

BOARD OF APPEALS  
Special Meeting, 10 a.m.  
Thursday, June 11, 2015  
City Hall Caldwell Park Conference Room  
777 Cypress Avenue  
Redding, California 96001

**AGENDA**

1. ***CALL TO ORDER***
2. ***INTRODUCTIONS***
3. ***APPROVAL OF MINUTES***
4. ***BOARD CONSIDERATION***
  - a. Appeal by Jim D. Green regarding the order, decision or determination regarding the application and interpretation of Section 1134B of the California Building Code (CBC).
5. ***PUBLIC COMMENT***
6. ***BOARD MEMBERS' COMMENTS***
7. ***ADJOURNMENT***

**City of Redding**  
**Report to the Board of Appeals**

Item No. ~~4-a~~

Meeting Date: June 11, 2015

**DATE:** June 5, 2015

**APPLICANT:** Jim D. Green

**LOCATION:** 1800 Eureka Way

**PROJECT DESCRIPTION** – Accessibility upgrades consisting of removal of a non-compliant ramp at an accessible parking stall loading area and installation of a new curb ramp in the same general location.

**CONSTRUCTION TYPE** - Type V-N

**OCCUPANCY GROUP** - A-2

**CODE SECTION BEING APPEALED** - California Building Code Chapter 1134B

**APPEAL REQUEST** - Applicant wishes to appeal the Building Official's order, decision, or determination regarding the application and interpretation of Section 1134B of the California Building Code (CBC).

**BACKGROUND** – In March of 2014 City of Redding Building Inspection Staff noticed site work in progress at Carl's Jr. located at above referenced address. A subsequent search of permit records revealed that the work in question was being conducted without a building permit in violation of the CBC. On March 26, 2014, building inspector Frank Hanagan posted a stop work notice on the job site (Attachment A). On April 2, 2014 a building permit application and plans were submitted by the installing general contractor, J.D. Green and Associates, for parking stall and curb ramp improvements at the referenced location. On April 28, 2014 building permit # 2014-00965 was issued for the work performed (Attachment B). The approved plans showed the new curb ramp being installed at the head of the accessible stall loading area and away from the main building entrance and an existing path of travel from the main building entrance to the public right-of-way (Attachment C).

On June 24, 2014 a building inspection was performed by building inspector, Frank Hanagan, who noted that the newly installed curb ramp was installed in a location different from that generally depicted on the approved plans and that it encroached into the required width of the path of travel from the primary entrance doors to the public right-of-way creating a cross slope far in excess of the 2% maximum allowable by the California Building Code (Attachment D).

Mr. Green then contacted Building Official, Bill Nagel, starting subsequent discussions through phone calls, emails and letters (Attachments E-M). As a result of the first phone call, Mr. Nagel visited the site with Development Services Supervisor, Erich Mayne, to better understand the

issue at hand. The site visit revealed that the curb ramp had been installed in such a manner that it reduced the width of the existing path of travel from the public right-of-way to the primary building entrance in violation of CBC Sections 11B-202.3, 11B-403.5.1 and 3404.1. Additionally, while conducting the site visit it was noticed that the newly installed curb ramp was installed with a slope in excess of the maximum allowable slope for curb ramps in violation of CBC Sections 11B-201.1 and 11B-406.2.1.

In an April 6, 2015 letter (Attachment J), Building Official, Bill Nagel ruled that the ramp is in violation of the CBC and must be reconstructed in such a manner that it is in compliance with maximum slope requirements and that it does not reduce the required width of the existing path of travel.

In an April 16, 2015 letter (Attachment K) Mr. Green requested that the City either approve and sign off on the final inspection for work performed or provide him with an application for the Board of Appeals.

The City subsequently provided Mr. Green with an application to hear the matter before the Board of Appeals which he has now submitted (Attachment N). Mr. Green's stated position on the application for an appeal is "Contrary to Federal and State law, as applied to accessibility for existing buildings, the Building Official of the City of Redding refuses to interpret, recognize, or apply, Section 1134 CBC. Specifically, the "Technically Infeasible" provisions of 1134B".

**DISCUSSION** - Firstly, Mr. Green has based his appeal on his interpretation of Section 1134B of the CBC. It should be noted that the 2013 CBC went into effect on January 1, 2014 and applies to all permit applications submitted to local building departments on or after that date. As noted above, the application for a building permit for this project was submitted to the City on April 2, 2104. Therefore, the work performed must be in compliance with the 2013 CBC. Due to a major rewrite of CBC Chapter 11B, Section 1134B does not exist in the 2013 CBC. The reference to Section 1134B is likely to a prior edition of the CBC which is no longer in effect anywhere in the State of California. Technically, the appeal could be denied on these grounds. However, the likely result would be to receive another appeal citing CBC Section 11B-202 of the 2013 CBC. Accordingly, staff will proceed based the assumption that Mr. Green wishes base his appeal on 2013 CBC Section 11B-202.3 Exception # 2 which contains language similar, but not the same, as language contained in prior code editions regarding "Technically Infeasible".

