

ADMINISTRATIVE MEETING

September 21, 2016

4:00 p.m. to 6:00 p.m.

Room 326

AGENDA

1. **Call to order, introductions, opening comments**
2. **September 7, 2016 Administrative Meeting summary**
3. **Commission comments, questions**
 - Upcoming appointments
4. **City Manager's Report**
5. **Department discussions**
 - Community Development/ Facilities**
 - Residential Energy Efficiency and Renewable Energy Loan Program update
 - City facilities energy efficiency update
 - **Consensus Direction to Manager:**
 - Public Works**
 - a) Capital Transit update on routes & ADA bus stops
 - b) PROWAG requirements, e.g. crosswalks - **Consensus Direction to Manager:**
6. **Committee discussions**
 - a) Audit Committee, City-County Board of Health, L&C County Mental Health Advisory Committee, Montana League of Cities & Towns
– Mayor Jim Smith
 - b) Mayor Pro-Tem, Audit Committee, Helena Chamber of Commerce Liaison, Information Technology Committee, Transportation Coordinating Committee
– Commissioner Dan Ellison
 - c) ADA Compliance Committee, Audit Committee, City-County Parks Board , Civic Center Board
– Commissioner Rob Farris-Olsen
 - d) Board of Adjustment, City-County Administration Building (CCAB), Non-Motorized Travel Advisory Board, Transportation Coordinating Committee
– Commissioner Andres Haladay
 - e) Business Improvement District/Helena Parking Commission ,Montana Business Assistance Connection, Public Art Committee
– Commissioner Ed Noonan
 - f) Helena Citizens Council
7. **Review of agenda for September 26, 2016 Commission meeting**
8. **Public comment**
9. **Commission discussion and direction to City Manager**
10. **Adjourn**

City of Helena, Montana

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The City of Helena is committed to providing access to persons with disabilities for its meetings, in compliance with Title II of the Americans with Disabilities Act and the Montana Human Rights Act. The City will not exclude persons with disabilities from participation at its meetings or otherwise deny them the City's services, programs, or activities.

Persons with disabilities requiring accommodations to participate in the City's meetings, services, programs, or activities should contact the City's ADA Coordinator, Elroy Golemon, as soon as possible to allow sufficient time to arrange for the requested accommodation, at any of the following:

(406) 447- 8490

TTY Relay Service 1-800-253-4091 or 711

citycommunitydevelopment@helenamt.gov

316 North Park, Avenue, Room 440, Helena, MT 59623

City of Helena, Montana

Approved Applications for Residential Energy Efficiency and Renewable Energy Loan Program

Property Address	Type of energy upgrade/energy system	Date of approval	Loan amount requested	Total amount for all approved loans
1716 5th Ave.	Solar	12/17/2015	\$11,991.86	\$11,991.86
826 N. Rodney St.	Solar	12/17/2015	\$11,877.64	\$23,869.50
580 S. Rodney	Solar	01/22/2016	\$8,444.00	\$32,313.50
613 Peosta Avenue	Solar	01/22/2016	\$9,341.15	\$41,654.65
609 Rhode Island St.	Solar	01/22/2016	\$12,000.00	\$53,654.65
608 Wintergreen Ct.	Solar	01/29/2016	\$10,397.62	\$64,052.27
1730 Lockey Ave	Solar	01/29/2016	\$12,000.00	\$76,052.27
716 Highland	Solar	01/29/2016	\$8,000.00	\$84,052.27
225 Wallace Street	Solar	02/19/2016	\$11,509.19	\$95,561.46
580 Diehl Drive	Solar	02/19/2016	\$12,000.00	\$107,561.46
534 S. Rodney	Solar	03/09/2016	\$10,957.25	\$118,518.71
638 1 st Street	Solar	03/15/2016	\$6,924.46	\$125,443.17
1630 Stuart Street	Solar	04/08/2016	\$12,000.00	\$137,443.17
209 & 211 5th Ave	Solar	05/10/2016	\$12,000.00	\$149,443.17
896 S. Hoback	Solar	06/02/2016	\$12,000.00	\$161,443.17
1127 5th Avenue	Solar	06/02/2016	\$12,000.00	\$173,443.17
215 S. Harrison Avenue	Solar	06/29/2016	\$12,000.00	\$185,443.17
716 Power St.	Solar	07/19/2016	\$12,000.00	\$197,443.17

