



Accessibility & Insights to Accessibility Audits

September 21, 2023

Mission Statement

- The mission of the Department of Labor & Industry is to improve the quality of life and economic security for Pennsylvania workers and businesses, encourage labor-management cooperation, and prepare the Commonwealth's workforce for the jobs of the future.



Bureau of Occupational & Industrial Safety





BOIS Divisions

- BOIS consists of six divisions
 - Administrative
 - Boilers
 - Buildings
 - Certification, Accreditation, and Licensing (CAL)
 - Elevators
 - Pennsafe



Pennsylvania Construction Code Act 45 of 1999

- Established the Uniform Construction Code
- Has had numerous amending Acts and exemptions that include religious belief exemption, excluding installation of aluminum or vinyl siding on existing buildings, lumber grading.
- Established accessibility standards and their updates



L&I's Role

- State Owned Buildings
 - L&I maintains plan and specification review and inspection authority over all state-owned buildings. 35 P.S. §7210.104(b).
 - A state-owned building is a building owned by or to be constructed for Commonwealth entities consisting of the General Assembly, the Unified Judicial System, the Pennsylvania Higher Education Assistance Agency, and executive agency, an independent agency and a state-affiliated entity or state-related institution as defined in 62 Pa. C.S. §103.



Opt-In Municipalities



- L&I reviews any local building and construction ordinances to determine if they meet or exceed the UCC
- L&I conducts municipal enforcement program audits for each municipality at an interval of at least once every 5 years

Opt-Out Municipalities



- L&I does all commercial plan review and inspections.
- Residential plan review and inspections are the responsibility of a building owner to acquire the services of a certified Third Party Agency



Accessibility Standards

- Section 304(a)(3) of the Act state that 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.



Accessibility Standards

- 2021 Accessibility standards came into effect on December 25, 2021.
- There was a 6-month grace period for projects to be drafted under the new standards.
- If a permit was issued prior to June 30, 2022, 2018 accessibility standards could be utilized in the project.



Accessibility Standards Significant Changes

- One of the most significant differences between 2018 compliance and 2021 is the edition of the ICC A117.1 standard adopted
- 2021 adopted the 2017 edition
- 2018 still adopted the 2009 edition
- Accordingly, one of the most significant differences between the 2009 and 2017 editions of the standards is that 2017 establishes clear design differences for existing buildings and new buildings and structures – not the least of which is the required turning radius



Accessibility Standards Significant Changes

- The new standards included some significant changes that include:
 - Wheelchair charging stations
 - Larger turning radius for wheelchairs
 - Parking to discuss perpendicular or angled spaces
 - Electrical charging stations are now addressed including operable parts and an accessible route
 - Accessible routes through parking lots



Pennsylvania Builders Association v Department of Labor & Industry

On October 26, 2022, the Commonwealth Court issued a decision on the petition the Pennsylvania Builders Association had filed on December 29, 2021 regarding the adoption of the 2021 accessibility regulations that were promulgated on December 25, 2021



Pennsylvania Builders Association v Department of Labor & Industry

The summary of the decision is as follows:

- The 2021 Accessibility Provisions adopted by regulation on December 25, 2021 are “rolled back” – their adoption is overturned by the Court
- The method by which Accessibility Provisions are adopted in Pennsylvania was deemed by the Court to be unconstitutional



Pennsylvania Builders Association v Department of Labor & Industry

What are the constitutionality items related to the decision?

- By virtue of Act 95 of 1999, as amended (PA Construction Codes Act), the legislature has unconstitutionally delegated authority for adoption of accessibility-related codes to a private entity (International Code Council)
- The accessibility codes and standards adopted by the ICC are not subject to legislative review or review by any authorized governmental entity in Pennsylvania – and they are not subject to any opportunity for public review and comment by those in the Commonwealth that will be required to comply with the Accessibility provisions.
- The Department of Labor and Industry is charged by Act 95 (and by regulation) to automatically adopt the accessibility-related codes and standards published by the ICC in its most recent edition of codes and standards – by December 31 in the year of publication



Pennsylvania Builders Association v Department of Labor & Industry

What about the other building codes?

- All other codes adopted in Pennsylvania, while published by the International Code Council, are not adopted automatically
- All other codes and standards adopted in Pennsylvania are subject to public review and comment, then deliberation by the UCC Review and Advisory Council (and its Technical Advisory Committees)
- After this process is completed, the UCC Review and Advisory Council, which is a legislatively established entity, adopts the codes and standards which will constitute the revised Uniform Construction Code for Pennsylvania



Pennsylvania Builders Association v Department of Labor & Industry

What information was disseminated by the Department?

- On October 27, 2022, the Director for BOIS issued an email to all stakeholder groups, as well as updating its website to provide guidance on the Court decision
- There were key takeaways that were provided and are as follows:
 - The Commonwealth Court invalidated or permanently terminated the use of the 2021 Accessibility provisions in Pennsylvania
 - The 2021 Accessibility standards were the first to utilize by adoption the A117.1-2017, so they are not able to be used either
 - All projects both for opt-in and opt-out municipalities revert back to the 2018 accessibility standards from the date of that Order (October 26, 2022) moving forward
 - All projects will need to return to utilize the A117.1-2009 standard



Pennsylvania Builders Association v Department of Labor & Industry

What to do if a permit was already issued prior to the date of the Court decision?

