Bureau of Development Services FROM CONCEPT TO CONSTRUCTION

CODE GUIDE

TOPIC: Accessible Design – OSSC/11/#7 & OSSC/34/#2

CODE: Oregon Structural Specialty Code: 2022 Edition

REVISED: March 30, 2023 [Rebecca Esau], Director

REFERENCE: Oregon Structural Specialty Code – Chapters 11 & 34

SUBJECT: Accessibility Upgrade Requirements in Existing Buildings (25% Rule)

QUESTION: When buildings are altered, the Oregon Structural Specialty Code (OSSC) requires a portion of the costs of the construction to be spent toward removal of existing barriers to accessibility.

A. How are the costs determined and what are the priorities for compliance?
B. What documentation is required for review and approval?

RESPONSE: Alterations to buildings must comply with the accessibility provisions outlined in Chapter 34 of the OSSC. There are three key concepts:

- Any element that is altered must comply with the accessibility standards for new construction unless doing so is *technically infeasible*.

- Alterations may not reduce the accessibility of a building.

- When alterations may affect the usability of, or access to an *area of primary function,* the *paths of travel* serving that area of primary function and existing restrooms must be improved to current accessibility standards unless the costs to improve those existing elements are *disproportionate* to the overall cost of the planned remodel. This is informally known as the “25% Rule”.**DEFINITIONS:**

Alterations affecting an area of primary function are those alterations that could affect the accessibility to an *area of primary function*, or the usability of an area of primary function. For example, these alterations could include changes to on-site parking, exterior walkways, building entries, changes of elevations within buildings and new or relocated interior walls in areas of primary function or in the path of travel to an area of primary function. These alterations usually would not include exterior façade or roof improvements, seismic upgrades, or utilities, plumbing, electrical and mechanical work, except those items that are subject to an accessibility standard such as clearances, mounting heights and reach ranges for controls and plumbing fixtures, etc.

Area of primary function is an area of a building where the principal activity occurs. There may be more than one primary function in a building, and the primary function(s) may occur in many different locations. For example, in an office building, employee work areas and all public areas are areas of primary function. In a hotel, the guest rooms are areas of primary function, as well as the restaurant, registration lobby and the meeting rooms. Areas of primary function do not include mechanical rooms, supply storage rooms, floors or portions of a floor not customarily occupied, observation galleries used primarily for observation purposes, employee lounges or locker rooms, janitorial closets, entrances, corridors, toilet facilities and bathing facilities, unless such areas are the major function of the facility.

Disproportionate cost occurs when upgrading existing *path of travel* elements to current accessibility standards would exceed 25 percent of the total cost of *alterations affecting the area of primary function.*

Paths of travel include the accessible route to the *area of primary function* and also include restrooms, telephones and drinking fountains serving these areas. For the purpose of this requirement, the "accessible route" is not only the pathway from the street to the entrance and through the building to the altered space, but also includes parking and other accessible features used by building occupants and guests.

“Safe harbor” refers to the exemption from the federal Americans with Disabilities Act (ADA) requirement to bring existing *path of travel* elements into compliance with current standards until those elements are subject to a planned alteration if they were built in compliance with the 1991 ADA Standards for Accessible Design. To use the safe harbor

rule, the building permit applicant must clearly identify on the plans those existing elements that are in compliance with the 1991 ADA Standards for Accessible Design. The US Department of Justice and the federal courts are the only entities with authority to determine if an existing condition falls under the safe harbor rule.
Technically infeasible is an alteration that has little likelihood of being accomplished because existing structural conditions would require removing or altering an existing load-bearing member that is an essential part of the structural frame.

A. Determining Costs and Priorities for Compliance:

Most of the accessibility upgrade requirements are in the Oregon Revised Statutes (ORS 447.241) and are very similar to, but not identical to the accessibility upgrade requirements of the ADA. The requirements under the ORS and the OSSC are:

- to have all altered elements comply with the accessibility standards; and

- to improve the *path of travel* to meet current accessibility standards, provided that the path of travel elements are not protected by the *safe harbor* rule, and provided the costs of improving the path of travel are not *disproportionate* to the total costs of the planned remodeling project.

For example, an owner may be remodeling a restaurant with the following projected costs:

$36,000 - Dining area
20,000 - Kitchen
12,000 - New exterior facade
5,000 - Toilet rooms
20,000 - Roof
75,000 - Seismic (earthquake) strengthening
$148,000 - Total costs

$36,000 - Total costs *of alterations affecting areas of primary function*

$9,000 - Minimum cost of required improvements to *path of travel* (25% of $36,000)

The owner was already planning to spend $5,000 on the toilet rooms. If this expenditure was to make them accessible, the owner may need to spend only $4,000 more on other *path of travel* improvements. This could bring the total project costs to $152,000. If the owner was only planning to spend $148,000,

they will have to adjust some other part of the project because the obligation to improve the path of travel remains. This may mean spending $4,000 less on the facade renovations, as an example.

If the *path of travel* already fully complies with the OSSC, no additional expenses are required. Using the example above, if it would only take $3,000 to fully comply, then that is the total expense required. If 25% will not fully upgrade the path of travel, ORS 447.241 lists priorities for the expenditure of the money. The priorities are, in order:

- Accessible parking and a route to the entrance;
- An accessible entrance;
- An accessible route to the altered area;
- At least one accessible restroom for each sex or a single-user facility;
- Accessible telephones;
- Accessible drinking fountains; and
- Other features such as storage and alarms.

Using the example above, the owner must spend at least (but not more than) $9,000 to improve the path of travel, to the extent it does not already comply with the Code. The owner's architect determines that it will take $3,000 to improve the parking; $500 to improve the entrance; and another $500 to improve the interior route of travel. The $4,000 of the $5,000 planned for the restrooms were to provide accessibility. This is a total of $8,000 for path of travel improvements. That means the owner must still apply $1,000 to telephones and drinking fountains. However, there are no public telephones or drinking fountains in the restaurant, and the code does not obligate the owner to install either of these features. This leaves the $1,000 to upgrade the fire alarm system to include visible warning devices and to make a coat room accessible.

Using another example, a building owner may be obligated to spend $20,000 to improve the path of travel. The building is a two-story office with 5,000 square feet on each floor, but has no elevator. $20,000 is not enough to provide an elevator. The owner must still spend the $20,000 to improve the path of travel based on the above priority list, including parking, the entrance, other portions of the accessible route, and possibly restrooms even though the elevator can't be provided when the alterations occur.

B. Documentation for Review and Approval:

The building permit application must include a summary of the accessibility improvements proposed and a summary of the costs as outlined in "A" above as part of the permit application. The summary may be included on the permit application drawings, or on a separate sheet. A plans examiner will review the plans and the summary for compliance with the 25% Rule.

Note that the Bureau of Development Services reviews applications for compliance with State regulations, but not the federal Americans with Disabilities Act. ADA standards for existing buildings are slightly different from State regulations and are enforced by the US Department of Justice and federal courts. Under the ADA, property owners may be obligated to remove barriers, even when they aren't planning to remodel.

Update March 30, 2023 edition
Updates July 24, 2014 edition (formerly Code Guide IBC/34/#2 & IBC/11/#7) for naming convention and removal of gender-specific language only.
Updates March 1, 1999 edition (formerly Code Guide UBC/11/#7, rescinded December 14, 2012)
Updates October 1, 1997 edition
New October 1, 1997