Date: September 1, 2016
TO: Ron Alles, City Manager
FROM: Randall Camp, Public Works Director
Ryan Leland, City Engineer

Subject: Highland Street and Montana Avenue Crosswalk

During the annual street maintenance overlay project conducted by the City, staff reviewed the crosswalks that were affected. In reviewing the Highland crosswalk and the surrounding area, it was determined that the crosswalk would not be re-stripped because there is no surrounding accessible pedestrian facilities. According to the Federal ADA requirements to reinstall the Highland crosswalk, sidewalks and ADA ramps would have to be installed. Highland Street immediately east of the intersection has no sidewalks or ADA ramps and the portion of the street to the west has minimal sidewalks and no sidewalks or ADA ramps connecting to the crosswalk. The lack of pedestrian and ADA features were the reasons for the decision. An alternate route that could be used is crossing at the Broadway Avenue and Montana Avenue. This intersection is stop controlled, has ADA and pedestrian features to convey all pedestrians to Jefferson School. City Staff took into account the larger intersection but having the stop controlled intersection outweighed the longer crossing distance. Crossing guards could be used at this location as at other crossings in the City. Improvements (ADA ramps and sidewalks) to the surrounding area at Highland and Montana would allow an accessible path to all pedestrians and the crosswalk could be restriped. Please note that City Code requires the adjacent property owners to pay for and maintain the sidewalk and pay for 50% of the ADA ramps. The estimated cost for the crosswalk and bulbouts is around \$15,000 which would require Commission approval. The estimated cost of the sidewalks which would be divided proportionally to the adjacent property owners is around \$113,200. The average cost per property is approximately \$4,900. Bringing total project cost with contingencies to around \$147,450. These costs can be applied to the Volunteer Sidewalk Program. It is a City loan program that spreads the cost of the sidewalk installation to the owner's property taxes over a ten year period currently with 0% interest.

The following guidance was received from the Rocky Mountain ADA Center.

- Where there is no sidewalk (or curb) there is no requirement to provide a curb cut or build a curb ramp.
- A crosswalk/marked pedestrian crossing is a facility (or part of one) and to the extent that it is a facility providing a public program (pedestrian transportation) it must be accessible. So, even though there are no ADA Standards specific to crosswalks/marked pedestrian crossings, public entities must employ best practices to ensure nondiscrimination on the basis of disability.

The entire email with additional detail is attached to this memo.

Attachments:

Map of crosswalk prior to removal

Highland Montana Crosswalk Area

Proposed bulbouts design

September 13, 2016 Email from Elroy Golemon-FWD: Geoff Ames Rocky Mountain ADA Center