Before discussing the "Technically Infeasible" issue referenced above it should be noted that, as constructed, there are two violations of the CBC.

Curb ramps are regulated by CBC Section 11B-406. Specifically, CBC Section 11B-406.2.1 states that curb ramps "shall have a running slope not steeper than 1:12" (8.33%). This maximum slope has been in effect for over thirty years and is pretty well understood in the disabled access community. Additionally, CBC Section 11B-201.1 (Attachment O) states "All areas of newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with these requirements". The curb ramp installed at the site is newly installed and is thus required to comply with the maximum slope requirements stated above. The slope of the curb ramp as installed exceeds the maximum slope requirements and was

measured to be in excess of 9.0%. Mr. Green has not challenged the referenced code sections and has agreed in his March 15, 2015 letter that the curb ramp slope as constructed exceeds 8.33%.

There currently exists a path of travel leading from the public right-of-way to the primary entrance doors. The newly installed curb ramp has encroached into this path of travel. The result has been to create an area within the required width of the path of travel that exceeds the maximum allowable cross slope for a path of travel of 1:48 (2%) as is provided for in CBC Section 11B-403.3 which states "The cross slope of walking surfaces shall not be steeper than 1:48". CBC Section 11B-403.5.1 exception # 3 requires a minimum clear width of 48" for walks and sidewalks. CBC Section 11B-202.3 states that "Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements". CBC Section 3404.1 addresses the same issue on a broader level in stating "Alterations shall be such that the existing building or structure is no less complying with the provisions of this code than the existing building or structure was prior to the alteration". This is a long standing premise contained in the building code. The hierarchy is that existing buildings are "grandfathered" in and not generally required to comply with new buildings codes which are typically adopted every three years for obvious practical reasons. Additions and alterations to existing facilities do not have "grandfather rights" and are expected to comply with the requirements of current codes in effect at the time a permit application is submitted. Additionally, alterations are not allowed to make an existing compliant condition noncompliant nor may they make an existing noncompliant condition more noncompliant. Mr. Green has not disagreed with the maximum cross slope requirement or with the minimum width requirement. He has not based his appeal on but has argued that the existing path of travel is noncompliant and he is therefore permitted to make alterations which bring the path of travel into further noncompliance. This is simply not true as is evidenced by the language contained in CBC Section 11B-202.3 (Attachment O).

The State of California Division of the State Architect (DSA), among other things, is charged with drafting CBC Chapter 11B accessibility regulations which are then recommended for adoption by the State Building Standards Commission. Enforcement of CBC Chapter 11B is then delegated to DSA for schools and state owned buildings and to local jurisdictions for local government and privately owned buildings. DSA has no local enforcement authority over local jurisdictions but they are charged with providing code interpretations which, although not legally binding, serve to assist local government in the enforcement and interpretation of CBC Chapter 11B. Attached is DSA interpretation IR 11B-10 (Attachment P). The first page of this interpretation provides some guidance pertaining to CBC Sections 11B-201.1 and 11B-202.3.

Mr. Green has stated that local jurisdictions have no jurisdiction to enforce ADA requirements. He is correct. This matter revolves around compliance with state accessibility laws contained within the CBC with which the City is charged with enforcement.

Mr. Green also attests to good relationships with all jurisdictions other than the City of Redding and cites his CASp and CBO certifications as proof of his expertise in the field. Building Official, Bill Nagel is also a CASp, is a licensed Civil and Structural Engineer, and a Certified Building Official who has thirty years of experience in interpreting and enforcing accessibility laws. Mr. Green has erred in citing the incorrect code section and in working without required

building permits contrary to assertions of expertise in the area of accessibility laws and in good working relationships with building departments.

Mr. Green has stated that correcting the work would be technically infeasible and that under the provisions of CBC Section 1134B, currently CBC Section 11B-202 Exception # 3, (Attachment O) he is not required to comply with the minimum ramp slope requirements and maximum path of travel cross slope requirements discussed above.

