

LAND USE LAW AND SIDEWALK REQUIREMENTS UNDER THE AMERICANS WITH DISABILITIES ACT

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Authors' Synopsis: A significant percentage of American families have a family member with a mobility impairment. The numbers will increase as our population continues to age. Therefore, it is important to focus on accessibility so that people can safely and easily navigate their local communities. This Article deals with the legal obligation to make communities accessible under the Americans with Disabilities Act (ADA). Specifically, this Article addresses the intricate regulations applicable to sidewalks. Local communities must construct, repair, and maintain sidewalks in compliance with the ADA. This obligation includes removing obstacles to accessibility such as snow, even in snow-belt communities that would prefer to avoid the cost of snow removal.

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I. INTRODUCTION

Approximately 18–20 percent of American families have a family member with mobility impairment—a disability that limits one’s ability to safely and easily navigate the pathways of many communities.¹ Moreover, the number of people with mobility impairment is increasing due to an aging population.² Therefore, it is important that local planning and zoning officials work to make the pathways of their communities accessible to people with mobility impairment and to those seeking to age in place.

Currently, there are three major federal statutes that protect people with disabilities from discrimination and that apply directly to local planning and zoning activities. First, the Rehabilitation Act (RHA), sections 504 and 794, prohibits discrimination with respect to any program or activity, including sidewalks, supported with federal funding.³ Second, the Fair Housing Act (FHA) covers certain aspects of planning and zoning related to access to housing.⁴ Sidewalks might be implicated under the FHA in situations where an equal opportunity to access housing may be negatively impacted by the disrepair or impassibility of a sidewalk. Third, and most importantly, Title II of the Americans with Disabilities Act (ADA) applies to all *programs, services, and activities* of local governments, which has been held to include planning and zoning, as well as the specific activity of building, repairing, and clearing snow from sidewalks.⁵ Collectively, we refer to these statutes as the “ADA” unless otherwise indicated.

In working with local zoning and planning officials, it is clear that there is often a high level of misunderstanding with respect to the applicability of the ADA to their activities. The opportunity for misunderstanding is greatest in communities with little or no legal staff, or in those communities where the legal staff is over worked or under educated regarding the interrelationship between disability law and land use regulation. While the ADA addresses a number of issues related to

¹ See ROBIN PAUL MALLOY, *LAND USE LAW AND DISABILITY, PLANNING AND ZONING FOR ACCESSIBLE COMMUNITIES*, 1–27 (2015).

² See *id.*

³ See Rehabilitation Act of 1973, 29 U.S.C. §§ 794, 504 (2016). All statutory citations in this Article refer to the current statute unless otherwise indicated.

⁴ See Fair Housing Act of 1968, 42 U.S.C. §§ 3601–3619.

⁵ See Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131–12161.

design and use regulations, a frequent subject of dispute involves sidewalks. Sidewalks are critical pathways for navigating the many places within a community where life is lived out. Sidewalks facilitate travel and enhance sustainability by reducing dependence on motor vehicles to travel within and among neighborhoods. Sidewalks also enhance public safety by providing pedestrians with a walking space outside of the roadway. People walking or moving in wheelchairs on the public roadways can be dangerous, especially in the winter when snow banks further block visibility and crowd the street. Sidewalks also provide locations for accessing public transit (such as bus stops) and offer protected crosswalks to assist in safely crossing busy roads.

In this Article, we explore the regulations applicable to sidewalks under the ADA. When addressing the topic of sidewalks, one must not only be aware of federal disability law, but must also account for underlying state and local law. Therefore, we discuss federal disability law in the context of an example that has emerged in some communities located in the central region of the State of New York. Examining the interplay among local, state, and federal law in this example will illustrate the general problem of dealing with the regulation of sidewalk accessibility around the country.

In addressing sidewalk requirements under the ADA, we proceed in several steps. First, we define “sidewalks” and discuss the provision of sidewalks by local governments. Second, we address sidewalk maintenance and repair. Third, we address the specific issue of snow removal and the obligation to keep sidewalks accessible during winter months. Fourth, and finally, we discuss planning for ADA compliant sidewalks.

II. SIDEWALKS AND THEIR PROVISION BY LOCAL GOVERNMENT

Defining a sidewalk is important when considering which requirements apply to both construction and maintenance of a pathway. Using the example of New York, we find that New York Vehicle and Traffic Law Title 1, Article 1, section 144 defines a sidewalk as, “[t]hat portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.”⁶ Further, the New York Department of Transportation (DOT) defines a sidewalk as “[a] smooth, paved, stable and slip resistant, exterior pathway

⁶ N.Y. VEH. & TRAF. LAW § 144 (McKinney).

intended for pedestrian use along a vehicular way separated with a curb offset” in the public right-of-way or in a public pedestrian easement.⁷

Once a walkway meets the definition of a sidewalk, it must be constructed and maintained in accordance with the provisions of the ADA. The ADA sets forth certain design standards that allow sidewalks to be accessible to those confined to wheelchairs or those with otherwise limited mobility.⁸ Retrofitting previously constructed sidewalks to meet the requirements of the ADA can be an expensive process, and it is important for municipalities to know when they are required to make ADA-compliant alterations. Additionally, it is important for municipalities to realize that any time a new sidewalk is constructed, it must meet the ADA requirements.

There is no provision in the ADA that requires municipalities to build sidewalks.⁹ Consequently, state and local law govern the building, locating, and funding of sidewalks.¹⁰ However, when a municipality decides to build a sidewalk, it must be compliant with ADA standards.¹¹ Many municipalities have developed their own requirements for when sidewalks must be constructed, and such requirements are usually contained in the municipality’s ordinances. Often, municipalities require the construction of sidewalks as a condition of new development. This requirement shifts the cost burden of the construction of sidewalks from the municipality to the developer. For example, the Town Code for the Town of Amherst, New York, states that “[s]idewalks shall be required along the entire street frontage of a lot or parcel that abuts an arterial or collector street when the lot or parcel is developed and along the entire frontage of such other lots or parcels as the Planning or Town Boards shall direct.”¹² Similarly, the Town of DeWitt, New York, requires the construction of sidewalks, at the expense of the developer, when land is subdivided.¹³

⁷ N.Y. DEP’T OF TRANS., HIGHWAY DESIGN MANUAL, 18-3 (2015), https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/chapt_18.pdf.

⁸ See 42 U.S.C. § 12101.

⁹ See *infra* notes 32–36 and accompanying text.

¹⁰ While many sidewalks in New York are federally funded, the ADA places the burden of funding sidewalks on state and local entities. See *infra* note 92.

¹¹ See *infra* notes 25–31, 37–41 and accompanying text.

¹² AMHERST, N.Y., TOWN CODE § 83-9-1, 1-1.1 (2009) (Amherst is a suburb of Buffalo, NY).

¹³ See DEWITT, N.Y. TOWN CODE § 164-21(A)(4)(a), (b) (2004) (DeWitt is a suburb of Syracuse, NY).

In addition, a municipal code may also address the requirements of the ADA. For example, the Town of DeWitt's zoning code seemingly requires the town to have ADA compliant sidewalks.¹⁴ The Town of DeWitt's zoning code has a general provision that defines a structure as "[a]nything constructed or erected at a fixed location on the ground or attached to something having a fixed location on the ground."¹⁵ This definition would include sidewalks within the meaning of a "structure." The town code further states that all structures must "[b]e accessible to disabled persons in accordance with the Americans with Disabilities Act"¹⁶ Consequently, local law often addresses the need to comply with the ADA, even if local officials seem unaware of its requirements.

