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SIDEWALKS AND THE AMERICANS WITH DISABILITIES ACT*

BY:

ROBIN PAUL MALLOY*

& SARAH K. SPENCER*

I. INTRODUCTION

Approximately one-fifth to one-quarter of American families have a family member with a mobility impairment. A mobility impairment is a disability that limits one's ability to safely and easily navigate a community.[1] Among other challenges, it makes using public transportation and public sidewalks difficult. This presents a growing problem for many local communities because the number of people with mobility impairments is increasing due to an aging population.[2] This article focuses on the construction and maintenance of sidewalks and outlines requirements for compliance with the Americans with Disabilities Act (ADA).

Three major federal statutes protect people with disabilities from discrimination and apply directly to local planning and zoning activities; including the construction and maintenance of sidewalks. Collectively, it is useful to refer to all three of these statutes as the "ADA" because most of the litigation related to sidewalks will have an ADA claim. Nonetheless, it is important to note that there are other important legislative requirements that may have a bearing on a given situation. The three federal statutes are:

1. *Section 504 of the Rehabilitation Act (RHA) codified as Section 794 of the RHA of 1978.* This

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section prohibits discrimination with respect to any program or activity, including sidewalks, supported with federal funding.[3]

2. *Fair Housing Act (FHA).* It 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.

3. *Title II of the Americans with Disabilities Act (ADA).* It applies to all *programs, services, and activities* of local governments, which have been held to include planning and zoning, as well as the specific activity of building, repairing, and clearing snow from sidewalks.[5]

In this article, we do four things. First, we define a sidewalk to distinguish it from other pathways and trails. Second, we address the requirements for repair and maintenance of sidewalks. Third, we address the need to keep sidewalks continually accessible; including the need to remove snow and ice, as well as other obstacles to accessibility. Fourth, we discuss the need for ongoing planning for ADA compliant sidewalks.

II. DEFINING AND CONSTRUCTING SIDEWALKS

There is no obligation under the ADA for a local municipality to provide sidewalks. However, if sidewalks are constructed they must be fully compliant with the ADA. Using New York as an example, we start by defining a sidewalk. Under the regulations applicable in New York, there are two prevailing sidewalk definitions:

1. *New York Vehicle and Traffic Law Title 1, Article 1, section 144.* "That 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]

2. *New York Department of Transportation (DOT).* "A smooth, paved, stable and slip resistant, exterior pathway 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, which 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 therefore important to build sidewalks in compliance with the ADA in the first instance.

Generally speaking, state and local law governs the building, locating, and funding of

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sidewalks, rather than federal law.[9] In addition, many municipalities develop their own requirements for when sidewalks must be constructed. Often, municipalities require the construction of sidewalks as a condition of new development that shifts the cost burden of sidewalk construction from the municipality to the developer. In addition, municipal codes sometimes specifically address the requirements of the ADA by requiring structures, including sidewalks, to be ADA compliant.

In New York, Article 2 of the State Highway Law provides that the Department of Transportation can build sidewalks adjacent to state highways in towns and outside city and village boundaries, where necessary.[10] The DOT has full authority to determine the type, width, location with respect to the highway, and the general construction details of such sidewalks.[11] 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."[12] Town governments can also construct sidewalks along state and county roads with the permission of the State Commissioner of Transportation or the County Superintendent of Highways, as appropriate; however, towns must pay for these sidewalks themselves.[13] A key requirement is that no matter who builds a sidewalk and no matter what right of way it occupies, the requirements for keeping the sidewalk ADA compliant fall upon the local municipal or town authority wherein the sidewalk is located.[14] With respect to federal law, sidewalks must comply with the ADA when federal funds are used to support construction,[15] or when the sidewalks function as a *program*, *service*, or *activity* of state or local government.[16]

