

ACCESSIBILITY LAW APPLICATION WORKSHEET FOR EXISTING BUILDINGS, ALTERATIONS, AND ADDITIONS FOR PROJECTS IN OREGON

APPENDIX B to report: *Issues of Compliance with Federal and State Accessibility Laws in Oregon*

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Introduction:

This worksheet is intended as a general introductory guide to determining the requirements for compliance with federal and Oregon laws requiring provision of accessibility in new buildings, building additions, and alterations. Consultation with design professionals, governing agencies, and an attorney is strongly recommended to ensure required compliance with the law.

Laws included:

Four federal and two state accessibility laws are included in this worksheet:

1. The Architectural Barriers Act of 1968 (ABA)
2. The Rehabilitation Act of 1973 (Section 504)
3. The Fair Housing Amendments Act of 1988, commonly referred to as the Fair Housing Act (FHA)
4. The Americans with Disabilities Act of 1991 (ADA)
5. ORS 447.210 to 447.280, "Standards and Specifications for Access by Persons with Disabilities"
6. ORS 456.506 to 456.514, "Subsidized Development Visitability"

Instructions:

Answer each question for each of the six numbered laws below to determine which law(s) apply to a particular new or existing building, including alterations and additions.

» Remember that a single facility may be subject to more than one law, and therefore more than one set of rules of compliance may apply.

» Included with each section are notes on exemptions, application, and cautions regarding the particular law. These are not to be considered definitive, but as a guideline or reminder to carefully examine the requirements of the laws, standards, and guidelines that must be complied with.

1. Architectural Barriers Act (ABA) criteria

1a Federal funding: Is/was the facility designed, built, altered, or is it being leased (e.g. rented by a federal agency) using federal funds? [42 USC §4151]

If the answer to question 1a is **no**, then the facility is not subject to the ABA.

If the answer to question 1a is **yes**, go on to question 1b.

1b When built: Was the facility built or altered after August 12, 1968? [42 USC §4151]

If the answer to question 1b is **no**, then the facility is not subject to ABA.

If answers to questions 1a and 1b are **both yes**, then building is probably subject to the ABA, and must comply with UFAS and ABA/ADAAG. Verify the requirements of these standards compared to building codes.

Waivers and exemptions under the ABA:

i. Waivers of requirements. Authorized agencies may grant an exemption to a requirement of the ABA, but only when "clearly necessary."

Notes and cautions under the ABA:

i. In some cases, conditions of funding may require a higher degree of compliance than the ABA.

ii. Facilities may be subject to the ABA and the FHA (and other standards and laws, both state and federal), and must comply with the most restrictive requirements). In the case of conflicts between federal and state requirements, the federal requirements must be followed.

2. Rehabilitation Act of 1973 (Section 504) criteria

- 2a Federal funding: Is/was the facility funded in whole or in part by federal funds (in this case, either HUD-funded public housing, HUD-assisted housing, funded by states or cities or counties using HUD funds, USDA-funded rural housing, or HHS funded transitional housing)? [24 CFR Part 8]

If the answer to question 2a is **no**, then the facility is not subject to Section 504.

If the answer to question 2a is **yes**, go on to question 2b.

- 2b When built: Is/was the facility built new after 1973?

If the answer to questions 2a and 2b are **yes**, then the facility is subject to Section 504.

If the answer to question 2b is **no**, go on to question 2c.

- 2c Substantial alterations: If the facility was *not* built new before 1973, were at least 15 units altered after that date at a total cost of at least 75% of the replacement cost of those units?

If the answer to questions 2a and 2c are **yes**, then the facility is subject to Section 504.

If the answer to question 2c is **no**, go on to question 2d.

- 2d Minor alterations: If the facility was not built or substantially altered, was it altered at all after 1973?

If the answer to questions 2a and 2d are **yes**, then the elements that were altered are subject to compliance with Section 504.

If the answer to questions 2a-d are **no**, then the facility should not be subject to Section 504.

Waivers and exemptions:

- i. In non-substantial alterations, non-compliant elements that are not altered need not be brought into compliance.

Notes and cautions:

- i. Section 504 covers all housing built with federal assistance, including single-family homes and
- ii. Housing covered by Section 504 must include a proportion of the units accessible to the
- » 5% of the units must be accessible to the mobility impaired.
 - » 2% of the units must be accessible to the sensory impaired.
 - » Note that it is required that, when calculating these percentages, fractional proportions must be rounded up.
 - » Note that, in multi-phase projects within the scope of Section 504, each individual phase of the project is subject to proportional requirements for accessible units.
- iii. In some cases, conditions of funding may require a higher proportion of units to be accessible.
- iv. Facilities may be subject to both Section 504 and the FHA (and other standards and laws, both state and federal), and must comply with the most restrictive requirements.E76

3. Fair Housing Act (FHA)

3a Housing use: Does any single building in the facility contain 4 or more units of housing within it?

If the answer to question 3a is **no** (that is, there are *no* buildings with more than 3 units), the facility is not subject to the FHA.

If the answer to question 3a is **yes**, go on to question 3b.

