.4.
2. *If a tenant is making alterations as defined in 106.5.5 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.*



# Texas Accessibility Standards

**202.5 Alterations to Qualified Historic Buildings and Facilities.** Alterations to a qualified historic building or facility shall comply with 202.3 and 202.4. *Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places or are designated as a Recorded Texas Historic Landmark or State Archeological Landmark shall comply to the maximum extent feasible with this part. If it is determined that it is not feasible to provide physical access to an 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 these requirements.*

**EXCEPTION:** Where the State Historic Preservation Officer or Advisory Council on Historic Preservation determines that compliance with the requirements for accessible routes, entrances, or toilet facilities would threaten or destroy the historic significance of the building or facility, the exceptions for alterations to qualified historic buildings or facilities for that element shall be permitted to apply *when approved by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code.*

**Advisory 202.5 Alterations to Qualified Historic Buildings and Facilities Exception.** State Historic Preservation Officers are State appointed officials who carry out certain responsibilities under the National Historic Preservation Act. State Historic Preservation Officers consult with Federal and State agencies, local governments, and private entities on providing access and protecting significant elements of qualified historic buildings and facilities. There are exceptions for alterations to qualified historic buildings and facilities for accessible routes (206.2.1 Exception 1 and 206.2.3 Exception 7); entrances (206.4 Exception 2); and toilet facilities (213.2 Exception 2). When an entity believes that compliance with the requirements for any of these elements would threaten or destroy the historic significance of the building or facility, the entity should consult with the State Historic Preservation Officer. If the State Historic Preservation Officer agrees that compliance with the requirements for a specific element would threaten or destroy the historic significance of the building or facility, use of the exception is permitted *when approved by the Department in accordance with the variance procedures contained in Chapter 68, Texas Administrative Code.*

# Texas Accessibility Standards

- **16 Texas Administrative Code, Chapter 68**

- **68.31. Variance Procedures.**

- *(Effective June 1, 1994, 19 TexReg 3485; amended effective May 6, 1998, 23 TexReg 4263; amended effective June 26, 2000, 25 TexReg 6122; repealed effective November 5, 2001, 26 TexReg 8807, new rule section effective November 5, 2001, 26 TexReg 8807; amended effective February 1, 2005, 30 TexReg 382; amended effective March 1, 2007, 32 TexReg 884; amended effective March 15, 2012, 37 TexReg 677; amended effective May 15, 2017, 42 TexReg 2333)*
- (a) Requests to waive or modify an accessibility standard shall be submitted on the Variance Application form. A separate Variance Application form shall be submitted for each TAS standard within a single building or facility.
- (b) Variance Applications shall be accompanied by the applicable fee, plans of all affected areas, and any supporting documentation such as photos, cost analyses, and code references.
- (c) A denial of a Variance Application may be appealed to the Director of Compliance, or his designee, in writing upon payment of the applicable appeal fee. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed must be submitted for consideration.
- (d) A denial of an Appeal from the Director of Compliance may be appealed to the Executive Director of the Texas Department of Licensing and Regulation, or his designee, in writing. Supporting documentation such as plans of all affected areas, photos, cost analyses and code references not previously reviewed may be submitted for consideration.
- (e) When a Variance or Appeal determination has been made, the owner and the person making the submission shall be advised in writing of the determination.
- (f) Variance and Appeal determinations shall be based on the information and supporting documentation submitted with the application and shall be issued in accordance with §469.151 and §469.152 of the Act.



# Texas Accessibility Standards

- Variance Application



## TEXAS DEPARTMENT OF LICENSING & REGULATION

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 techinfo@tdlr.texas.gov • www.tdlr.texas.gov

### VARIANCE APPLICATION

A separate variance application must be submitted by the owner (or owner's designated agent) for each (non-compliant) condition within a single building or facility which must include a \$175.00 **non-refundable application fee**. If the project has not already been registered and assigned a TDLR project number, an additional \$175.00 **non-refundable registration fee** must be included with the application.