In *Barden v. City of Sacramento*,[17] the Ninth Circuit held that "sidewalks are subject to program accessibility regulations promulgated in furtherance" of the ADA[18] and qualified as a "service, program or activity" within the meaning of Title II.[19] In *Geiger v. City of Upper Arlington, 33 Nat'l Disability Law Rep. P 21*, 2006 WL 1888877 (S.D. Ohio 2006),[20] the court referred to *Barden* and held that while sidewalks came within the ADA, communities were not required to build sidewalks.[21]

In *Frame v. City of Arlington*,[22] the Fifth Circuit Court of Appeals held that Title II of the ADA, and section 504 of the RHA, apply to newly built and altered public sidewalks.[23] The Court reasoned that municipal authorities are "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."[24] Consequently, when communities undertake to build sidewalks they must make them ADA compliant because the sidewalks represent programs, services, and activities of the local government. The plaintiffs in *Frame* claimed that the inaccessible sidewalks violated both Title II of the ADA and section 504 of the RHA.[25] 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.[26] The court found a violation of the RHA because the RHA covers all programs and activities of local government.[27] Specifically, the court considered the fact that federal funding was used on the sidewalks in this case, which brought them within the RHA.[28] Additionally, the court reviewed Department of Justice regulations and determined that new sidewalks must be "readily accessible" to individuals with disability. Thus, it is clear that sidewalks are covered under the ADA and related regulations.[29]

III. UPGRADING SIDEWALKS

When does the undertaking of standard sidewalk repair and maintenance require

municipalities to bring outdated sidewalks into compliance with the ADA? Title 28 C.F.R. section 35.150(a) states that public entities must operate services, programs, or activities so that each, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.[30] However, a municipality is not necessarily required to make each of its existing facilities accessible to and usable by individuals with disabilities. Nor is it required to take action that would threaten or destroy the historic significance of an historic property, or result in a fundamental alteration to the nature of the service, program, or activity.

In *Kinney v. Yerusalim*, the city resurfaced local roads and the plaintiffs argued that resurfacing of a street constituted an "alteration" under section 35.151(i).[31] Plaintiffs claimed 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.[32] The city argued that resurfacing was not an activity that rose to the level of alteration under the statute.[33] The court rejected the city's argument and cited the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) and held that Title II of the ADA is triggered whenever an alteration "affects or could affect the usability of [the] facility."[34] The court discussed the definition of "usability" and concluded that the term should "be read broadly to include any change that affects the usability of the facility, not simply changes that relate directly to access by individuals with disabilities."[35] Thus, "[w]hether resurfacing a street constitutes an 'alteration' " depends on "whether resurfacing affects the usability of the street."[36] The court concluded that resurfacing a street made it more useable and that it constituted an "alteration," under the ADA. Thus, the city was required to construct curb ramps on all streets that had been resurfaced after January 26, 1992.[37]

Communities that undertake routine maintenance of roads and streets are not engaged in alterations that require sidewalks to be upgraded 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."[38] The Department of Justice (DOJ) has further stated that the following maintenance activities are not considered alterations:

- Filling potholes, joint repair, pavement patching, shoulder repair, striping, signing, and draining system repairs.[39]

However, the following projects are considered alterations:

- Resurfacing beyond normal maintenance, reconstruction, rehabilitation, widening, and traffic signal installation.[40]

Under the ADA, municipalities are responsible for general upkeep of sidewalks to ensure they remain open and usable to persons with disabilities.[41] 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.[42] Cities and villages are responsible for the upkeep of state-constructed roads within their boundaries.[43]

Additionally, New York State Property Maintenance Code, provides that individual property owners are responsible for maintaining all sidewalks, stairs, driveways, parking spaces, and similar areas located on their property and for keeping all these areas free from hazardous conditions.[44] Municipalities may also delegate the responsibility of public sidewalk upkeep to individual property owners.

