

PA 2021 Accessibility Q&A Session

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PA UCC

- ▶ (3) The department shall promulgate regulations updating accessibility standards under Chapter 3 by adopting by December 31 of the year of issuance of the accessibility provisions of the most recently published edition of the ICC codes and any other accessibility requirements which shall be specified in the regulations, or contained in or referenced by the Uniform Construction Code relating to persons with disabilities.



2021 Adoption

- ▶ 2021 IBC – Chapter 11, Appendix E
- ▶ ICC A117.1-2017
- ▶ 2021 IPC – 403.4, 403.5, 404, 405.3.1
- ▶ 2021 ISPSC – 307.1.4
- ▶ 2021 IEBC – 306, 1101.2, 1508, Appendix B



PBA Argument

On December 29, 2021, PBA filed the Complaint, alleging therein that the General Assembly delegated unfettered legislative authority to a private entity to establish accessibility standards, and that PBA and its members are aggrieved as a result.¹



October 26, 2022

- ▶ The Commonwealth Court issued an opinion in *Pennsylvania Builders Association v. Department of Labor and Industry*, which permanently enjoined enforcement of the 2021 accessibility updates to the Uniform Construction Code. As such, effective immediately, you must cease all enforcement of the 2021 accessibility standards. Since the 2018 accessibility standards were in effect before December 25, 2021 and were unchallenged, all structures must still comply with the 2018 accessibility requirements.
- ▶ Please be advised that the Court's decision does not affect enforcement of the non-accessibility requirements of the Uniform Construction Code.



Moving Forward

- ▶ All new projects are now 2018 IBC
- ▶ All projects not issued now 2018 IBC
- ▶ Issued projects get inspected to 2018 IBC
- ▶ May exceed code requirements....
- ▶ Audits will be 2018 IBC
- ▶ No way currently to update the accessibility provisions
- ▶ L&I Accessibility board still hears all accessibility appeals



General

Most of the big changes in the 2017 A117.1 (the clear floor space and the turning space provisions) are going to make the A117.1 more restrictive than the ADA (2010 Standards for Accessible Design). Therefore, dropping off of the 2017 A117.1 standard and going back to the 2009 edition will generally not be a problem because it would coordinate closer to the current ADA provisions.



IBC 1104.4

Although it does not come up that often, the loss of Item 1.5 in Exception 1 in 1104.4 of the 2021 IBC may cause some problems with buildings not complying with the Fair Housing Act. The key thing here is that you cannot use the 3,000 sq. ft. limitation for Fair Housing buildings and try to get away from the requirements in 1108.7.1 that you need to have at least one level with Type B dwelling units.



EV Charging

The loss of the Electric Vehicle Charging Station (EVCS) requirements in 2021 IBC Section 1107 (and the related technical requirements in 2017 A117.1 Section 502.11) will cause some confusion. The issue is that these are NOT addressed in the 2018 IBC or 2009 A117.1. And while they also are not really addressed within the 2010 ADA standards, the DOJ has required EVCS to be accessible under their “equal accommodation” viewpoint. So the DOJ viewpoint is that if you provide EVCS then you must provide accessible EVCS points also. The problem is that while they say they are required, they don’t provide scoping or technical requirements to make them that way. At least having the provisions in the IBC and A117.1 gave the designers and code officials some guidance as to the scoping and technical details. Without our information the EVCS is required by the feds (DOJ) but you don’t have any details or guidance to follow.



Water Bottle Filling

Water bottle filling stations are addressed in Section 1110.6 of the 2021 IBC and in Section 602.4 of the 2017 A117.1 standard. These are NOT addressed in the earlier code and standard. This is another item that is not currently addressed in the 2010 ADA, but again is supposedly regulated by the feds under their equal accommodation viewpoint. So they will say they are regulated if you provide them, but they have no specific guidance on what the requirements are.