3b When built: Are/were all parts of the 4+ unit building(s) built new for first occupancy after March 13, 1991?

If the answers to questions 3a and 3b are both **yes**, then the building is subject to the FHA. Portions of other buildings used as common areas for covered units may also be required to be accessible, as well as the site itself.

If the answer to question 3a is **no**, go on to question 3b.

3c Addition(s): If a building was not a new building constructed after 1991, were there new additions to it of 4 or more units of housing built onto it for first occupancy after March 13, 1991?

If the answers to questions 3a and 3c are both **yes**, then the portion of the building added on after March 13, 1991 is subject to the FHA. Portions of the existing building may also be accessible if used as common areas for the added units, as well as the site itself.

If the answer to questions 3b and 3c are **no**, that building is not subject to the FHA, unless it contains common areas which must be accessible to those in other buildings that *are* covered by the FHA.

Waivers and exemptions:

- i. Alterations (including changes of use) of existing buildings first occupied prior to March 13, 1991, regardless of the extent of the alterations, are not covered by the FHA.
- ii. Generally, in buildings without elevators, accessibility need not be provided to:
 - » Housing units located above the ground floor.
 - » Upper levels of multi-story (townhouse-type) units with entrance levels on the ground floor.
- iii. Multiple-unit facilities where four or more units are not contained in a single building are not covered by the FHA.

Notes and cautions:

- i. The criteria for accessibility under the FHA differ in significant ways, in terms of application, standards, and interpretation, from other accessibility standards, and should be considered separately.
- ii. For the purpose of compliance with the FHA, in multi-use buildings the "ground" floor is considered to be the lowest floor of housing, regardless of whether it is at the actual ground level, on the second floor, or higher. Townhouse units on the second floor, with parking below, may or
- iii. Facilities may be subject to both the FHA and other standards and laws, both state and federal, and must comply with the most restrictive requirements.C94

4. Americans with Disabilities Act (ADA)

4a Public use, funding, or ownership: Is/was the facility owned, funded, or leased by a federal, state, or local unit of government, regardless of use?

If the answer to question 4a is **no**, go on to question 4b.

If the answer to question 4a is **yes**, go on to question 4c.

4b Public accommodation: Does the facility serve as a public accommodation (that is, owned, leased from, leased to, or operated by a private or public entity operating the facility as a restaurant, retail store, hotel, performance center (theater, movie house), private school, medical office, homeless shelter, funeral home, day care center, sports center, or gymnasium)?

If the answers to both questions 4a and 4b are **no**, the facility is not subject to the ADA.

If the answer to question 4a is **yes**, go on to question 4c.

4c When built or altered. Is/was the facility built, altered, or added to after January 26, 1992?

If the answers to either question 4a or 4b is yes, and if the answer to question 4c is also **yes**, the facility, or the portion of the facility altered or added after January 26, 1992, is subject to the ADA.

If the answer to question 4c is **no**, the facility is not subject to the ADA.

Exemptions:

- i. Some requirements of the ADA may be waived if shown by the applicant to be "technically infeasible," especially in existing and historic buildings.
- ii. Some requirements of the ADA may be waived for government facilities if alternate methods of accommodation can be made by the agency.
- iii. The requirement to retrofit an existing facility for compliance in an alteration project is limited to accessibility measures which do not, taken together, exceed 20% of the total cost of the alterations.

Notes and cautions:

- i. Actual alterations or additions made after January 26, 1992, must comply with the ADA regardless of the extent of the alteration.
- ii. Note that Oregon law expands the scope of application of the ADA requirements in terms of both the buildings to which the requirements apply, and the proportional cost limitation in
- iii. A facility in Oregon that is subject to the ADA and will also be subject to ORS 447.210-280, and may also be subject to the FHA (and other standards and laws, both state and federal, and must comply with the most restrictive requirements. In the case of conflicts between state and federal requirements, the federal requirements must be followed.

5. ORS 447.210 to 447.280 (OREGON DISABILITY LAW)

5a ADA compliance: Is the facility subject to the ADA?

If the answer to question 5a is **yes**, the facility, or the portion of the facility altered or added after January 26, 1992, is also subject to ORS 447.210-280.

If the answer to question 5a is **no**, go on to question 5b.

5b Multifamily housing: Does the facility contain buildings consisting of 4 or more dwelling units?

If the answers to questions 5b is **yes**, all units are subject to ORS 447.210-280 if the building has an elevator, and ground floor dwelling units are subject to ORS 447.210-280 in buildings without an elevator, in buildings constructed after January 26, 1992. [ORS 447.210(5)]

If the answer to question 5b is **no**, go on to question 5c.

5c Government facility: Is the facility a building, structure, or related facility constructed in whole or in part, by the use of state, county, or other government funds, or constructed for the use and occupancy of a state, county, or public agency? [OSSC Sec. 1102, P. 241-2]

If the answer to question 5c is **yes**, the facility, or the portion of the facility altered or added after January 26, 1992, is also subject to ORS 447.210-280.