One issue affecting maintenance and up-

grading of sidewalks is funding. In many cases federal or state funding maybe be available to facilitate the original construction of new sidewalks, but as the sidewalks age and require repairs the funding typically must come from local sources. This may put local governments in a difficult position when resources are limited and taxpayers are reluctant to support new taxes. Often, this reluctance is amplified when taxpayers are told repairs and upgrades are needed to enhance accessibility for people with disabilities. This is because many people have the misimpression that less than 1% of the population needs these accessible sidewalks. Many people associate the need for accessible sidewalks with people in a wheelchair, and when they look around, they do not see that many people in wheelchairs. Consequently, there is minimal support for raising taxes when it is perceived that little benefit is to be gained. The problem for many taxpayers is that they do not understand how many people and families are actually affected by a disability. Likewise, they fail to appreciate that policy choices on the need for sidewalk accessibility have already been made and enacted into law by the elected officials that passed the ADA.

IV. SIDEWALK SNOW REMOVAL AND ACCESSIBILITY

In areas of the country with significant snowfall, removing snow and ice from sidewalks is often an issue. Snow accumulates on sidewalks and makes them impassible. In addition, roads and streets have to be plowed, and this sometimes causes snow to be pushed onto nearby sidewalks. Removing snow and ice from sidewalks is not cost free and many communities seek to avoid paying for such costs out of general tax revenues. Property owners dislike being told that they must either keep sidewalks along their property clear of snow and debris or pay someone to do it for them. Thus, one of the most disputed issues related to sidewalk accessibility involves snow removal. In spite of what some local government leaders try to argue, the ADA requires snow-belt communities to clear sidewalks of 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."[45] This requirement does not apply to "temporary interruptions in service or access due to maintenance or repairs."[46] 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 so that it is neither "accessible to" nor "usable by" individuals with disabilities, it is noncompliant.[47] In 2010, the DOJ released the latest official guidelines for Accessible Design.[48] 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.[49]

In 2011, the United States Access Board (Access Board) released proposed guidelines for adoption as "accessibility standards in regulations issued by other federal agencies implementing Title II of the Americans with Disabilities Act."[50] Under the proposed guidelines, "pedestrian access routes" must be provided within:

- Sidewalks and other pedestrian circulation paths located in the public right-of-way;
- Pedestrian street crossings and at-grade rail crossings, including medians and pedestrian refuge islands; and
- Overpasses, underpasses, bridges, and

similar structures that contain pedestrian circulation paths.[51]

In the FHWA memorandum SNOW REMOVAL ON SIDEWALKS CONSTRUCTED WITH FEDERAL FUNDING, snow and ice removal from sidewalks is considered a pedestrian accessibility issue.[52] Further, "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."[53] Part of this maintenance obligation includes "reasonable snow removal efforts."[54] There is recognition that snow conditions vary among the states but local governments are required to develop policies that provide for the removal of snow and ice from "their own roadways and adjoining pedestrian facilities."[55]

Many sidewalks in New York State, as in other states, are funded at least in part with federal funds, and this makes the sidewalks subject to the FHWA guidelines.[56] 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."[57] 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 open *and accessible* the entire year—including winter. Some municipalities avoid the cost of snow removal by adopting ordinances that place the burden on individuals or entities that own or occupy the land abutting the sidewalk.[58]

In addition to federal disability law, states also have regulations requiring sidewalks to be clear of ice and snow. The New York State DOT has incorporated the Access Board guidelines as part of its standards, and requires local towns to keep sidewalks clear and accessible.[59] New York Highway Design Manual, Chapter 18.4, and Section 140 of the New York State Highway Law, provide:

> Chapter 18.4 . . . Americans with Disabilities Act (ADA) regulations require accessible pedestrian routes to be maintained. Only temporary interruptions in service or access are permitted. A sidewalk with accumulated snow and/or ice that is left in place beyond a reasonable period of time would clearly not qualify as a temporary interruption in access.[60]
>
> Section 140 of the Highway Law . . . requires towns to maintain sidewalks along State highways, including removing snow and ice.[61]