The term “Technically Infeasible” is defined in CBC Section 202 as “An alteration of a building or a facility that has little likelihood of being accomplished because the existing structural conditions required the removal or alteration of a load-bearing member that is an essential part of the structural frame, or because other existing physical or site constraints prohibit modification or addition of elements, spaces or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility”. Mr. Green has stated existing roof drainage piping which daylight just to the right side of the ramp in the face of the curb prohibits modifications which will allow full compliance with the code and he is therefore allowed to deviate from the requirements for curb ramp slopes.

CBC Section 11B-202.3 Exception # 2 does allow certain relief when full compliance is technically infeasible. However, the Exception # 2 clearly states that the decision as to whether compliance is technically infeasible rests with the enforcing authority. Additionally, if the enforcing authority does decide that full compliance is not technically feasible then equivalent facilitation must be provided. Lastly, any such findings must be recorded and entered into the files of the enforcing agency.

In this case, the enforcing agency, the City of Redding, Building Inspection Division, does not agree that full compliance is technically infeasible as there are many potential solutions which may be feasible, such as moving the ramp location or the drain lines, and which would provide full compliance with existing code requirements. Even determined to be technically infeasible, there have been no proposals by the applicant which address equivalent facilitation requirements as is required in the event that that full compliance is truly technically infeasible. For both reasons stated above, there have been no “findings recorded and entered into the files” of the City of Redding, Building Inspection Division which would be required in the event of a determination that full compliance is technically infeasible and equivalent facilitation being provided.

**STAFF RECOMMENDATION** - Staff recommends that the Board of Appeals deny the appeal.

#### **ATTACHMENTS**

- A. March 26, 2014 Stop Work Notice
- B. Building Permit # 2014-00965
- C. Approved Plans for Building Permit # 2014-00965
- D. June 24, 2014 Correction Notice
- E. June 29, 2014 – July 1, 2014 email correspondence
- F. November 21, 2014 permit expiration letter to J.D. Green & Associates

- G. November 30, 2014 letter from Jim Green
- H. December 18, 2014 letter to Jim Green
- I. March 15, 2015 letter from Jim Green
- J. April 6, 2015 letter to Jim Green
- K. April 16, 2015 letter from Jim Green
- L. April 21, 2015 letter to Jim Green
- M. May 5, 2015 letter from Jim Green
- N. May 5, 2015 Board of Appeals Application
- O. 2013 California Building Code Section 11B-201 and 11B-202
- P. DSA interpretation IR 11B-10

BN:bn

V6-5jgboa.wpd

# ATTACHMENT A



CITY OF REDDING  
BUILDING DIVISION  
777 Cypress Avenue  
Redding, CA 96001  
530-225-4013

**STOP WORK ORDER**

Location: 1800 Conner Way Date: 3-24-14

# STOP

STOP WORK ON THIS JOB  
CALIFORNIA BUILDING CODE - SECTION 115

You must respond by: 3-26-14 Building Permits will be required

**DO NOT REMOVE THIS TAG**

Description of project: ACCESSIBLE CURB  
RAMP

What stage is project at: EXISTING SIDEWALK  
IS BEING REMOVED

Description of work to be stopped:

- All     - Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any person who continues any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to penalties as prescribed by law.

Frank C. Hunsicker  
Inspector

# ATTACHMENT B

# CITY OF REDDING

PIN #: 249495

## - BUILDING PERMIT -

**Office: 225-4013    Inspection Request: 1-866-458-7319**

THIS PERMIT EXPIRES IF THE BUILDING OR WORK AUTHORIZED HEREIN IS NOT COMMENCED WITHIN 180 DAYS OR ABANDONED.  
AFTER EXPIRATION THIS PERMIT MUST BE RENEWED BEFORE WORK MAY COMMENCE.

BUILDING ADDRESS 1800 Eureka Way	A.P.# 103010029000	DATE ISSUED 04/28/2014	CONSTRUCTION TYPE	OCCUPANCY GROUP	PERMIT NO. BLDC-2014-00965	WORKCLASS Remodel/Repair
ISSUED BY Ruth Brown			AREA 0	FIRE SPRINKLER	PLAN NO. PLCKC-2014-00235	VALUATION \$ 8,500.00