In addition to local law, Article 2 of the New York State Highway Law provides that the Department of Transportation (DOT) can build sidewalks adjacent to state highways in towns and outside city and village boundaries, where necessary.¹⁷ The DOT also has full authority to determine the type, the width, the location with respect to the highway, and the general construction details of such sidewalks.¹⁸ Additionally, the New York State Highway Law states that "[w]alks or paths for pedestrians may be constructed by a county along any improved state highway or along a part thereof in any town of the county."¹⁹ The town board must request such a walk or path, which must then be approved by the county's board of supervisors.²⁰ After approval, the county works with the state to develop a plan for construction of the requested improvements.²¹ For instance, in Onondaga County, New York, the county funds construction of the right-of-way acquisition, and the requesting town is then responsible for paying thirty-five percent of these costs to the county.²² Town governments can also construct sidewalks along state and county roads with the permission of the State Commissioner of

¹⁴ See DEWITT, N.Y., TOWN CODE Ch. 192, art. XVII, § 192-103(E)(6) (2007).

¹⁵ *Id.* § 192-14.

¹⁶ *Id.* § 192-90(A)(4).

¹⁷ See N.Y. HIGHWAY LAW § 10.22 (McKinney).

¹⁸ *See id.*

¹⁹ N.Y. HIGHWAY LAW § 54 (McKinney).

²⁰ *See id.*

²¹ *See id.*

²² See ONONDAGA CTY. SUSTAINABLE STREETS—SIDEWALKS REFERENCE DOCUMENT, SUSTAINABLE STREETS PROJECT 2-3 (2014), http://walkbikecny.org/wp-content/uploads/2011/05/Sustainable-Streets-Sidewalks-DRAFT-3_10_14.pdf (The City of Syracuse, NY is located within Onondaga County.).

Transportation or the County Superintendent of Highways, as appropriate; however, towns must pay for these sidewalks themselves.²³ Importantly, no matter who builds a sidewalk and without regard to its location in a town, city, county, or state right-of-way, the obligation to keep the sidewalk accessible within the ADA falls upon the local jurisdiction of the community in which it is located.²⁴

With respect to federal law, sidewalks must comply with the ADA when federal funds are used to support construction,²⁵ or when they function as a *program, service, or activity* of state or local government. In *Barden v. City of Sacramento*,²⁶ the Ninth Circuit held that “sidewalks are subject to program accessibility regulations promulgated in furtherance” of the ADA²⁷ and qualified as a “service, program or activity” within the meaning of Title II.²⁸ The *Barden* court reasoned that maintaining accessible public sidewalks was a normal function of a municipality, which meant it had a duty to remove obstacles and barriers to sidewalk accessibility.²⁹ Although sidewalks were not explicitly covered by the text of Title 28 C.F.R. section 35.150, the regulation did specifically address curb ramps.³⁰ Thus, the *Barden* court rationalized that “[s]ection 35.150’s requirement of curb ramps in all pedestrian walkways reveals a general concern for the accessibility of public sidewalks, as well as a recognition that sidewalks fall within the ADA’s coverage, and would be meaningless if the sidewalks between the curb ramps were inaccessible.”³¹

In *Geiger v. City of Upper Arlington*,³² the plaintiff suffered from a disability and brought suit, claiming that the City of Upper Arlington was required to construct sidewalks throughout the municipality because sidewalks were “a basic public services program pursuant to the ADA.”³³

²³ See N.Y. HIGHWAY LAW § 151 (McKinney).

²⁴ See *infra* notes 69–73 and accompanying text.

²⁵ See FED. HIGHWAY ADMIN., *Questions and Answers About ADA Section 504*, https://www/fhwa.dot.gov/civilrights/programs/ada_sect504qa.cfm#q16 (last modified Nov. 18, 2015).

²⁶ 292 F.3d 1073 (9th Cir. 2002).

²⁷ *Id.* at 1074.

²⁸ *Id.* at 1076–77.

²⁹ *Id.* at 1077.

³⁰ See *id.* at 1076.

³¹ *Id.* at 1077.

³² No. 2:65-cv-1042 2006, U.S. Dist. LEXIS 48284 (S.D. Ohio 2006).

³³ *Id.* at *1.

The plaintiff relied on *Barden*.³⁴ The court in *Geiger* found that while *Barden* required cities to bring sidewalks into compliance with the ADA when they perform maintenance or alterations to the sidewalks, *Barden* did not “stand for the proposition that municipalities must build new sidewalks in order to comply with the ADA.”³⁵ The court found that the City of Upper Arlington’s decision to not build sidewalks discriminated equally against visitors and residents with and without disabilities.³⁶

In *Frame v. City of Arlington*,³⁷ the Fifth Circuit Court of Appeals held that Title II and section 504 “unambiguously extend to newly built and altered public sidewalks.”³⁸ In that case, plaintiffs relied on the use of motorized wheelchairs for mobility, and due to the condition of the sidewalks, access to public and private establishments across Arlington was “dangerous, difficult, or impossible.”³⁹ The Court indicated that municipal authorities are considered “trustees for the public” and “have [a] duty to keep [the] streets open and available for movement of people and property, the primary purpose to which streets are dedicated.”⁴⁰ Thus, when a municipality authorizes the construction or alteration of a sidewalk that is inaccessible to persons with disabilities—without adequate justification—individuals with disabilities are “denied the benefits of that city’s services, programs, or activities.”⁴¹

The plaintiffs in *Frame* claimed that the inaccessible sidewalks violated both Title II of the ADA and section 504 of the RHA.⁴² In this regard, the court found that the plaintiffs had a private right of action to enforce Title II of the ADA because sidewalks are “services, programs, or activities” of a public entity within the plain meaning of Title II.⁴³

³⁴ See *id.* at *8–10.

³⁵ *Id.* at *10.

³⁶ See *id.* at *11.

³⁷ 657 F.3d 215 (5th Cir. 2011).

³⁸ *Id.* at 223.

³⁹ *Id.* at 221.

⁴⁰ *Schneider v. New Jersey*, 308 U.S. 147, 160 (1939).

⁴¹ *Frame*, 657 F.3d at 226–27; see also *Foley v. City of Lafayette*, 359 F.3d 925, 930–31 (7th Cir. 2004) (holding that where a temporary disruption occurred, a city is not liable so long as it provides reasonable accommodation); *Midgett v. Tri-City Metro. Trans. Dist.*, 254 F.3d 846, 851 (9th Cir. 2001) (holding that a city’s bus system may experience temporary disruptions in accessibility as long as it has a plan in place to support ongoing compliance with the ADA).

⁴² See *Frame*, 657 F.3d at 221.

⁴³ *Id.* at 227.