USDOJ Technical Assistance and Marked Crossings

City of Helena, Montana



LOCKEY AVE

N MONTANA AVE

E BROADWAY ST

BROADWAY CT

S MONTANA AVE

HIGHLAND ST

HIGHLAND ST

S COOKE ST



0 25 50 100 150 200 Feet



0 35 70 140 210 250 Feet



N MONTANA AVE

BRECKENRIDGE ST

N DAKOTA ST

LOCKEY AVE

N ROBERTS ST

BROADWAY ST

E BROADWAY ST

S COOKE ST

S ROBERTS ST

HIGHLAND ST

HIGHLAND ST

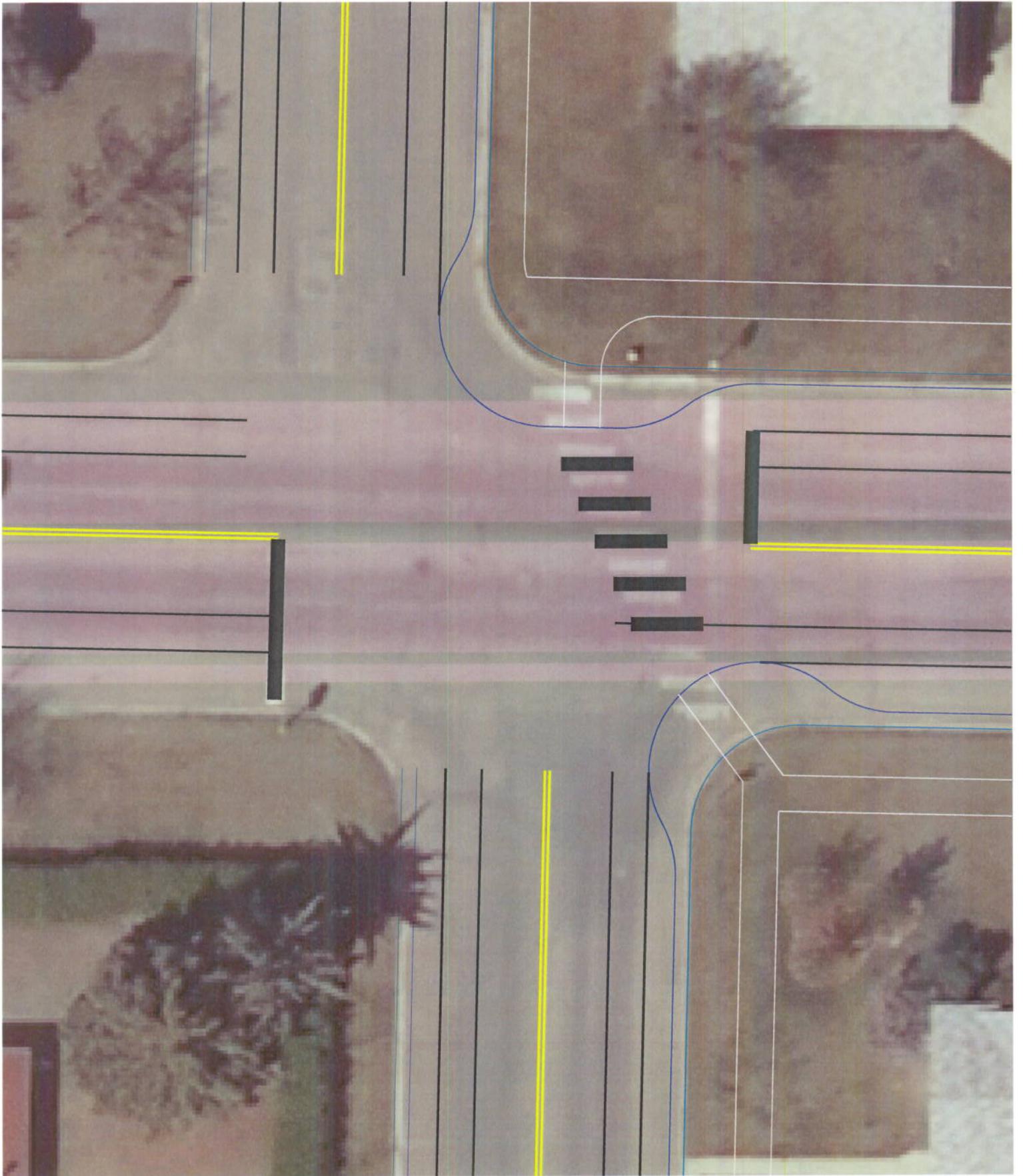
S MONTANA AVE

S DAKOTA ST

S COOKE ST

WALLACE ST

S ROBERTS ST



From: Elroy Golemon
To: Iryna OConnor; Thomas Jodoin
CC: Sharon Haugen
Date: 09:48 September 13, 2016
Subject: Fwd: Crosswalks/Pedestrian street crossings
Attachments: FHWA PROWAG Memorandum.pdf

Thomas,

Somehow this got hung up in my spam folder. Mr. Ames provided this information which generally reinforces the summary of the conversation I had with him last Thursday on the subject of ADA requirements when striping a street.