**DESCRIPTION OF WORK:**

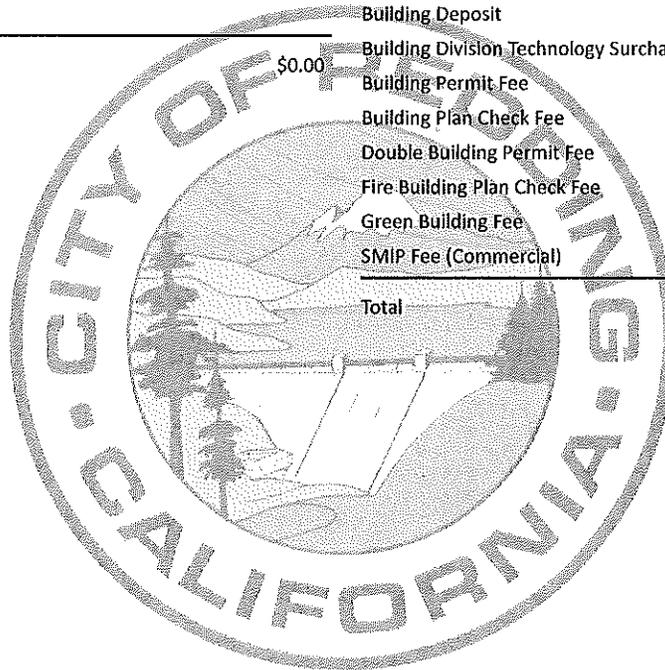
ADA IMPROVEMENTS: REMOVE AND REPLACE HANDICAP PARKING & ACCESS ISLE. RESTRIPE AND SIGNAGE. ADJUST DISPENSER HEIGHTS IN RESTROOMS

CONTACT	CONTACT TYPE	ADDRESS	PHONE
FOODS NORTH LLC	Applicant	2908 Innsbruck Dr Redding, CA 96003	
J.D. GREEN & ASSOCIATES	Contractor	Po Box 1462 Portola, CA 96122	530-798-8458
MICHAEL C MILLS, TRUSTEE MUIR SHARON MCKENZIE LIVING	Owner	2908 Innsbruck Dr Redding, CA 96003	

\*\*\*\*\*ESTIMATED FINAL FEES DUE\*\*\*\*\*

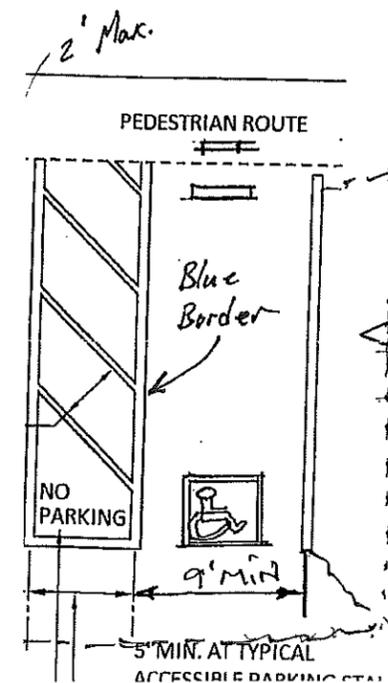
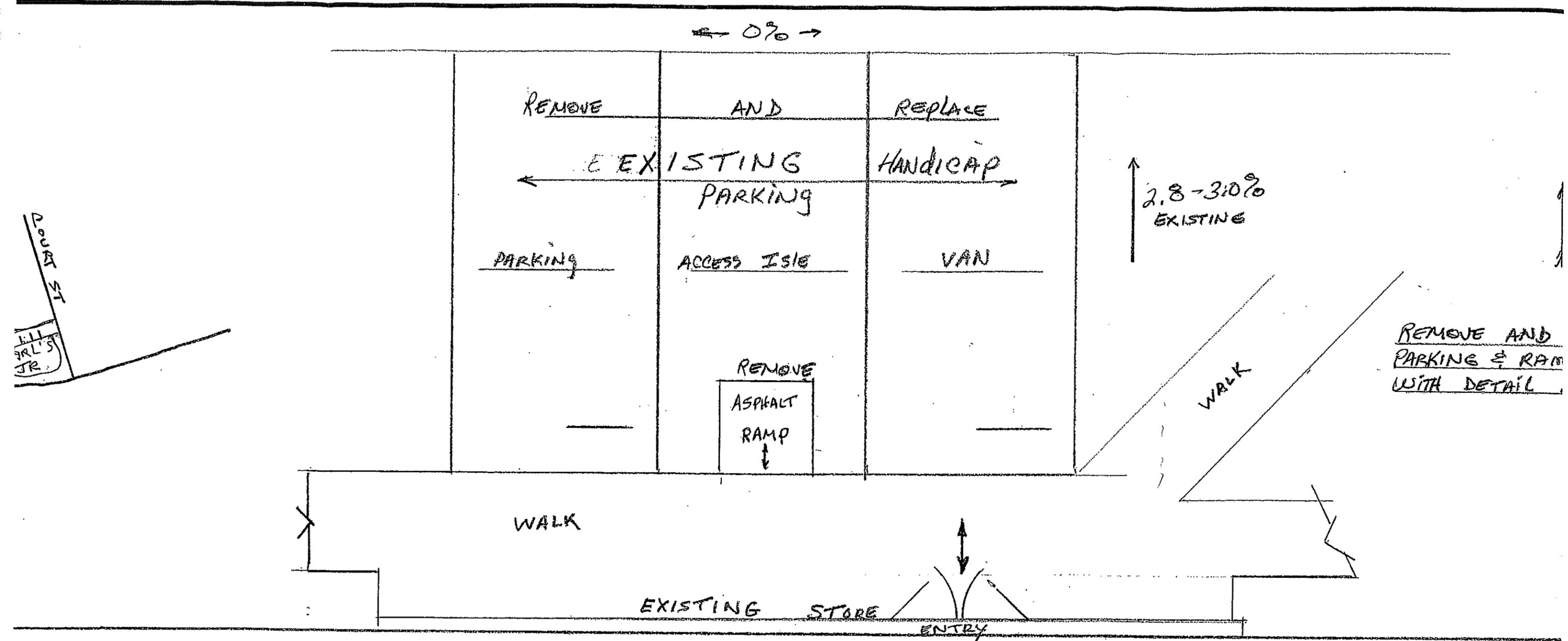
\*\*\*\*\*FEES PAID\*\*\*\*\*