Additionally, the court found that sidewalks qualified as a “program or activity” under the RHA because this definition included “all of the operations of . . . a local government.”⁴⁴ The court further found that section 504 of the RHA prohibits disability discrimination by recipients of federal funding.⁴⁵ The court interpreted the Department of Justice’s regulations to mean that “each new sidewalk must be made ‘readily accessible’ to individuals with disabilities.”⁴⁶ Moreover, “the ‘altered portion’ must be made ‘readily accessible’ ‘to the maximum extent feasible’ if it ‘could affect the usability of the facility.’”⁴⁷ The court reasoned that this was because once an entity decided to construct or alter a sidewalk, it would not be a significant burden on the entity to make that sidewalk accessible.⁴⁸

III. SIDEWALK REPAIR AND MAINTENANCE

A common question municipalities face is when does the undertaking of standard sidewalk repair and maintenance require them to bring outdated sidewalks into compliance with the ADA? Title 28 C.F.R. section 35.150(a) states that:

[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.⁴⁹

However, section 35.150(a) further states that a municipality is not:

(1) Necessarily require[d] to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) require[d] to take [any] action that would threaten or destroy the historic significance of an historic property; or

(3) require[d] to take [any] action that it can demonstrate would result in a fundamental alteration in the

⁴⁴ *Id.* at 225 (quoting 29 U.S.C. § 794(B)(1)(A)).

⁴⁵ *Id.* at 223.

⁴⁶ *Id.* at 231.

⁴⁷ *Id.* at 232 (quoting 28 C.F.R. § 35.151(b) (2015)).

⁴⁸ *See id.*

⁴⁹ 28 C.F.R. § 35.150(a).

nature of a service, program, or activity or in undue financial and administrative burdens.⁵⁰

Section 35.151(b) states that:

[e]ach facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.⁵¹

Furthermore, section 35.151(i) states that:

(1) [n]ewly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway; and

(2) [n]ewly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.⁵²

Section 35.150(b)(2)(i) lists provisions for a “safe harbor” exception. This exception states that:

[e]lements that have not been altered in existing facilities on or after March 15, 2012 and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards . . . are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.⁵³

Therefore, any facility constructed or altered on or after March 15, 2012, must comply with the 2010 Standards.⁵⁴ In *Kinney v. Yerusalim*,⁵⁵

⁵⁰ 28 C.F.R. § 35.150(a).

⁵¹ 28 C.F.R. § 35.151(b).

⁵² 28 C.F.R. § 35.151(i).

⁵³ 28 C.F.R. § 35.150(b)(2)(i).

⁵⁴ See 28 C.F.R. § 35.151(c)(5)(ii). Additionally, section 35.150(b)(3) provides an exception for historic preservation programs. Under this exception, public entities “shall

the plaintiffs contended that the resurfacing of a street constituted an “alteration” under section 35.151(i) and that the city was therefore required to provide curb ramps or slopes on all streets that had been resurfaced since January 26, 1992, the effective date of the statute. However, the city argued that resurfacing was not an activity that rose to the level of alteration under the statute and that it was not required to install curb ramps or slopes.⁵⁶ In rejecting the city’s argument, the court cited the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG), which defines “alteration” as the following:

[a] change to a building or facility made by, on behalf of, or for the use of a public accommodation or commercial facility, *that affects or could affect the usability of the building or facility* or part thereof. Alterations include, but are not limited to, remodeling, renovation rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.⁵⁷

The court found that the regulations under Title II of the ADA provide that the accessibility requirements are triggered whenever an alteration “affects or could affect the usability of [the] facility.”⁵⁸

The court then discussed the definition of “usability” and concluded that it should “be read broadly to include any change that affects the usability of the facility, not simply changes that relate directly to access

give priority to methods that provide physical access to individuals with disabilities,” but that audio-visual materials or other “innovative methods” are permitted in those limited situations where physical alteration to make an existing facility accessible is not required. 28 C.F.R. § 35.150(b)(3).

⁵⁵ See 812 F. Supp. 547 (E.D. Pa. 1993).

⁵⁶ See *id.* at 549.

⁵⁷ *Id.* at 550 (citing 28 C.F.R. Pt. 36, App. A). Note that this case was decided in 1993, and the ADA standards for accessible design were revised in 2010. While 2010 revisions changed the language slightly, the changes would not make a difference in this case, nor should they effect the understanding of the case in today’s context.

⁵⁸ *Id.* (quoting 28 C.F.R. § 35.151(b) (2015)) (omitting emphasis on “usability”).

by individuals with disabilities.”⁵⁹ The court further stated that the express language of the provision in question precluded an interpretation that only the alteration itself must be accessible.⁶⁰ The court found that “[w]hether resurfacing a street constitutes an ‘alteration’ [is] thus dependent on whether resurfacing affects the usability of the street.”⁶¹ The court determined that resurfacing did affect the usability of a street, adding, “resurfacing affects the street in ways integral to its purpose,” including making “driving on and crossing streets easier and safer,” by preventing “damage to vehicles and injury to people,” and by “generally promot[ing] commerce and travel.”⁶² Therefore, when the surface of a street is improved, “the street becomes more usable in a fundamental way.”⁶³ Thus, the court held that because resurfacing constituted an “alteration,” the city was required to construct curb ramps on all streets that had been resurfaced after January 26, 1992.⁶⁴

Normal maintenance of roads is not an alteration that requires sidewalks to be ADA compliant. The Federal Highway Administration (FHWA) has defined “maintenance activities” as those “actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity.”⁶⁵ The Department of Justice (DOJ) has further stated that maintenance activities such as filling potholes, joint repair, pavement patching, shoulder repair, striping, signing, and drainage system repairs are not alterations.⁶⁶ However, resurfacing beyond normal maintenance always triggers the alteration provision, and sidewalks must be brought into compliance with the ADA.⁶⁷ Projects such as reconstruction, rehabilitation, widening, and traffic signal installation also qualify as alterations, and sidewalks must be compliant with the ADA.⁶⁸

⁵⁹ *Id.* at 551 (quoting 28 C.F.R. Pt. 36, App. C (2015)).

⁶⁰ *See id.* at 551.

⁶¹ *Id.* at 551.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *See id.* at 552.

⁶⁵ FED. HIGHWAY ADMIN., *supra* note 25, at 5.

⁶⁶ *See* FED. HIGHWAY ADMIN., DEP’T OF JUSTICE/DEP’T OF TRANSP. JOINT TECH. ASSISTANCE ON THE TITLE II OF THE AMERICANS WITH DISABILITIES ACT REQUIREMENTS TO PROVIDE CURB RAMPS WHERE STREETS, ROADS OR HIGHWAYS ARE ALTERED THROUGH RESURFACING (2013), http://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm.

⁶⁷ *See id.*

⁶⁸ *See id.*

IV. GENERAL UPKEEP

Under the ADA, municipalities are responsible for general upkeep of sidewalks to ensure they remain open and usable to persons with disabilities.⁶⁹ This general upkeep includes, but is not limited to, snow and debris removal, as well as maintenance of an accessible path throughout work zones, and corrections of any other disruptions.⁷⁰ Cities are responsible for the upkeep of state-constructed roads within city boundaries.⁷¹ New York State Highway Law also states that it is the responsibility of the Town Superintendent to

[m]aintain all sidewalks in the town constructed by the state adjacent to state highways and all sidewalks in the town constructed by the county adjacent to county roads and, when authorized by the town board, cause the removal of snow therefrom, and the cost thereof shall be paid from the miscellaneous or other town funds.⁷²

Villages also face the same requirements for maintaining state-built roads within their boundaries.⁷³

According to the New York State Property Maintenance Code, the property owner is responsible for maintaining all sidewalks, stairs, driveways, parking spaces, and similar areas and for keeping all these areas free from hazardous conditions.⁷⁴ Additionally, town ordinances often delegate the responsibility of sidewalk upkeep to individual property owners.⁷⁵

For example, the code of the City of Syracuse, New York, states that:

it shall be the duty of the owner of every lot or piece of land in said city to keep the sidewalks, any sidewalk cellar or vault or vaults and/or gutters in front thereof at all times in good repair and in safe condition for public

⁶⁹ See 28 C.F.R. § 35.133 (2015); see also U.S. DEP'T OF TRANSP. FED. HIGHWAY ADMINISTRATION, http://www.fhwa.dot.gov/civilrights/programs/ada_sect504qa.cfm.