- All work under the issued permit shall comply with the 2021 accessibility provisions, since the permit was legally issued when those provisions were in effect
- All inspections must be performed to assure compliance with 2021 provisions
- The Certificate of Occupancy must be issued to reflect compliance with 2021 accessibility provisions



Pennsylvania Builders Association v Department of Labor & Industry

What to do if a permit was already issued prior to the date of the Court decision?

- For permits that have already been issued under 2021 accessibility provisions, the code official is to advise that reverting back to the 2018 codes is an option as the 2021 codes are not in effect at this time.
- If the applicant and the code official decide it would be best to revert to the 2018 codes, that is allowable, but it is recommended that **new plans** are provided for review if required by the local code official based on the project.



Pennsylvania Builders Association v Department of Labor & Industry

What to do moving forward?

- All plan, specs and construction documents must comply with the 2018 accessibility provisions previously adopted by the Commonwealth
- This includes Chapter 11 and Appendix E of the 2018 IBC plus all accessibility provisions for exiting buildings in the 2018 IEBC
- All other accessibility provisions in the 2018 IBC apply (Chapters 2, 3, 9, 10)
- The A117.1-2009 standard shall be applied



Pennsylvania Builders Association v Department of Labor & Industry

What to do moving forward?

- There are MANY new/revised provisions in the 2017 standard that distinguish between existing and new
- As a result, plans for new construction under the 2017 standard look substantially different than those drawn to the 2009 standard
- There are also a number of completely new provisions in the 2017 standard and in the 2021 scoping provisions from IBC/IEBC that do not apply when enforcing 2018 provisions – unless the applicant / design professional wish to do so voluntarily



Accessibility Provisions Within ICC Codes



Chapter 11

Chapter 9 Visual Alarms

Chapter 10 Accessible Means of Egress

Chapter 10 “Mainstreaming Provisions”

Appendix E



Accessibility Provisions Within ICC Codes



Section 305 and other referenced sections:
Section 305.1 (Scope of Accessibility in the IEBC)

Section 305.2 (Maintenance of Facilities)

Section 305.3 (Extent of Application)

Section 305.4 (Change of Occupancy)

Section 305.5 (Additions)

Section 305.6 (Alterations)



Accessibility Provisions Within ICC Codes



Section 305.7 (Alterations Effecting an Area of Primary Function)

Section 305.8 (Scoping for Alterations)

Section 305.9 (Historic Buildings)

Section 1101.2 (Creation or extension of conformity)

Section 1501.6 / Section 1505.2 / Section 1508.1
(Construction Safeguards)

Appendix B (Supplementary Accessibility
Requirements for Existing Buildings)



Accessibility Provisions Within ICC Codes



A117.1 – 2009 is utilized to the extent it is required by the scoping provisions of the 2018 IBC and/or 2018 IEBC



Accessibility Provisions Within ICC Codes



The accessibility provisions contained in the following sections of the International Plumbing Code of 2018 are adopted:

- Section 403.4 (relating to signage)
- Section 403.5 (relating to drinking fountain location)
- Section 404 (relating to accessible plumbing facilities)
- Section 405.3.1 (relating to water closets, urinals, lavatories and bidets).

There are no additional requirements that are not already scoped by Chapter 11 of the 2018 IBC



Accessibility Provisions Within ICC Codes



The accessibility provisions contained in Section 307.1.4 (relating to general design requirements) of the International Swimming Pool and Spa Code of 2018 are adopted

An accessible route to public pools and spas shall be provided in accordance with the International Building Code.

Accessibility within public pools and spas shall be provided as required by the accessible recreational facilities provisions of the International Building Code.



Questions?



Accessibility Audit Program

What is the Accessibility Audit Program?

- §403.104(b) of the Uniform Construction Code, Labor & Industry is required to conduct an audit for every municipality at least once every five years.
- The audit is to ensure that code administrators are adequately administering and enforcing the accessibility provisions of the Uniform Construction Code.
- The Building Code Official (BCO) is responsible for administering the requirements of the code.

Primary Intent for the Accessibility Audit Program

- The audit program is for *Educational Purposes*.
- To see if recommendations have been made from previous audit.
- Ensure certified local and third-party code officials comply and administer the accessibility provisions within the Uniform Construction Code.



Procedures for the Accessibility Audit

- The Department will contact the BCO before the accessibility due date.
- BCO has 7 days to respond to phone call or email.
- The Department will request a permit list from the previous five (5) years.
- BCO will have fourteen days (14) to gather the commercial permit list.





Multiple BCO's

More than one (1) BCO

- Municipality can have multiple BCO's.
- The Departments Inspector will ask the BCO on our system (Dot Net) if there are other BCO's for the municipality.
- Each BCO must submit a project list.
- Each BCO must fill out Separate BCO Form.