Swimming Pools

The provisions of 2021 IBC 1111.4.14 address “swimming pools, wading pools, cold baths, hot tubs and spas” while the ADA text (Section 1009) only addresses “swimming pools, wading pools and spas.” The older IBC and A117.1 did not make this distinction. Again however, if you design something like a sports therapy facility that has therapy tubs (hot or cold), the feds will say that you need to provide access to them. This is again the DOJ’s equal accommodation perspective. So if you had a sports facility where they put hot or cold tubs into the training center/locker room area, are they regulated or not? The DOJ through the “spa” language and also through the equal accommodation do say those types of tubs/elements are regulated, but the language is not clear. After some facilities being sued, we did modify the 2021 IBC to clarify that application, but the ADA (because it is 2010 – and really was finalized in 2003 to 2004) does not clarify that. So you are putting facilities at risk of legal exposure since the term “spa” is not clear whether that includes hot and cold therapy tubs.



Occupied Roofs

Occupied roofs and whether an elevator is required to provide one of the Accessible Means of Egress (AMOE) on various buildings. The issue here is that an elevator is required to be one of the AMOEs where “a required accessible floor is four or more stories above . . . a level of exit discharge” under the 2018 IBC (Section 1009.2.1) and then “where a required accessible floor or occupied roof . . .” is at that height under the 2021 IBC. The issue is that an occupied roof does not qualify as a “story” and therefore under the 2018 code you would not require the elevator as an AMOE until you were on the roof of a 5 story building while the 2021 code would require the elevator to an occupied roof on a four story building. This will not cause a problem with the ADA stuff because they only use the 2000 or 2003 IBC for the AMOE provisions, but since occupied roofs are becoming a big deal and more common, it is nice to address them. The real problem with this code language was the fact that an occupied roof does not meet the definition for a “story” (because it does not have a ceiling/roof over it. Therefore even though the occupied roof was the fourth level above the level of exit discharge, it did not qualify as a story and therefore was unregulated. But now under the 2021 the occupied roof is regulated the same as if it was a story and if that roof level is the fourth level above the level of exit discharge, then the elevator serving as one of the AMOEs is required.



Counters

IBC 1110.13.2 in the 2021 code dealing with sales and service counters and windows. There are a couple of aspects here. First off that service windows are regulated – even if there is no “counter” for the public side. The 2018 only addressed “counters” but again the equal accommodation provisions the feds use would look for at least one of each type to be accessible and their viewpoint did include windows even though it was not stated. The other important thing here is that the 2017 A117.1 standard is much better on addressing these service counters and windows. It clearly makes the distinction between the employee (work) side of the counter and the customer (public) side of the counter. It just makes figuring out what is required at the counters much easier. A lot of this is covered in Section 904 of the A117.1 standard.



Acoustics

Section 1207 of the 2021 IBC addresses enhanced classroom acoustics and is tied to 2017 A117.1 Section 808. This really is important for educational uses – especially for little kids that are just learning a language or for adults with hearing issues or learning a new language. These provisions came from some research that was done for the feds, but I don't know that they have gotten them adopted or set to enforce.

This is one that I am uncertain on since I have heard that some federal agencies (DOJ?, Dept of Education, etc.) may be requiring them to be used. Again this was NOT scoped or given any technical criteria in the 2018 IBC or 2009 A117.1 standard. But the difficulty in hearing has a huge impact on learning. Not only for people with disabilities (like hearing loss) but also the new learners mentioned earlier.



Geometry

The larger turning spaces and clear floor spaces will result in a smaller percentage of the population being served by the accessible elements. There are some of the slides in that Significant Changes seminar that give you the percentage reduction between the 2017 and 2009 standard's requirements. That may be helpful to point out, especially to encourage the accessibility community to support getting back to the new provisions. But there are also smaller changes like the taller clearance beneath the partitions in toilet compartments and extra toe clearance beneath the partitions that improve how many people can use the compartment.



Operable Parts

The operable parts requirements in A117.1 Section 309 were clarified in the 2017 edition, plus added two new exceptions. The biggest issue here is that in the 2009 standard there were not any exceptions that existed and applied to the vast majority of spaces. What the standard did was bring the exceptions that had been permitted for years in the residential uses up so they could be used for regular spaces (public spaces). So it helps clarify that things like dedicated outlets (think of the outlet behind the refrigerator) don't have to be in the reach range, or clarifies that having floor outlets is OK even though they don't meet the 15 to 48 inch range, or that if you have redundant controls (like one for kitchen hood fan or ceiling fan) where you put one at the accessible level that it OK to have the other control up on the hood or fan and have it be out of reach range. Really a lot of common sense stuff that people accepted even though the standard technically did not allow them to. And one of the new exceptions addressed outlets over cabinets in the corner of a kitchen. Since there really is no way possible to provide access to those outlets, we specifically address that. But if you have to use the 2009 standard, then those outlets ARE regulated and required to be accessible – even though there is no reasonable way to do it.