If the answer to question 5c is **no**, go on to question 5d.

5d Commercial or public accommodation use: Is the facility a non-residential building whose operations affect commerce, such as an office, factory, or warehouse; or is the facility a public accommodation such as lodgings, or a place for service of food and drink, exercise, recreation, social services, public display, public transportation, sales or rentals, public displays, exhibitions, or entertainment? [ORS 447.210(4) and 447.210(11)]

If the answer to question 5d is **yes**, the facility, or the portion of the facility altered or added after January 26, 1992, is also subject to ORS 447.210-280.

If the answer to question 5d is **no**, go on to question 5e.

5e Covered private entity: Is the facility owned or operated by a private entity offering examinations or courses related to applications, licensing, certification or credentials for secondary or post-secondary education, professional or trade purposes, or by a private membership club or church? [ORS 447.210(1)]

If the answers to questions 5a, 5b, 5c, 5d, *and* 5e are all **no**, the facility is not subject to ORS 447.210-280.

If the answer to question 5e is **yes**, go on to question 5f.

5f Size of facility: Does the facility in 5d have more than one floor level and more than 4,000 square feet in ground area, or is the facility more than 20 feet in height from lowest floor to ceiling of highest floor? [ORS 447.210(1)]

If the answers to questions 5a, 5b, 5c, 5d, *and* 5f are **no**, the facility is not subject to ORS 447.210-280.

If the answer to questions 5e and 5f are both **yes**, the facility, or the portion of the facility altered or added after January 26, 1992, is also subject to ORS 447.210-280.

Waivers and exemptions:

i. The requirement to retrofit an existing facility for compliance in an alteration project is limited to accessibility measures which do not, taken together, exceed 25% of the total cost of the alterations. [ORS 447.241]

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5. ORS 447.210 to 447.280 (CONTINUED FROM PREVIOUS PAGE)

Waivers and exemptions (CONTINUED FROM PREVIOUS PAGE):

ii. Where full compliance is not required by the 25% limitation, improvements to accessibility must be made in accordance with an established list of priorities. [ORS 447.241]

Notes and cautions:

- i. Facilities may be subject to ORS 447.210, the ADA, and the FHA (and other standards and laws, both state and federal, and must comply with the most restrictive requirements. In the case of conflicts between state and federal requirements, the federal requirements must be followed.
- ii. The OSSC grants authority to the building official to modify or waive provisions of the Oregon code if practical difficulties make compliance with the letter of the code infeasible [OSSC Sec. 104.10]. However, this authority does not extend to the modification of parallel provisions in other standards required by federal law.

6. ORS 456.506 to 456.514 (OREGON VISITABILITY LAW)

6a Housing use. Is the building or facility designed to be used for single or multiple rental housing? [ORS 456.508(6)]

If the answer to question 6a is **no**, the facility is not subject to the ORS 456.506-514 visitability law.

If the answer to question 6a is **yes**, go on to question 6b.

6b When built. Was the building or facility newly constructed after January 1, 2004?

If the answer to question 6b is **no**, the facility is not subject to the ORS 456.506-514 visitability law.

If the answer to question 6b is **yes**, go on to question 6b.

6c Funding. Was funding, or any portion thereof, provided through any of the following:

(a) the federal low-income housing tax credit under 26 U.S.C. 42(a),

(b) a farmworker housing tax credit described in ORS 315.164,

(c) a loan where the lender qualifies for a tax credit under ORS 317.097,

(d) funding under the federal HOME Investment Partnerships Act, 42 U.S.C. 12721 to 12839,

(e) money from the Oregon Housing Fund created under ORS 458.620, or

(f) money from another grant or tax incentive program administered by the H&CSD under ORS 456.559?

[ORS 456.508(7)]

If the answer to questions 6a, 6b, *and* 6c are all **yes**, the facility is subject to the ORS 456.506-514 visitability law.

If the answer to questions 6c is **no**, the facility is not subject to the ORS 456.506-514 visitability law.

Waivers and exemptions:

- i. Alterations, regardless of the extent, are not subject to this law.
- ii. Owner-occupied single family homes are not subject to this law.
- iii. Dwelling units above the ground floor are exempted.
- iv. Farmworker housing located on a farm is not subject to this law.

Notes and cautions:

- i. ORS 456.506-514 establishes an independent set of criteria for accessibility, which are subject to the rules of application in OAR Chapter 813, Division 310. A brief summary of the basic criteria of visitability includes:
 - (a) a visitable exterior route leading to a dwelling unit entrance that is stepless and has a minimum clearance,
 - (b) visitable routes between a dwelling unit and at least one visitable common living space,
 - (c) visitable routes between a dwelling unit and a lavatory,
 - (d) a visitable lavatory with a minimum 32 inch door opening, walls reinforced for handrails,
 - (e) reachable switches, outlets, and controls, and
 - (f) where a development has a shared community room, or more than 20 units, there is at least one shared accessible lavatory.
- ii. Facilities may be subject to the Visitability law, and the FHA (and other standards and laws, both state and federal, and must comply with the most restrictive requirements.