Elroy

>>> Geoff Ames <games@mtc-inc.com> 9/9/2016 10:18 AM >>>

Elroy,

Sorry for the delayed response... yesterday was a crazy day around here.
First, scoping requirements apply to new, altered, and/or existing facilities -

Facility<<http://www.dictionary.com/browse/facility>>

noun, plural facilities.

1.

Often, facilities.

something designed, built, installed, etc., to serve a specific function affording a convenience or service: transportation facilities; educational facilities; a new research facility.

Where there is no facility there is nothing covered by ADA scoping requirements. Where there is no sidewalk (or curb) there is no requirement to provide a curb cut or build a curb ramp.

Second, a crosswalk/marked pedestrian crossing is a facility (or part of one) and to the extent that it is a facility providing a public program (pedestrian transportation) it must be accessible. so, even though there are no ADA Standards specific to crosswalks/marked pedestrian crossings, public entities must employ best practices to ensure nondiscrimination on the basis of disability. The scoping and technical provisions of the

PROWAG<<https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines/chapter-r3-technical-requirements>> are recognized as best practices, by the Federal Highway Administration (see attached). Those guidelines indicate that pedestrian street crossings should contain a pedestrian access route, having a grade (running slope) of 5 percent maximum and a cross slope of 2% maximum. The surface should be stable, firm and slip resistant. Any markings should have a color that contrasts with the pavement. The PROWAG says nothing to the effect that the existence of a crosswalk requires the construction of sidewalks or curb ramps at the ends of the street crossing. Both the ADA Standards and the PROWAG indicate that, where street crossings exist, curb ramps should be installed within the width of those crossings, at least when such pedestrian crossings are marked.

See following sections from ADA title II regulations (Part 35), the PROWAG, and the 2010 ADA Standards for reference.

§ 35.150 Existing

facilities<https://www.ada.gov/regs2010/titleII_2010_regulations.htm#a35150>

(d) Transition plan.

....

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by

walkways serving other areas.

Chapter R2: Scoping

Requirements<<https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines/chapter-r2-scoping-requirements>>

R201 Application

R201.1 Scope. All newly constructed facilities, altered portions of existing facilities, and elements added to existing facilities for pedestrian circulation and use located in the public right-of-way shall comply with the requirements in this document.

Advisory R201.1 Scope. The requirements in this document are to be applied to all areas of a facility within the scope of the project. Where multiple features of the same type are provided, such as on-street parking spaces, and a percentage of the features are required to be accessible, only the required number of features must comply with the technical requirements in this document and be connected to a pedestrian access route. Where elements are provided on a site that is a designated portion of a public right-of-way, the elements are required to comply with the applicable requirements in this document instead of the requirements in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities and the Architectural Barriers Act Accessibility Guidelines (36 CFR part 1191).

R204.3 Pedestrian Street Crossings. A pedestrian access route shall be provided within pedestrian street crossings, including medians and pedestrian refuge islands, and pedestrian at-grade rail crossings. The pedestrian access route shall connect departure and arrival sidewalks.

Pedestrian Access Routes have the following requirements:

R302<<https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines/chapter-r3-technical-requirements>>.3 Continuous Width. Except as provided in R302.3.1, the continuous clear width of pedestrian access routes shall be 1.2 m (4.0 ft) minimum, exclusive of the width of the curb.

...

R302.5 Grade. Except as provided in R302.5.1, where pedestrian access routes are contained within a street or highway right-of-way, the grade of pedestrian access routes shall not exceed the general grade established for the adjacent street or highway. Where pedestrian access routes are not contained within a street or highway right-of-way, the grade of pedestrian access routes shall be 5 percent maximum.

R302.5.1 Pedestrian Street Crossings. Where pedestrian access routes are contained within pedestrian street crossings, the grade of the pedestrian access route shall be 5 percent maximum.

R302.6 Cross Slope. Except as provided in R302.6.1 and R302.6.2, the cross slope of pedestrian access routes shall be 2 percent maximum.