In spite of both federal and state regulations, some local governments in New York have failed in keeping sidewalks accessible during the winter. For example, the Town of DeWitt (a suburban community near Syracuse, New York) does not maintain accessible sidewalks. It passed a local ordinance declaring all sidewalks to be "snow shelves" where snow and ice can be placed with no obligation to keep the sidewalks clear.[62] The term "snow shelf" is one originated by the Town itself, and is meant to designate a place where snow can be placed when removed from the streets. The Town does not clear sidewalks in accordance with the ADA and applicable highway regulations because it relies on its own ordinance for the position that it does not have to keep sidewalks clear and accessible. The neighboring Town of Onondaga also passed similar ordinance language.[63] The DeWitt ordinance provides:

> 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 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.[64]

Acting, or more properly, failing to act pursuant to such an ordinance results in sidewalks being buried in snow—even at protected crosswalks and at locations clearly identified as

handicap accessible bus stops. Waiting for the snow to melt by natural forces may take days or even weeks.

In our opinion, a Town ordinance such as the one in DeWitt directly contradicts both state and federal law and should be considered unenforceable. Furthermore, failing to keep sidewalks clear of snow and other obstructions violates the requirements of the ADA. Moreover, when a local government purposefully retains an unlawful ordinance after being informed of the requirements of the ADA, it is evidence of a presumption of intentional discrimination against people with disabilities.

Even if an area along a roadway is used to place snow when clearing roads in the winter months, if a sidewalk has been built in that space, the sidewalk must be cleared. A community may not want to pay for the cost of snow removal on sidewalks, but that is not a legal excuse for avoiding compliance with the law. It is up to the local government to comply with the law and to figure out how best to efficiently and effectively clear sidewalks so that they remain accessible. Keeping sidewalks accessible and free of obstructions, including snow, is not optional; it is a legal requirement.

Although temporary interruptions in sidewalk accessibility are tolerated, general expectations are that sidewalks should be clear within 24 hours after a snowfall.[65]

V. PLANNING FOR ACCESSIBLE SIDEWALKS

The ADA requires public entities with more than 50 employees to establish transition plans for sidewalk accessibility.[66] These plans should identify needed sidewalk repairs and upgrades that will bring community sidewalks into ADA compliance. Plans should 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."[67] Each transition plan should accomplish four tasks:

- Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
- Describe in detail the methods that will be used to make the facilities accessible;
- Specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and section 504 requirements in each year following the transition plan; and
- Indicate the official responsible for implementation of the plan.[68]

Local planning must also comply with the requirements for "Olmstead planning" as first articulated in *Olmstead v. L.C.*[69] and "subsequently mandated in federal disability legislation."[70] "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."[71] Given that sidewalks are services, communities must plan on how to make sidewalks accessible to the fullest extent possible. Moreover, comprehensive plans and sustainability plans should include specifics regarding efforts to transition to fully accessible sidewalks.[72]

As part of a planning process, it may be useful to require Accessibility Impact Assessments. These would be similar to Health Impact Assessments, and Environmental Impact Statements. These Accessibility Impact Assessments would focus on the way that land use regulation and property development affect the accessibility of a community. These assessments should include details with respect to sidewalks as a core component of connectivity across the community; focusing on the best

locations for building new sidewalks, and for placing curb cuts, crosswalks, and transit stops. They should also assess the ongoing need for repairs and updates.

In planning and executing an accessible sidewalk plan, guidance addressing ramping, curb cutting, width and turning radius requirements, as well as placement of benches, signs, and bus stops[73] is offered from several sources, including:

- The U.S. Department of Justice;[74]
- The U.S. Department of Transportation;[75]
- The United States Access Board;[76] and
- State governments.[77]

VI. CONCLUSION

Our communities should be sustainable and accessible. This means that communities need to build, alter, and maintain their sidewalks in accordance with the requirements of the ADA. For political reasons, it may be difficult to move a community in the direction of compliance because many elected officials may fear voter backlash if taxes have to be raised in order to pay for sidewalk upgrades and for snow removal. Nonetheless, compliance is not an option; it is a legal requirement. In some cases, this type of political inertia may have to be overcome by litigation or by getting the Justice Department involved. If elected officials have to respond to a court order or a directive from the Justice Department, they can take "political cover" in the event that local taxes must be raised to cover costs. In such a case, local officials will simply be responding to a legal requirement imposed on them rather than being seen as pursuing a policy of accessibility that requires an increase in local taxes. Hopefully, however, communities will voluntarily move to greater compliance with the ADA. This will make communities more accessible, and easier to navigate by people with disabilities and for people seeking to age in place.