⁷⁰ See UNITED STATES ACCESS BOARD, ADA ACCESSIBILITY GUIDELINES § 4.1.1(4) (2010).

⁷¹ See N.Y. HIGHWAY LAW § 349-C (McKinney).

⁷² N.Y. HIGHWAY LAW § 140 (McKinney).

⁷³ See N.Y. HIGHWAY LAW § 46 (McKinney).

⁷⁴ See INT'L N.Y. PROP. MAINT. CODE §§ 301.2, 302.3 (INT'L CODE COUNCIL 2015).

⁷⁵ See SYRACUSE, N.Y., CODE §§ 18-27 (1980).

use and also to remove and clean away all snow and ice and other obstructions therefrom.⁷⁶

Additionally, the City of Syracuse requires property owners to repair damaged portions of sidewalks themselves.⁷⁷ If the property owner cannot afford such repairs, he can apply for the city's Sidewalk Assessment Program, which will pay to repair or replace the sidewalk, and allow the property owner to pay off the total cost over a ten-year period with a seven percent interest rate.⁷⁸ If a property owner fails to make necessary repairs, the city may condemn the sidewalk.⁷⁹

V. ACCESSIBILITY AND SNOW REMOVAL

One of the most disputed issues related to sidewalk accessibility involves snow removal. Some snow-belt communities take the position that they are not obligated to remove snow from sidewalks because snow is simply a normal element of their environment. Nevertheless, the ADA requires snow-belt communities to clear sidewalks of snow. In this part of the Article, we address the requirement for maintaining sidewalk accessibility and the obligation to remove snow.

Under the ADA, Title II, subpart B, “[a] public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.”⁸⁰ This requirement does not apply to “temporary interruptions in service or access due to maintenance or repairs.”⁸¹ It is not sufficient to simply provide “accessible routes” if they are not maintained in a manner that enables individuals with disabilities to use them. Specifically, if the route is obstructed by anything that renders the path neither “accessible to” nor “usable by” individuals with disabilities, it is non-compliant.⁸² In 2010, the Department of Justice

⁷⁶ *Id.*

⁷⁷ *See id.*

⁷⁸ *See* CITY OF SYRACUSE, *Sidewalk Maintenance* (2009), http://www.syracuse.ny.us/sidewalk_maintenance.aspx.

⁷⁹ *See id.*

⁸⁰ 28 C.F.R. § 35.133(a) (2015).

⁸¹ *Id.* § 35.133(b).

⁸² *See* KATHY E. HINCK ET AL., AM. JUR. 2D *Americans with Disabilities Act Analysis and Implications* § 279 (2015).

released the latest official guidelines for Accessible Design.⁸³ These guidelines require that at least one accessible route must be provided on “public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve,” with exceptions for historic buildings and vehicle-only paths.⁸⁴

In 2011, the United States Access Board (Access Board) released proposed guidelines addressing “Public Rights-of-Way” and specifically, “Pedestrian Access Routes.”⁸⁵ These guidelines have been proposed for adoption as “accessibility standards in regulations issued by other federal agencies implementing Title II of the Americans with Disabilities Act.”⁸⁶ Under the proposed guidelines, “pedestrian access routes must be provided within: (1) sidewalks and other pedestrian circulation paths located in the public right-of-way; (2) pedestrian street crossings and at-grade rail crossings, including medians and pedestrian refuge islands; and (3) overpasses, underpasses, bridges, and similar structures that contain pedestrian circulation paths.”⁸⁷ The proposal notes that an advisory section will point to a Federal Highway Administration (FHWA) memorandum “on the obligations of state and local governments to keep pedestrian access routes open and usable throughout the year, including snow and debris removal.”⁸⁸

⁸³ See U.S. DEP’T OF JUSTICE, 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN (2010).

⁸⁴ *Id.* § 206.2.1.

⁸⁵ See U.S. ACCESS BOARD, 5 *Section-by-Section Analysis*, <http://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines/section-by-section-analysis> (last visited Mar. 26, 2016) (stating that “[A] pedestrian access route is a continuous and unobstructed path of travel provided for pedestrians with disabilities within or coinciding with a pedestrian circulation path in the public right-of-way (citation omitted). Pedestrian access routes in the public right-of-way ensure that the transportation network used by pedestrians is accessible to pedestrians with disabilities. Pedestrian access routes in the public right-of-way are analogous to accessible routes on sites in that they connect to accessible elements, spaces, and facilities in the public right-of-way, including accessible pedestrian signals and pedestrian pushbuttons, accessible street furniture, accessible transit stops and transit shelters, accessible on-street parking spaces and parking meters and parking pay stations serving those parking spaces, and accessible passenger loading zones. Pedestrian access routes in the public right-of-way also connect to accessible routes at building and facility site arrival points.”).

⁸⁶ *Id.* at 1.

⁸⁷ *Id.* at 5.

⁸⁸ *Id.*

In the FHWA memorandum SNOW REMOVAL ON SIDEWALKS CONSTRUCTED WITH FEDERAL FUNDING, snow removal and treatment for ice on sidewalks is considered a pedestrian accessibility issue.⁸⁹ Further, “[i]n accordance with [sic] section 35.133, a public agency must maintain its walkways in an accessible condition for all pedestrians, including persons with disabilities, with only isolated or temporary interruptions in accessibility. Part of this maintenance obligation includes reasonable snow removal efforts.”⁹⁰ The memorandum recognizes that winter conditions vary from state to state, and local agencies may have policies that reasonably limit removal of snow from “their own roadways and adjoining pedestrian facilities.”⁹¹ However, although local agencies may limit such removal, they must make “reasonable snow removal efforts” to ensure safe and traversable conditions.⁹²

Most New York sidewalks are funded, at least partially, with federal funding.⁹³ Because most NY sidewalks are federally funded, NY sidewalks are subject to these guidelines. As previously noted, New York

⁸⁹ See U.S. DEP’T OF TRANSP.: FED. HIGHWAY ADMIN., MEMORANDUM BY BATCH WLASCHIN TO DIRS. OF FIELD SERVS. AND DIV. ADM’RS., *Information: Snow Removal on Sidewalks Constructed with Federal Funding* (Aug. 27, 2008), <http://www.fhwa.dot.gov/preservation/082708.com>.