R304.5.5 Clear Space. Beyond the bottom grade break, a clear space 1.2 m (4.0 ft) minimum by 1.2 m (4.0 ft) minimum shall be provided within the width of the pedestrian street crossing and wholly outside the parallel vehicle travel lane.

201

Application<<https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#pgflid-1010043>>

201.1 Scope. All areas of newly designed and newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with these requirements.

Advisory 201.1 Scope. These requirements are to be applied to all areas of a facility unless exempted, or where scoping limits the number of multiple elements required to be accessible. For example, not all medical care patient rooms are required to be accessible; those that are not required to be accessible are not required to comply with these requirements. However, common use and public use spaces such as recovery rooms, examination rooms, and cafeterias are not exempt from these requirements and must be accessible.

406<<https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#marker-1012120>>.5

Location. ... Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides.

I hope that you find this information helpful.

Best regards,

Geoff

Geoffrey L. Ames

Executive Consultant

Meeting the Challenge, Inc.
Creating an Accessible World for Everyone
719.433.7640

games@mtc-inc.com<<mailto:games@mtc-inc.com>>

Rocky Mountain ADA Center

www.rockymountainada.org<<http://www.rockymountainada.org/>> |

www.twitter.com/@RockyMtnADA<<http://www.twitter.com/@RockyMtnADA>>

800.949.4232, x106

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"The Rocky Mountain ADA Center, operated by Meeting the Challenge, Inc., is funded under a grant from the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR grant number 90DP0018-01-00) to provide technical assistance, training, and materials to Colorado, Utah, Montana, North Dakota, South Dakota, and Wyoming on the Americans with Disabilities Act. The information, materials, and technical assistance provided are intended solely as informal guidance, and are neither a determination of your legal rights or responsibilities under the ADA, nor binding on any agency with enforcement responsibility under the ADA. NIDILRR is a Center within the Administration for Community Living (ACL), Department of Health and Human Services (HHS). The contents of this e-mail do not necessarily represent the policy of NIDILRR, ACL, HHS, and you should not assume endorsement by the Federal Government."

From: Elroy Golemon
To: David Knoepke
Date: 10:02 September 13, 2016
Subject: Fwd: Re: DOJ guidance on street painting and curb ramps
Attachments: USDOJ and UDDOT TECHNICAL ASSISTANCE.pdf; Marked Crossings.pdf

>>> Elroy Golemon 9/13/2016 9:49 AM >>>

>>> Elroy Golemon 9/8/2016 3:09 PM >>>
Thomas,

Attached are some reference PDF's that may be applicable to the question on the requirement to install curb ramps when striping is being put on a street.

I also checked with the Geoff Ames, accessibility specialist for the Rocky Mountain Technical Assistance Center to see if there was additional information I may have missed. Mr. Ames felt I found all the related information that has been published as the Standard at this time.

Mr. Ames Stated that in general there is no requirement to install ADA curb ramps providing striping. Mr. Ames added that lot depends on why the question of striping is being asked.

Crosswalks (Marked Crossings):

Mr. Ames advised me that if the City is installing or crosswalks due to safety concerns then pedestrian safety for crosswalks becomes a program provided by the city. Mr. Ames reminded me that all facilities, parks, services, programs and activities must be maintained in compliance with the ADA and all elements of a service program or activity must be evaluated and any non compliant elements must be included in a Transition Plan to correct the non-compliant elements.

Other Pedestrian/non-motorized facilities:

Mr. Ames stated that if the intent of the striping is intended to establish a new use/facility (bike lane) in the Right-of Way then this becomes a change in use of the existing facility which the USDOJ views as an alteration which then requires the same compliance requirements that a street overlay or street reconstruction project requires for addressing non-compliant elements such as curb ramps.

Best Practices (PROWAG)

Mr. Ames also reminded me that the updated version of the Public Rights of Wag Accessibility Guidelines (PROWAG) is still pending adoption by the USDOJ as the new compliance standards in r-o-w and all covered entities will be required to meet and maintain compliance with these standards once adopted. Mr. Ames stated he recommends to every community he talks to that they really should use the proposed PROWAG document as as a best practice.