In addition, the application must be accompanied by plans (site and/or architectural) of all affected areas and any supporting documentation that provides adequate proof that compliance with the specific Texas Accessibility Standard (TAS) is impractical or irrelevant to the nature, use, or function of the building or facility. The department shall issue a decision based on the information submitted with the application as well as Texas Government Code §469.151 and §469.152. **Incomplete applications will not be processed.**

#### FORM MUST BE COMPLETED IN FULL

1. Has this project been reviewed for compliance with TAS? <input type="checkbox"/> Yes <input type="checkbox"/> No		2. If yes, name of RAS who reviewed the project:	
3. Has this project been inspected for compliance with TAS? <input type="checkbox"/> Yes <input type="checkbox"/> No		4. If yes, name of RAS who inspected the project:	
5. If yes, date of inspection:			
6. Project Name:			7. TDLR Project #: (if registered.)
8. Building/Facility Name:			
9. Address:		Suite No.:	City:
Zip Code:			
10. Description: Indicate the type of project: <input type="checkbox"/> New Construction <input type="checkbox"/> Addition <input type="checkbox"/> Alteration		11. Scope of Work: (Describe the construction activities)	
12. Estimated Project Construction Cost:		13. Original date of construction of this building/facility:	
14. Square Footage of Building:		15. Square Footage Per Floor:	
16. Is this building a qualified historic building? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, a copy of the determination of effect letter from the Texas Historical Commission (THC) must accompany this application.		17. Is this building being considered for a state lease? <input type="checkbox"/> Yes <input type="checkbox"/> No Is a state agency currently located in this building? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, provide the state lease number:	
18. State the TAS reference number for which the variance is requested:		19. State the specific location of the violation within the building or site:	
20. Explain in detail, why compliance with this TAS standard cannot be achieved: (attach additional sheets if necessary)			
21. Intent to Apply: I hereby apply for a variance or waiver from the Texas Accessibility Standards as required for compliance with the Texas Architectural Barriers Act, Government Code, Chapter 469. (Check One): I am the <input type="checkbox"/> Owner <input type="checkbox"/> Owner's Agent (If you are not the owner, a completed Owner Agent Designation form must accompany this application).			
22. Name:		23. Company/Firm:	
24. Address:		City:	State:
Zip Code:			
25. Phone Number:	26. Fax Number:	27. Email:	
28. Signature:			29. Date:

TDLR Form AB013N rev November 2020

# Texas Accessibility Standards

The Texas Architectural Barriers Act has no ongoing obligation for “Readily Achievable Barrier Removal”.

The Texas Architectural Barriers Act uses construction as the triggering activity.

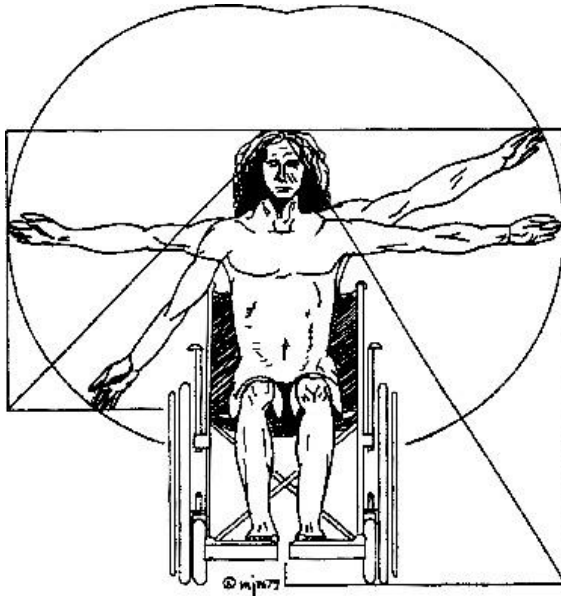
If there was no construction activity such as an alteration, there is no recourse using TDLR through the complaint form.

There is still the option to file a complaint on the Federal level.





# How Does the ADA Apply to Historical Landmarks and Older Buildings?



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