ENDNOTES:

*E. I. White Chair and Distinguished Professor of Law, and Kauffman Professor of Entrepreneurship and Innovation, College of Law, Syracuse University. Author of 16 books and numerous articles on property, real estate, and land regulation—including with particular reference to this Article: ROBIN PAUL MALLOY, LAND USE LAW AND DISABILITY: PLANNING AND ZONING FOR ACCESSIBLE COMMUNITIES (2015); ROBIN PAUL MALLOY, LAND USE AND ZONING LAW: PLANNING FOR ACCESSIBLE COMMUNITIES (forthcoming from Carolina Academic Press, 2018); Robin Paul Malloy, *Inclusion by Design: Accessible Housing and Mobility Impairment*, 60 HASTINGS L. J. 699 (2009); Robin Paul Malloy, *Land Use Law and Disability*, 38 ZONING AND PLAN. L. REP. (Apr. 2015, Issue 4, at 1-8). Malloy (with Peter Blanck) is also the series editor of the DISABILITY LAW AND POLICY book series published by Cambridge University Press.

*Associate Attorney at Goldberg Segalla LLP, B.A. State University of New York at Buffalo; M.P.S., State University of New York College of Environmental Science and Forestry, 2016; J.D., Syracuse University College of Law, 2016.

[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.A. §§ 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.A. §§ 3601-3619 (note that this incorporates the Fair Housing Amendments Act of 1988 and the Housing for Older Persons Act of 1995).

[5] *See* Americans with Disabilities Act of 1990, 42 U.S.C.A. §§ 12131-12161.

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

[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.A. § 12101.

[9] 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 52.

[10] *See* N.Y. HIGHWAY LAW § 10.22 (McKinney).

[11] *See id.*

[12] N.Y. HIGHWAY LAW § 54 (McKinney).

[13] *See* N.Y. HIGHWAY LAW § 151 (McKinney).

[14]69 *See* 28 C.F.R. § 35.133 (2015); *see also* U.S. DEP'T OF TRANSP. FED. HIGHWAY ADMIN., http://www.fhwa.dot.gov/civilrights/programs/ada_sect504qa.cfm.

[15] *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).

[16]*See Frame v. City of Arlington*, 657 F.3d 215, 25 A.D. Cas. (BNA) 556 (5th Cir. 2011); *See Barden v. City of Sacramento*, 292 F.3d 1073, 13 A.D. Cas. (BNA) 497 (9th Cir. 2002).

[17] *Id.*

[18] *Id.* at 1074.

[19] *Id.* at 1076-77.

[20]*Geiger v. City of Upper Arlington, 33 Nat'l Disability Law Rep. P 21*, 2006 WL 1888877 (S.D. Ohio 2006).

[21]*See Barden v. City of Sacramento*, 292 F.3d 1073, 13 A.D. Cas. (BNA) 497 (9th Cir. 2002).

[22]*Frame v. City of Arlington*, 657 F.3d 215, 25 A.D. Cas. (BNA) 556 (5th Cir. 2011).

[23] *Id.* at 223.

[24] *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 160, 60 S. Ct. 146, 84 L. Ed. 155, 5 L.R.R.M. (BNA) 659, 2 Lab. Cas. (CCH) P 17049 (1939).

[25] *See Frame*, 657 F.3d at 221.

[26] *Id.* at 227.

[27]*Id.*

[28]*Id.* at 225.

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

[30] 28 C.F.R. § 35.150(a).