The following link is to Chapter R2 of the proposed PROWAG requirements being consider for adoption.

<https://www.access-board.gov/guidelines-and-standards/streets-sidewalks/public-rights-of-way/proposed-rights-of-way-guidelines/chapter-r2-scoping-requirements>

Elroy

>>> Thomas Jodoin 9/8/2016 10:52 AM >>>
Elroy--

Can you point me in the direction of the DOJ guidance with regard to the requirement to install curb ramps when striping is being put on the street. Thanks, Thomas.

Detectable Warning. A standardized surface feature built in or applied to walking surfaces or other *elements* to warn of hazards on a *circulation path*.

Element. An architectural or mechanical component of a *building, facility, space, or site*.

Elevated Play Component. A *play component* that is approached above or below grade and that is part of a composite play structure consisting of two or more *play components* attached or functionally linked to create an integrated unit providing more than one play activity.

Employee Work Area. All or any portion of a *space* used only by employees and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are not *employee work areas*.

Entrance. Any access point to a *building* or portion of a *building or facility* used for the purpose of entering. An *entrance* includes the approach *walk*, the vertical access leading to the *entrance* platform, the *entrance* platform itself, vestibule if provided, the entry door or gate, and the hardware of the entry door or gate.

Facility. All or any portion of *buildings, structures, site improvements, elements, and pedestrian routes or vehicular ways* located on a *site*.

Gangway. A variable-sloped pedestrian walkway that links a fixed structure or land with a floating structure. *Gangways* that connect to vessels are not addressed by this document.

Golf Car Passage. A continuous passage on which a motorized golf car can operate.

Ground Level Play Component. A *play component* that is approached and exited at the ground level.

Key Station. Rapid and light rail stations, and commuter rail stations, as defined under criteria established by the Department of Transportation in 49 CFR 37.47 and 49 CFR 37.51, respectively.

Mail Boxes. Receptacles for the receipt of documents, packages, or other deliverable matter. *Mail boxes* include, but are not limited to, post office boxes and receptacles provided by commercial mail-receiving agencies, apartment *facilities*, or schools.

Marked Crossing. A crosswalk or other identified path intended for pedestrian use in crossing a *vehicular way*.

Mezzanine. An intermediate level or levels between the floor and ceiling of any *story* with an aggregate floor area of not more than one-third of the area of the room or *space* in which the level or levels are located. *Mezzanines* have sufficient elevation that *space* for human occupancy can be provided on the floor below.

Occupant Load. The number of persons for which the means of egress of a *building* or portion of a *building* is designed.

Operable Part. A component of an *element* used to insert or withdraw objects, or to activate, deactivate, or adjust the *element*.

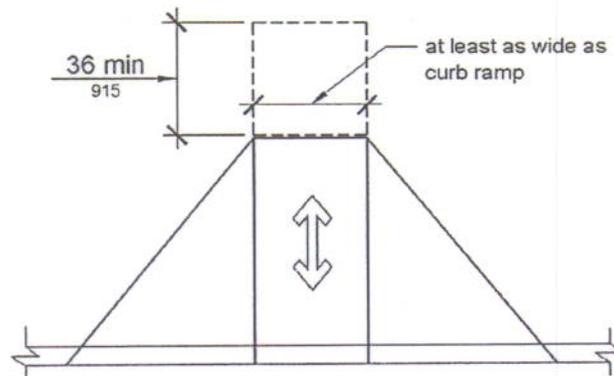


Figure 406.4
Landings at the Top of Curb Ramps

406.5 Location. *Curb ramps* and the flared sides of *curb ramps* shall be located so that they do not project into vehicular traffic lanes, parking spaces, or parking access aisles. *Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides.*

406.6 Diagonal Curb Ramps. Diagonal or corner type *curb ramps* with returned curbs or other well-defined edges shall have the edges parallel to the direction of pedestrian flow. The bottom of diagonal *curb ramps* shall have a clear space 48 inches (1220 mm) minimum outside active traffic lanes of the roadway. *Diagonal curb ramps provided at marked crossings shall provide the 48 inches (1220 mm) minimum clear space within the markings.* Diagonal *curb ramps* with flared sides shall have a segment of curb 24 inches (610 mm) long minimum located on each side of the *curb ramp* and within the *marked crossing*.