⁹⁰ U.S. DEP’T OF TRANSP., *supra* note 89, at 1.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Many New York pathways and sidewalks are subsidized by federal funding. In 2014 alone, the FHWA funded a \$70,000,000 project to improve and build sixty-eight bicycle, pedestrian, and multi-use path transportation projects in New York. As part of this funding, the City of Syracuse received \$585,451 for a Park Street Neighborhood Gateway project, the Village of Dryden received \$398,694 for a Dryden Elementary Safe Routes to School project, and the Village of Fayetteville received \$314,076 for a Canal Landing Park Phase IV project. Additionally, \$90,000 was made available for a NYSDOT project to install rumble strips, or Milled-In Audible Roadway Delineators (MIARDS), on sections of I-81 and I-690 that currently do not have them. The safety improvements will be made in the City of Syracuse and the towns of DeWitt and Salina, all in Onondaga County. The use of such federal funding by the county brings these pathways under the scope of FHWA accessibility regulations. See ONONDAGA CTY. SUSTAINABLE STREETS PROJECT REFERENCE DOCUMENT, 6. SIDEWALK FINANCES, 9-10, http://walkbikecny.org/wpcontent/uploads/2014/06/SSM_ch6_Sidewalk_Finances.pdf (last visited Mar. 27, 2016); *Governor Cuomo Announces \$70 Million in Funding for 68 Bicycle and Pedestrian Projects* (Oct. 27, 2014), <http://www.governor.ny.gov/news/governor-cuomo-announces-70-million-funding-68-bicycle-and-pedestrian-projects>; *Governor Cuomo Announces Nearly \$76 Million for Road Safety Projects Across the State* (June 10, 2014), <http://www.governor-cuomo-announces-nearly-76-million-road-safety-projects-across-state>.

state law defines a “sidewalk” as “[t]hat portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians.”⁹⁴ A sidewalk is part of the public street or highway, thus “the duty of maintaining the sidewalks in a safe condition belongs to the municipality.”⁹⁵ It follows that when a street is open for use year-round, the adjoining sidewalk, as part of the public street or highway, must also remain accessible the entire year—including winter. A municipality may adopt ordinances that place the burden of snow removal on individuals or entities that own or occupy the land abutting the sidewalk,⁹⁶ but a municipality cannot always shift its liability to these individuals or entities for the negligent failure to remove snow and ice from public sidewalks.⁹⁷ Further, some sidewalks do not abut privately owned property, and so the municipality is solely responsible for maintaining these sidewalks in a safe condition.

At least one New York municipality sought to avoid responsibility for clearing sidewalks by redefining them as “snow shelves.” Until 2007, the DeWitt Town Code prohibited the removal of snow “into the Town right-of-way or any street, highway or sidewalk.”⁹⁸ However, in 2007, the Town of DeWitt adopted section 161-19.1, which reads:

Notwithstanding any other statute, ordinance, rule and/or regulation, any and all snow and/or ice plowed/removed from any highway right-of-way within the borders of the Town of DeWitt may be plowed/removed to any adjoining sidewalk, walkway, pathway, tarvia and/or

⁹⁴ N.Y. VEH. & TRAF. LAW § 144 (McKinney).

⁹⁵ *Castigliione v. Ellenville*, 291 A.D.2d 769, 770 (N.Y. App. Div. 2002) (quoting *Farnsworth v. Potsdam*, 228 A.D.2d 79, 82 (N.Y. App. Div. 1997)) (“It is a well-established principle of law that a sidewalk is part of the public street or highway, (citation omitted) and that the duty of maintaining the sidewalks in a safe condition belongs to the municipality.”).

⁹⁶ NEW YORK, N.Y., ADMIN. CODE § 16-123 (2016) (stating persons “having charge of any building or lot of ground in the city, abutting upon any street where the sidewalk is paved, shall within four hours after the snow ceases to fall . . . remove the snow or ice . . . from the sidewalk and gutter”).

⁹⁷ See ONONDAGA CTY. SUSTAINABLE STREETS PROJECT REFERENCE DOCUMENT, 3. MUN. CODES 3-5, http://walkbikecny.org/wp-content/uploads/2014/06/SSM_ch3_Municipal_Codes.pdf (last visited Mar. 27, 2016) (“Half of the municipalities in the Study Area that have sidewalk ordinances, including the City of Syracuse, have ordinances specifying that it is the property owner’s responsibility to clear ice and snow from sidewalks on their property.”).

⁹⁸ DEWITT, N.Y., TOWN CODE § 161-19.1 (1995).

right-of-way of such highway right-of-way, which, for the purpose of such snow removal, shall be considered a snow shelf. Highway rights-of-way within the Town shall include any State, county and/or Town road, and there shall be no obligation of the Town of DeWitt to remove any snow and/or ice from said snow shelf once it is placed there.⁹⁹

The DeWitt Town Code does not explicitly include a definition for a “snow shelf,” nor does any New York state law, code, or regulation make reference to, or define, a snow shelf in a way that would validate its use in the DeWitt Town Code. Moreover, in DeWitt’s comprehensive plan, the zoning code generally, and in the language of section 161-19.1, the town code identifies these walkways as sidewalks. Generally, when something looks like a sidewalk, is identified by pedestrians as a sidewalk, and is used as a sidewalk—it should be considered a sidewalk. The only apparent reason for redefining these sidewalks as snow shelves in the winter months is to avoid the legal obligation and expense of maintaining the accessibility of the sidewalks. Therefore, in the absence of an explicit statutory or case law definition to the contrary, the meaning of snow shelf may be determined from the plain language of the phrase or implied from its surrounding context. Thus, a “snow shelf” may be understood to be a designated physical location or space along a roadway where town snow-removal workers push or dispose of snow and ice.¹⁰⁰ However, once a sidewalk is constructed in this space, the sidewalk must comply with the ADA. In other words, a snow shelf might consist of a grassy area along the side of the road where snow can be placed, but when a community elects to construct sidewalks within this area, it then becomes the obligation of the town to fully comply with the ADA. This

⁹⁹ DEWITT, N.Y., TOWN CODE § 161-19.1 (2007). Similar exculpatory language has also been found in the Town of Onondaga Code at Chapter 253, art. III, sec. 253-15(f). (The Town of Onondaga, located in Onondaga County, is a suburb of Syracuse, NY.)

¹⁰⁰ When attempting to understand an ambiguous or undefined term, “courts generally assume that the words of a statute mean what an ‘ordinary’ or ‘reasonable’ person would understand them to mean.” Katharine Clark & Matthew Connolly, *A Guide to Reading, Interpreting and Applying Statutes* 3 (The Writing Ctr. at GULC, ed. 2006). So, plain meaning is the first resort when interpreting. If plain meaning does not satisfy the question you are looking to answer, the reader should adopt the doctrine of “Noscitur a Sociis”—“it is known from its associates”—by using contextual clues to interpret the meaning and scope. *Id.* at 7.

is a reasonable legal requirement given that the town has no obligation to provide sidewalks in the first instance.

Under the ADA, a town is not responsible for “temporary interruptions in service or access.”¹⁰¹ The language of section 161-19.1 of the DeWitt Town Code, however, was not intended to allow only a temporary interruption to sidewalk access.¹⁰² Rather, the plain language of this provision makes clear that the town intended to obstruct accessibility by placing snow on the sidewalks with no plan to remove it once it is placed there. Although each individual snow storm may seem temporary, the accumulation of plowed snow on a sidewalk in central New York can last for months if not manually removed. A guidance document released by the Department of Justice for small towns states that the “[m]aintenance of accessible features would include the removal of snow from . . . the accessible route to the accessible entrance[.]”¹⁰³ Although temporary interruptions in services due to bad weather are expected, alternate services should be provided if snow and ice cannot be cleared in a timely manner.¹⁰⁴ Thus, if a town intends to leave snow and place snow on its sidewalks as a regular course of operations, it must provide an alternative accessible route. Furthermore, case law has explained that temporary interruptions from snow storms would not mean waiting for the snow to melt on its own.¹⁰⁵

If no other accessible route is made available, individuals in wheelchairs are often forced to take to the road in order to get around town. This creates an inherently dangerous condition for both pedestrians with disabilities and the drivers on the road.¹⁰⁶

¹⁰¹ U.S. DEP’T OF JUSTICE, *infra* note 103, at 13.