[31] *Kinney v. Yerusalim*, 812 F. Supp. 547, 1 A.D.D. 369, 2 A.D. Cas. (BNA) 444 (E.D. Pa. 1993), decision aff'd, 9 F.3d 1067, 3 A.D.D. 444, 2 A.D. Cas. (BNA) 1470 (3d Cir. 1993).

[32]*See id.*

[33] *See id* at 549.

[34] *Id.* (quoting 28 C.F.R. § 35.151(b) (2015)) (omitting emphasis on "usability").

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

[36] *Id.*at 551.

[37] *See id.* at 552.

[38] FED. HIGHWAY ADMIN., *supra* note 15.

[39] *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.

[40]*See id.*

[41] *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.

[42] *See* UNITED STATES ACCESS BOARD, ADA ACCESSIBILITY GUIDELINES § 4.1.1(4) (2010).

[43] *See* N.Y. HIGHWAY LAW § 349-C (McKinney); *See* N.Y. HIGHWAY LAW § 46 (McKinney).

[44] *See* INT'L N.Y. PROP. MAINT. CODE §§ 301.2, 302.3 (INT'L CODE COUNCIL 2015).

[45] 28 C.F.R § 35.133(a) (2015).

[46] *Id.* § 35.133(b).

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

[48] *See* U.S. DEP'T OF JUSTICE, 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN (2010).

[49] *Id.* § 206.2.1.

[50] *Id.* at 1.

[51] *Id.* at 5.

[52] *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.

[53] *Id.* at 1.

[54] *Id.* at 1.

[55] *Id.*

[56] 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 68 bicycle, pedestrian, and multi-use path transportation projects in New York. The use of such federal funding brings these pathways under the scope of FHWA accessibility regulations.

[57] *Castiglione v. Village Of Ellenville*, 291 A.D.2d 769, 770, 738 N.Y.S.2d 443 (3d Dep't 2002) (quoting *Farnsworth v. Village of Potsdam*, 228 A.D.2d 79, 82, 651 N.Y.S.2d 748 (3d Dep't 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.").

[58] 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").

[59] *See,* U.S. ACCESS BOARD, *infra* note 72.

[60] N.Y. DEP'T OF TRANS., HIGHWAY DESIGN MANUAL, https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/chapt_18.pdf.

[61] N.Y. HIGHWAY LAW § 104 (McKinney).

[62] DEWITT, N.Y. TOWN CODE § 161.19.1 (2007).

[63] The same ordinance language has also been found in the Town of Onondaga code at Chapter 253, Art. III, Sec. 253-15(f). (The Town of Onondaga is a suburb of Syracuse, NY and is also in Onondaga County.)

[64] DEWITT, N.Y. TOWN CODE § 161.19.1 (2007).

[65] *See generally* SIDEWALK MAINTENANCE, CITY OF SYRACUSE, NEW YORK, http://www.syracuse.ny.us/Sidewalk_Maintenance.aspx.

[66] *See* 28 C.F.R. § 35.150(d)(1) (2015).

[67] *Id.*

[68] *Id. §* 35.150(d)(3).

[69] 527 U.S. 581 (1999).

[70] *See* MALLOY, *supra* note 1, at 238.

[71] *Id.*

[72] *See id.* at 238-39.

[73] *See, e.g.*, U.S. ACCESS BOARD, *infra* note 74. 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 constructing and financing upgrades to existing sidewalks so that all pathways will be fully accessible to all residents without regard to disability.

[74] *See* U.S. DEPT. OF JUSTICE, GUIDANCE ON THE 2010 ADA STANDARDS FOR ACCESSIBLE DESIGN, http://www.ada.gov/regs2010/2010ADAStandards/Guidance2010ADAStandards.htm.

[75] *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.

[76] *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.

[77] *See* U.S. DEP'T OF JUSTICE, *SUPRA* NOTE 48; N.Y. DEP'T OF TRANS., HIGHWAY DESIGN MANUAL, https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/hdm-repository/chapt_18.pdf.