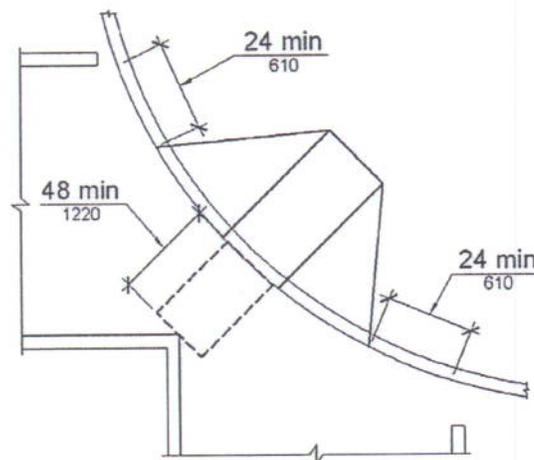


Figure 406.6
Diagonal or Corner Type Curb Ramps

502.3 Access Aisle. Access aisles serving parking *spaces* shall comply with 502.3. Access aisles shall adjoin an *accessible* route. Two parking *spaces* shall be permitted to share a common access aisle.

Advisory 502.3 Access Aisle. Accessible routes must connect parking spaces to accessible entrances. In parking facilities where the accessible route must cross vehicular traffic lanes, **marked crossings enhance pedestrian safety, particularly for people using wheelchairs and other mobility aids.** Where possible, it is preferable that the accessible route not pass behind parked vehicles.

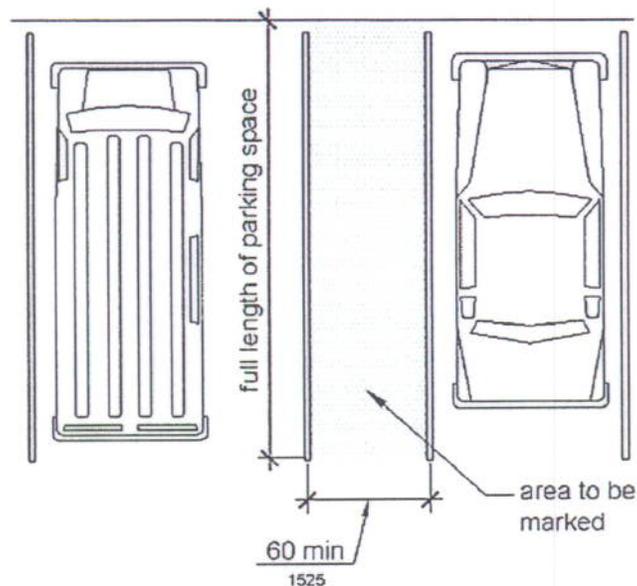


Figure 502.3
Parking Space Access Aisle

502.3.1 Width. Access aisles serving car and van parking *spaces* shall be 60 inches (1525 mm) wide minimum.

502.3.2 Length. Access aisles shall extend the full length of the parking spaces they serve.

502.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

Advisory 502.3.3 Marking. The method and color of marking are not specified by these requirements but may be addressed by State or local laws or regulations. Because these requirements permit the van access aisle to be as wide as a parking space, it is important that the aisle be clearly marked.



U.S. Department of Justice
Civil Rights Division
Disability Rights Section



U.S. Department of
Transportation
**Federal Highway
Administration**

Department of Justice/Department of Transportation Joint Technical Assistance¹ on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

Title II of the Americans with Disabilities Act (ADA) requires that state and local governments ensure that persons with disabilities have access to the pedestrian routes in the public right of way. An important part of this requirement is the obligation whenever streets, roadways, or highways are *altered* to provide curb ramps where street level pedestrian walkways cross curbs.² This requirement is intended to ensure the accessibility and usability of the pedestrian walkway for persons with disabilities.