PROWAG

A lot of things that were added into the 2017 edition of the A117.1 standard that were done to coordinate with the federal Public Rights of Way Accessibility Guidelines (PROWAG) that just did not exist in the 2009 standard. While PROWAG has not been adopted yet as a part of the ADA, it is being used and required by many of the federal agencies. Some of the primary changes that the PROWAG stuff changed – and were included into the 2017 A117.1 standard are:



PROWAG

- ▶ Accessible exterior routes are required to be 48" in clear width versus 36"
- ▶ There were some substantial changes in the curb ramp and blended transition provisions. One big issue is simply addressing how to do parallel curb ramps. Although they have been used there were no specific technical requirements for them until PROWAG and the 2017 A117.1 standard added them. The 48" width mentioned earlier also impacted the width of curb ramps. Requiring "grade breaks" to occur perpendicular to the path of travel on curb ramps. Better guidance on the location and placement of detectable warnings on curb ramps. Addressing curb ramps with low slopes ("blended transitions") which previously were never addressed. Changing/clarifying the flared side provisions for perpendicular curb ramps. Limiting the amount of a sidewalk that needs to be removed/replaced if you put in a new curb ramp or if you are on a sloped site and you would end up trying to chase the existing grade.
- ▶ Addressing both angled and on-street parallel parking.



Windows

Providing better guidance and also some reduced requirements for windows and making them accessible. One of the key things is that previously operable windows would have needed to comply with the operable parts requirements – including the 5 pound force provision. Now windows recognize the distinction between the force to open, close, etc. and use a different standard. Most decent windows (double or triple pane and well-sealed for leakage) cannot meet the 5 pound force requirement. The other thing is that the windows in dwelling units have clarified which provisions apply – generally just a clear floor space and perhaps the reach range). But we also wisely give exceptions for windows in bathrooms and kitchens which obviously cannot ever be accessible if they are located above the counter or over the tub. So again common sense to specifically exempt them versus making it appear that those windows need to be accessible even when there is no way to do it. So that caused some people to just eliminate windows in those locations which people did not like design wise.



Curb Ramps

The 2017 standard is just clearer and will provide better consistency on where detectable warnings are to be located. Better consistency will provide better accessibility for the user and eliminate varying interpretations between jurisdictions.



Showers

- ▶ Providing an exception in A117.1 Section 1104.11.3.1.3.3 to specifically address that various size options exist for the shower in a Type B unit. Previously HUD and Fair Housing always just said it the shower was the only bathing option that it had to be a minimum 36" by 36" shower. That excluded more accessible options such as using a roll-in shower that was 30" by 60" and acceptable in public areas and in higher level of accessible dwellings. The new exception points out that it was the area the 36" by 36" was looking for and not the actual dimensions. So a 30" by 44" shower is OK in a Type B unit even though it is not 36 inches in width in the one direction.



Kitchens

The kitchen provisions which specifically address (a) kitchens with islands and how to deal with them, and (b) clearances in kitchens without a cooktop or conventional oven, and (c) also provide clarity regarding whether a “work surface” is required. These changes occur in both the general kitchen provisions and also within the dwelling unit requirements.



Clear Floor Space Effects

Another big aspect I think is important is that the 2017 standard accepts some items (like a parallel approach to a bar sink) to NOT be centered on the element. Part of this is due to the fact that the 2017 standard increased the clear floor space (from 48" to 52") which would have pushed the elements further out from the corner (they would be 26" off the wall to the center line versus 24" as previously done). This change recognized that the plumbing code requires elements to be a minimum of 15" off the wall to the centerline of say a lavatory or sink and that with a parallel approach you can typically reach directly inline with your shoulders (about 12" from the back of a wheelchair or wheelchair space) and can also reach forward at a bit of an angle. So eliminating the centering requirement ends up helping by allowing somethings to go back closer into the corner and towards the wall, but still don't reduce access to them.



Moving Forward

- ▶ Legislative modification needed



Questions