¹⁰² If the law had been framed in such a way that could be construed as a hierarchy of priorities when plowing, it would likely be upheld. Such a code or regulation could allow plows to *temporarily* push or remove snow and ice onto sidewalks—prioritizing roadway clearance—if it made provisions for the subsequent removal of snow from sidewalks, whether by the Town or abutting landowners.

¹⁰³ U.S. DEP’T OF JUSTICE, AMERICANS WITH DISABILITIES ACT: ADA GUIDE FOR SMALL TOWNS 13 (Mar. 2000), <http://www.ada.gov/smtown.htm#anchor25962>.

¹⁰⁴ *Id.*

¹⁰⁵ See MALLOY, *supra* note 1, at 165–74 (indicating that there must be a regular plan for maintaining accessibility in order to avoid liability for temporary interruptions).

¹⁰⁶ See Geoff Forester, *Downtown: In wake of fatal accident, officials are in talks over maintenance for I-393 Sidewalk*, CONCORD MONITOR (Mar. 6 2016), <http://www.concordmonitor.com/community/town-by-town/concord/21390505-95/downtown-in-wake-of-fatal-accident-officials-are-in-talks-over-maintenance-for-i393> (due to an unplowed sidewalk, a man in a wheelchair took to the road where he was struck and killed by a car).

The DeWitt Town Code Section 161-19.1 offers an example of a local regulation that directly conflicts with ADA regulations and requirements. Under federal law, a sidewalk “shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities.”¹⁰⁷ In using “shall,” the ADA makes clear that public entities, including local municipalities, are obligated to ensure that public services and programs are readily accessible to and usable by persons with disabilities. However, section 161-19.1 not only ignores the obligation to maintain accessible routes, it actually authorizes obstructions and the eliminating of accessible routes that are required to be maintained.¹⁰⁸ While a snow shelf may be an open space of grass along a roadside where snow can be placed when clearing the adjoining road, once a decision is made to construct a sidewalk in that space, the sidewalk must be built, maintained, and kept accessible in accordance with the requirements of the ADA.¹⁰⁹

Conflict of laws is an additional factor to consider in evaluating town regulations. The Supremacy Clause of the United States Constitution establishes that the “supreme law of the land” includes (1) the Constitution, (2) federal laws made pursuant to it, and (3) treaties made under its authority.¹¹⁰ This means that when a state and federal law conflict, federal law must be applied. Here, there is a direct conflict between the ADA and a local regulation such as the DeWitt Town Code section 161-19.1. Under the Supremacy Clause doctrine, the requirements of the ADA are superior to any conflicting law that the Town of DeWitt could enact; thus, as written, the DeWitt law is an arguably unconstitutional and unenforceable town code provision.

The DeWitt Town Code is an example of a community failing to fully understand the requirements of the ADA. Passing a town ordinance declaring sidewalks to be snow shelves during the winter months is neither an appropriate nor legal response to the needs of people with disability and the ADA. Other towns, even those without a specific local ordinance such as that in DeWitt, often fail to remove snow from sidewalks because they do not want to pay the cost of snow removal.

¹⁰⁷ U.S. DEP’T OF JUSTICE, *supra* note 83, at 3.

¹⁰⁸ See DEWITT, N.Y., TOWN CODE § 161-19.1 (2007).

¹⁰⁹ In the case of DeWitt, a failure to comply with the ADA also contradicts its own local zoning code, which defines a sidewalk as a structure and requires that all structures be accessible and in compliance with the ADA. See DEWITT, N.Y., TOWN CODE § 192-M, -90(A)(4).

¹¹⁰ U.S. CONST. art. VI, cl. 2.

Politically, there is often pressure to offer tax paying constituents the promise of more sidewalks while assuring them that taxes will not go up in order to keep those sidewalks clear of snow. These constituents also seek assurance that they will not be personally required to remove snow from walkways along their property.¹¹¹ As a consequence, people with a disability are often discriminated against as a result of failure by local communities to comply with the ADA.¹¹²

VI. PLANNING FOR ADA COMPLIANT SIDEWALKS

The ADA requires public entities with more than fifty employees to establish transition plans for sidewalk accessibility.¹¹³ The transition plan is intended to identify system needs and integrate them with the State's planning process. Transition plans must include a schedule for providing access features, including curb ramps for sidewalks.¹¹⁴ The schedule should first provide for pedestrian access upgrades to "[s]tate and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas."¹¹⁵ Each transition plan should accomplish four tasks: (1) "identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities; (2) [d]escribe in detail the methods that will be used to make the facilities accessible; (3) [s]pecify the schedule for taking the steps necessary" to upgrade pedestrian access to meet ADA and section 504

¹¹¹ See generally Elizabeth Doran, *DeWitt May Schedule Referendum on Proposal to Build 23 Miles of Sidewalks Along Busy Roads*, SYRACUSE.COM, http://www.syracuse.com/news/index.ssf/2012/06/dewitt_sidewalks.html (last visited June 28, 2016); See *Frequently Asked Questions*, www.townofdewitt.com/documents/124.pdf (concerning new sidewalks for DeWitt) (In response to the question: "Will I be required to shovel them?" The answer is: "No, the sidewalk would be a designated snow shelf and homeowners would not have to shovel them.").

¹¹² A pattern of local government indifference to accessibility, a failure to plan for sidewalk upgrading and enhanced accessibility, or a reluctance to commit to the obligations and goals of the ADA should constitute evidence of discrimination against people with disability. Moreover, it is well known that physically able people in the snow-belt often walk along snow covered sidewalks using them as winter pathways; thus, a failure to regularly clear the sidewalks of snow is understood by many officials to disadvantage both the elderly and people with mobility impairments.

¹¹³ See 28 C.F.R. § 35.150(d)(1) (2015).

¹¹⁴ See *Id.* § 35.150(d)(2).

¹¹⁵ *Id.*

requirements in each year following the transition plan; and (4) “[i]ndicate the official responsible for implementation of the plan.”¹¹⁶

In addition to this planning requirement, local communities must also comply with the requirements for “Olmstead planning” as first articulated in *Olmstead v. L.C.*¹¹⁷ and “subsequently mandated in federal disability legislation.”¹¹⁸ “Olmstead planning requires communities to plan for the best ways to deliver services to people with disabilities in settings that enable them to interact with nondisabled people to the fullest extent possible.”¹¹⁹ Given that sidewalks are services, communities must plan on how to make sidewalks accessible to the fullest extent possible. Moreover, Olmstead planning requirements would seem to require that local comprehensive plans and sustainability plans include specifics regarding efforts to transition to fully accessible sidewalks and pathways.¹²⁰

In planning and executing an accessible sidewalk plan, guidance is offered from several sources, including (1) the U.S. Department of Justice,¹²¹ (2) the U.S. Department of Transportation,¹²² and (3) the United States Access Board.¹²³ Many states, such as New York, also offer guidance for compliance in planning and design.¹²⁴ These guidelines address ramping, curb cutting, width and turning radius requirements, as well as placement of benches, signs, and bus stops.¹²⁵

¹¹⁶ *Id.* § 35.150(d)(3).