An alteration is a change that affects or could affect the usability of all or part of a building or facility.³ Alterations of streets, roads, or highways include activities such as reconstruction, rehabilitation, *resurfacing*, widening, and projects of similar scale and effect.⁴ Maintenance activities on streets, roads, or highways, such as filling potholes, are not alterations.

Without curb ramps, sidewalk travel in urban areas can be dangerous, difficult, or even impossible for people who use wheelchairs, scooters, and other mobility devices. Curb ramps allow people with mobility disabilities to gain access to the sidewalks and to pass through center islands in streets. Otherwise, these individuals are forced to travel in streets and roadways and are put in danger or are prevented from reaching their destination; some people with disabilities may simply choose not to take this risk and will not venture out of their homes or communities.

Because resurfacing of streets constitutes an alteration under the ADA, it triggers the obligation to provide curb ramps where pedestrian walkways intersect the resurfaced streets. See Kinney v. Yerusalim, 9 F 3d 1067 (3rd Cir. 1993). This obligation has been discussed in a variety of technical assistance materials published by the Department of Justice beginning in 1994.⁵ Over the past few years, state and local governments have sought further guidance on the scope of the alterations requirement with respect to the provision of curb ramps when streets, roads or highways are being resurfaced. These questions have arisen largely due to the development of a variety of road surface treatments other than traditional road resurfacing, which generally

involved the addition of a new layer of asphalt. Public entities have asked the Department of Transportation and the Department of Justice to clarify whether particular road surface treatments fall within the ADA definition of alterations, or whether they should be considered maintenance that would not trigger the obligation to provide curb ramps. This Joint Technical Assistance addresses some of those questions.

Where must curb ramps be provided?

Generally, curb ramps are needed wherever a sidewalk or other pedestrian walkway crosses a curb. Curb ramps must be located to ensure a person with a mobility disability can travel from a sidewalk on one side of the street, over or through any curbs or traffic islands, to the sidewalk on the other side of the street. However, the ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use. Nor are curb ramps required in the absence of a curb, elevation, or other barrier between the street and the walkway.

When is resurfacing considered to be an alteration?

Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Examples include, but are not limited to the following treatments or their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.

What kinds of treatments constitute maintenance rather than an alteration?

Treatments that serve solely to seal and protect the road surface, improve friction, and control splash and spray are considered to be maintenance because they do not significantly affect the public's access to or usability of the road. Some examples of the types of treatments that would normally be considered maintenance are: painting or striping lanes, crack filling and sealing, surface sealing, chip seals, slurry seals, fog seals, scrub sealing, joint crack seals, joint repairs, dowel bar retrofit, spot high-friction treatments, diamond grinding, and pavement patching. In some cases, the combination of several maintenance treatments occurring at or near the same time may qualify as an alteration and would trigger the obligation to provide curb ramps.

What if a locality is not resurfacing an entire block, but is resurfacing a crosswalk by itself?

Crosswalks constitute distinct elements of the right-of-way intended to facilitate pedestrian traffic. Regardless of whether there is curb-to-curb resurfacing of the street or roadway in general, resurfacing of a crosswalk also requires the provision of curb ramps at that crosswalk.

¹ The Department of Justice is the federal agency with responsibility for issuing regulations implementing the requirements of title II of the ADA and for coordinating federal agency compliance activities with respect to those requirements. Title II applies to the programs and activities of state and local governmental entities. The Department of

Justice and the Department of Transportation share responsibility for enforcing the requirements of title II of the ADA with respect to the public right of way, including streets, roads, and highways.

2 See 28 CFR 35.151(i)(1) (Newly 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 35.151(i)(2) (Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways).

3 28 CFR 35.151(b)(1).

4 2010 ADA Accessibility Standards, section 106.5.

5 See 1994 Title II Technical Assistance Manual Supplement, Title II TA Guidance: The ADA and City Governments: Common Problems; and ADA Best Practices Tool Kit for State and Local Governments: Chapter 6, Curb Ramps and Pedestrian Crossings under Title II of the ADA, available at ada.gov.

July 8, 2013