Procedures for the Accessibility Audit



All commercial project list shall at a minimum contain the following information:

- 1) The permit number (preferable sequential)
- 2) The permit issue date
- 3) The name of project
- 4) The project address
- 5) The type of permit (e.g. commercial or residential if not pre-sorted)

Procedures for the Accessibility Audit

6)The type of permit (new building, addition, alteration, electrical, plumbing, sidewalk, Sign, etc.)

7)The date occupancy was granted - C/O date

8) Name of the BCO when the building permit was issued.



Procedures for the Accessibility Audit

- The Departments inspector will pick 5 projects from the list.
- Will contact the BCO to schedule a date.
- 2 parts to the accessibility audit.
(Administrative and Field Visit)
 - Administrative
 - (Departments inspector will pick 3 projects to audit from the 5)





Administrative

- **BCO to have Following:**
 - Copies of the C/O's
 - UCC Approved and Design Professional stamped plans
 - Building permits
 - Inspection records
 - Local Board or Accessibility Variances if any
 - Plan Review Notes if applicable



Certificate of Occupancies

The following information is required on the C/O:

(1) Permit Number.

(1a) Address of the building, structure, or facility.

(2) The permit holder's name and address.

(3) A description of the portion of the building, structure, or facility covered by the occupancy permit.

(4) The name of the building code official (BCO) who issued the occupancy permit.



Certificate of Occupancies

The following information is required on the C/O:

- (5) The applicable construction code edition (Year) applicable to the occupancy permit.
- (6) The use and occupancy classification
 - a. Must include subtype if applicable – Such as A3 for Assembly
- (7) The type of construction
 - a. Must include subtype if applicable – Such as IIB
- (8) When applicable, special stipulations and conditions
- (9) The date of the final inspection.



Field Visits

- It is the BCO's responsibility to call all five (5) of the projects owners/tenants to let them know that there will be a possibility of a field visit from the Department on the day of the audit.
- The Department's Inspector will visit the three (3) projects that were selected.
- It is *Highly recommended* that the BCO or Designee accompany The Department's Inspector for the Field Visits.



Field Visits

- At each project, The Department's Inspector will identify themselves.
- The Department's Inspector will document any accessibility findings and answer questions.
- If there are any accessibility findings, the owner/tenant does not have to correct them.



Outgoing Report

- The Departments inspector will submit the audit report to the Accessibility Audit Administrator.
 - The audit Administrator will review the reports, CO's, BCO Form and any other documentation or pictures



Outgoing Report

- The Outgoing letter will contain the following information:
 - Municipality information
 - BCO information
 - Project information
 - Accessibility plan reviewer
 - Accessibility final inspector
 - Any accessibility findings
 - Possible comments from the Department concerning the audit



Outgoing Report

- The Outgoing Report will be emailed to the BCO/s and the Borough President or Supervisor Chairman.
 - The Report No longer mailed
- The President/Chairman of the municipality or the BCO can call or email the Audit Administrator with any questions from the letter.
- A written response must be submitted by the BCO/s if there are concerns from the letter.



Administrative Findings

- The Accessibility Audit Administrator will submit any Administrative Findings to the UCC Building Field Operations Manager .
- The Field Operations Manager will review the Administrative Findings and then send a separate letter to the BCO and/or plans examiners and inspectors.



Common Administrative Findings

- C/O's
 - Not listing all nine (9) items as required by the UCC as mentioned earlier.
- Not Having the Construction Documents and inspection records.
- Not having a site plan for a new building or structure.
 - Must have, can be waived by the BCO for an addition, or alteration
- BCO not verifying plans examiner and/or inspector not having the proper or current certifications.
- C/O's not being issued within 5 days of the final building inspection.



Common Accessibility Findings

- Number #1 – Missing Tactile Exit signs
 - Height of signs
 - Location – wrong side of door
 - Permanent signs not having braille or tactile characters
- Operable Reach Ranges
- Handrails
 - Handrail only on one side
 - No handrail extensions
- Transition between doors and landings
- Drinking fountains
 - No barriers
- Kitchen breakroom sink height
- Service counter height



Common Accessibility Findings

- Restrooms
 - Grab bar location
 - Compartment doors not self closing
 - Compartment door not having a handle on each side of door
 - Clearance from sidewall for the water closet
- Accessible showers
 - Dimensions – Especially Transfer type showers
 - Transition entry point
 - Control locations
 - Bench if required



Common Accessibility Findings

- Coat Hooks
 - Both general and restroom locations
- Sound Amplification systems
 - Not having an assistive listening system
- Visual Alarm
 - Height of visual notification devices (Strobes)



Accessibility Variances

- If the permit holder/owner wants to seek relief from an accessibility element or modification, the applicant can file for an UCC Accessibility Advisory Board Petition
- The Form can be found on the Labor & Industry website
 - Under UCC/Buildings/Forms
- The Accessibility Advisory Board meets once a month



Questions?