¹¹⁷ 527 U.S. 581 (1999).

¹¹⁸ *See* MALLOY, *supra* note 1, at 238.

¹¹⁹ *Id.*

¹²⁰ *See id.* at 238–39.

¹²¹ *See* U.S. DEPT. OF JUSTICE, GUIDANCE ON THE 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN, <http://www.ada.gov/regs2010/2010ADASTandards/Guidance2010ADASTandards.htm>.

¹²² *See* U.S. DEP’T OF TRANSP., DESIGNING PEDESTRIAN FACILITIES FOR ACCESSIBILITY, http://dot.state.nm.us/content/dam/nmdot/OEOP/ADA_Module-3.pdf.

¹²³ *See* U.S. ACCESS BOARD, ADA ACCESSIBILITY GUIDELINES (2002), <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/background/adaag>.

¹²⁴ *See* U.S. DEP’T OF JUSTICE, *supra* note 83; N.Y. DEP’T OF TRANS., HIGHWAY DESIGN MANUAL, https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/chapt_18.pdf.

¹²⁵ *See, e.g.*, U.S. ACCESS BOARD, *supra* note 123. In addition to dealing with issues of snow removal, communities should inventory the extent to which existing pathways fail to meet ADA requirements. These communities must also make sure that new and altered sidewalks comply with the ADA; and, they must affirmatively plan for

VII. CONCLUSION

It is very important for municipalities and towns to build, alter, and maintain their sidewalks in accordance with the requirements of the ADA. The bottom line is, if a municipality decides to build a sidewalk, regardless of funding source, it must be constructed and maintained in accordance with the ADA. Specific technical requirements must be met to ensure that all users can access and safely use the sidewalk. Municipalities and towns generally are responsible for day-to-day maintenance of sidewalks within their boundaries, unless they delegate that responsibility to property owners through the municipal or town code.¹²⁶ ADA requirements can be an added expense and burden for municipalities but compliance with the ADA is a legal requirement—not to mention an appropriate way of making our communities more accessible to people with disabilities and to people seeking to age in place.¹²⁷

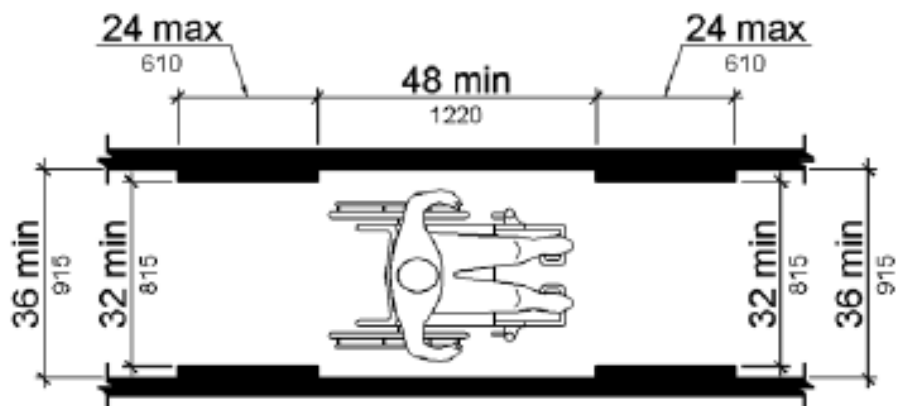
[An Appendix is included on the next page to offer guidance on basic ADA sidewalk design requirements.]

constructing and financing upgrades to existing sidewalks so that all pathways will be fully accessible to all residents without regard to disability.

¹²⁶ See U.S. DEP'T OF JUSTICE, THE AMERICANS WITH DISABILITIES ACT: TITLE II TECH. ASSISTANCE MANUAL, <https://www.ada.gov/taman2.html#11-5.3000>; see also Gerald Hicks, But It's Your Sidewalk! Sidewalk Repair and Liability, LEAGUE OF CAL. CITIES (May 8, 2014, 2:15 PM), http://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2014/Spring-Conf/5-2014-Spring-Gerald-Hicks-But-Its-Your-Sidewalk_S.aspx (explaining California property owners' responsibility for maintaining sidewalks).

¹²⁷ See U.S. DEP'T OF JUSTICE, THE ADA AND CITY GOV'TS: COMMON PROBLEMS, <http://ada.gov/comprob.htm> (noting that while governments and municipalities must comply with ADA requirements, they are "not required to take any action that would result in [. . .] undue financial [or] administrative burdens").

APPENDIX

General Requirements

Under the ADA, all sidewalk surfaces must be at least thirty-six inches wide.¹²⁸ The width can be reduced to thirty-two inches for a length of twenty-four inches, provided that the reduced width segments are separated by segments that are forty-eight inches long, and thirty-six inches wide.¹²⁹ When an accessible route is less than sixty inches wide, passing spaces must be provided at intervals of 200 feet.¹³⁰

Curb Cuts

Curb cuts, or curb ramps, are an integral part of an ADA compliant sidewalk. Curb ramps allow for continuous sidewalk access to those with mobility impairments and the ADA has strict requirements that must be met whenever an accessible route crosses a curb.¹³¹ Curb cuts are most commonly found at intersections, but they are also found at entrances to businesses and private homes, as well as in medians and crosswalks.¹³²

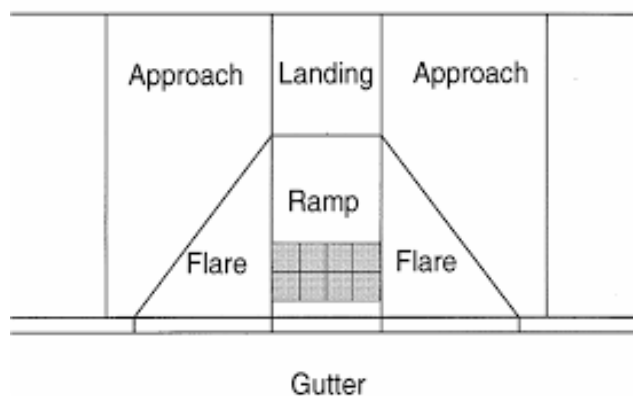
¹²⁸ See U.S. DEP'T OF JUSTICE, *supra* note 83, at 89.

¹²⁹ See *id.*

¹³⁰ See *id.*

¹³¹ See U.S. DEP'T OF JUSTICE, *supra* note 121, at 62.

¹³² See U.S. DEP'T OF TRANSP., *supra* note 122, at 2.



Curb cuts consist of five sections: (1) the landing, or the “level area of [the] sidewalk at the top of a curb ramp facing the ramp path”; (2) the approach, or the “section of the accessible route flanking the landing of a curb ramp”; (3) the flare, or the “sloped transition between the curb ramp and the sidewalk”; (4) the ramp, or the “sloped transition between the street and the sidewalk where the grade is constant and the cross-slope is at a minimum”; and (5) the gutter, or a “trough or dip used for drainage purposes” along the street.¹³³

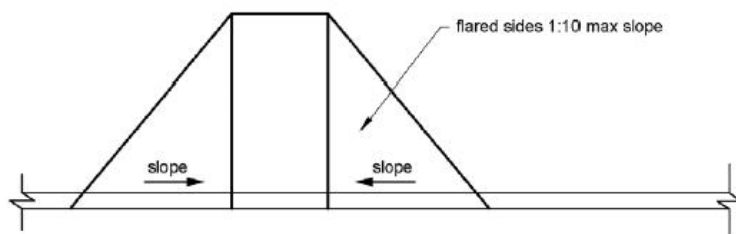
When setting requirements for curb cuts under the ADA, agencies should look to the 2010 ADA Standards for Accessible Design published by the DOJ.¹³⁴ The 2010 Standards incorporated the majority of the 2004 ADA Accessibility Guidelines Manual published by the Access Board.¹³⁵ The United States Federal Highway Administration also published a manual incorporating the DOJ’s requirements.¹³⁶

¹³³ U.S. DEP’T OF TRANS. DESIGNING SIDEWALKS AND TRAILS FOR ACCESS, 4.4.1.1, https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/sidewalks/chap4a.cfm#sid.

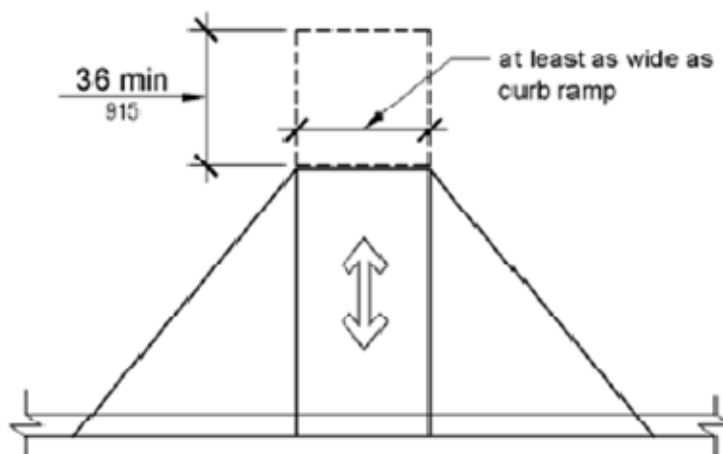
¹³⁴ See U.S. DEP’T OF JUSTICE, *supra* note 83.

¹³⁵ See U.S. ACCESS BOARD, ADAAG MANUAL: GUIDE TO THE AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (2004), <http://www.adainfo.org/sites/default/files/ADAAG-Manual.pdf>.

¹³⁶ See *id.* at 36.



Under the adopted standards, the slope of the ramp section of any curb cut cannot exceed 1:10.¹³⁷ “It is [also] important that transitions to [the] section ramp be flush.”¹³⁸ This allows for wheelchairs to gain necessary momentum to propel up the slope without scraping the footrest against the ramp.¹³⁹ The parallel street or gutter must also be flush with the lowest portion of the ramp to allow access to the street or crosswalk.¹⁴⁰



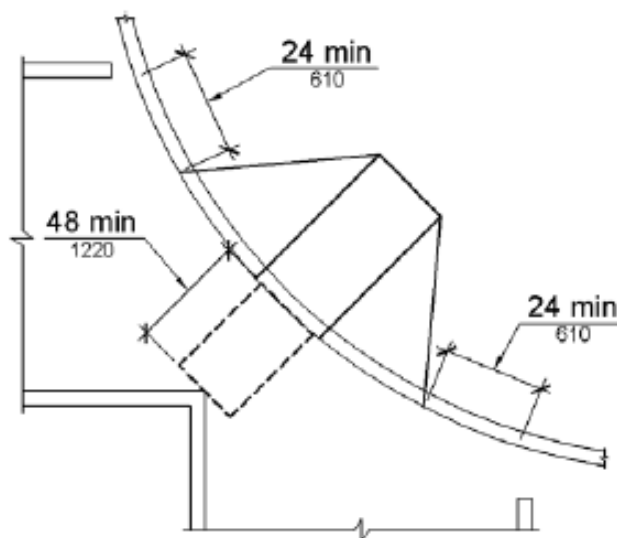
¹³⁷ See id.

¹³⁸ Id.

¹³⁹ See id.

¹⁴⁰ See id.

Curb cuts must have a “minimum clear width of 36 inches, exclusive of flared sides.”¹⁴¹ “A landing with a minimum length of 48 inches” is also required at the top of curb ramps.¹⁴² This allows wheelchairs to easily maneuver from the ramp and turn when necessary.¹⁴³ Alternative designs are acceptable, when space is limited, so long as a level landing with space to turn is provided.¹⁴⁴ All materials used when constructing curb cuts must be “stable, firm, and slip resistant.”¹⁴⁵ “It is [also] important that parked cars, lampposts, utility poles,” benches, and other common elements along sidewalks not be placed so as to obstruct the connection of the accessible route.¹⁴⁶



Diagonal curb cuts, often located at corner intersections, have slightly different requirements.¹⁴⁷ A forty-eight inch landing is required

¹⁴¹ *Id.*

¹⁴² *Id.* at 38.

¹⁴³ *See id.*

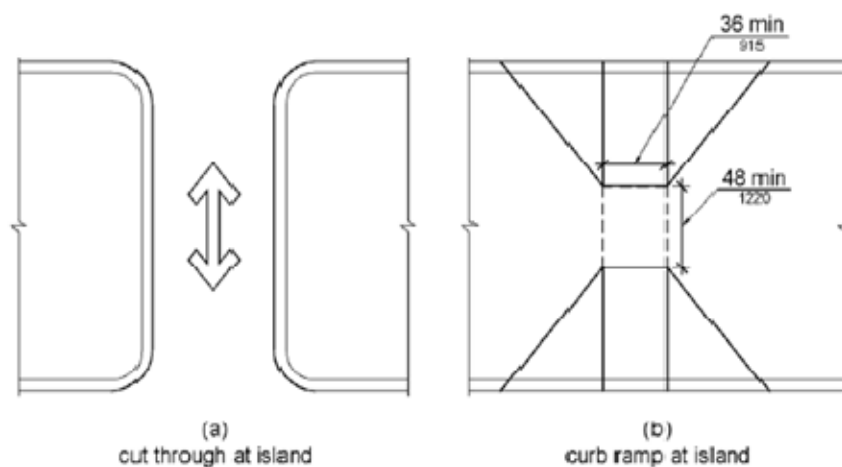
¹⁴⁴ *See id.*

¹⁴⁵ *Id.* at 44.

¹⁴⁶ *Id.* at 37.

¹⁴⁷ *See id.* at 39.

at the base of the sloped ramp so that wheelchairs are not directed into active traffic lanes when crossing the street.¹⁴⁸



When curb ramps are located on islands within a multi-lane street, a forty-eight inch landing is required so that a wheelchair can rest flat before proceeding up the sloped ramp to cross the remaining portion of the street.¹⁴⁹ This also prevents the wheelchair from “bottoming out.”¹⁵⁰ The New York Department of Transportation has prepared sheets with instructions and guidelines for third-party construction of ADA compliant curb cuts, crosswalks, and driveways.¹⁵¹ These sheets have general notes about construction, illustrations, and definitive technical measurements.¹⁵²

¹⁴⁸ See *id.*

¹⁴⁹ See *id.*

¹⁵⁰ See *id.*

¹⁵¹ See N.Y. DEP'T OF TRANS., DOING BUSINESS WITH NYSDOT, <https://www.dot.ny.gov/main/business-center/engineering/cadd-info/drawings/standard-sheets/608-sidewalks-driveways-etc>.

¹⁵² See *id.*