	Building Deposit	\$80.00
	Building Division Technology Surcharge	\$17.91
Total	\$0.00	
	Building Permit Fee	\$84.71
	Building Plan Check Fee	\$107.06
	Double Building Permit Fee	\$84.71
	Fire-Building Plan Check Fee	\$19.08
	Green Building Fee	\$1.00
	SMIP Fee (Commercial)	\$1.78
	Total	\$396.25



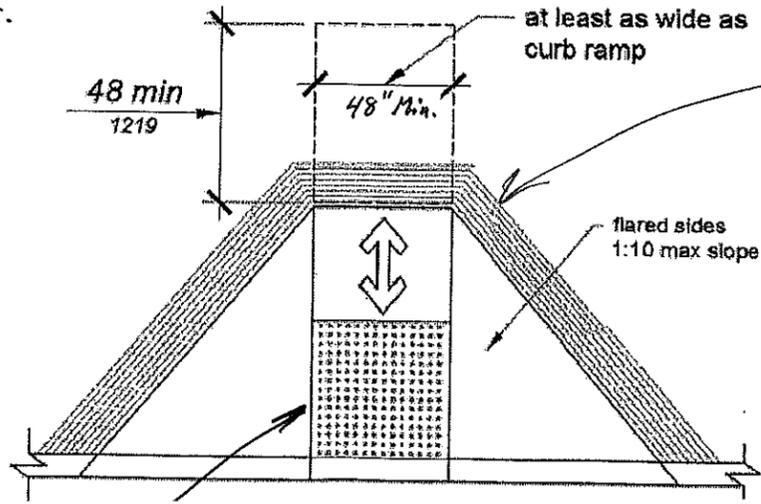
**FEE PROTESTS:** The applicant is hereby notified that you may have a right to protest/appeal from the imposition of development impact fees imposed on the project, which protest/appeal must be filed with the Director of Development Services within 90 days of imposition of the fee. For the purposes of determining the applicable time limit for filing a protest/appeal, the date of the imposition of fees shall be the date of the earliest approval by the City of the project where fees are imposed and a 90-day protest notice as required by Government Code Section 66020(a) is provided to the applicant as a condition of approval or issuance of a permit. If the applicant fails to file a protest within this 90 day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

# ATTACHMENT C



Any transition level or grade to be at 5% max. slope.

2% IN ANY DIRECTION



11B-406.5.11 Grooved border. Curb ramps shall have a grooved border 12 inches (305 mm) wide along the top of the curb ramp at the level surface of the top landing and at the outside edges of the flared sides. The grooved border shall consist of a series of grooves 1/4 inch (6.4 mm) wide by 1/4 inch (6.4 mm) deep, at 3/4 inch (19 mm) on center.

# ATTACHMENT D

CITY OF REDDING

Correction Notice

Page \_\_\_\_\_ of \_\_\_\_\_

Type Insp. Final

Date 6-24-13

Location 1800 BUNICKA

I have inspected the structure/premises and have the following code violations:

NOTED TO HAVE A  
MIN. 48" PATH OR  
TRAVEL WITH NO  
MORE THAN 2%  
CROSS SLOPE. PATH  
OF TRAVEL CANNOT  
RUN THROUGH ACCESSIBLE  
CURB RAMP

**THIS NOTICE IS TO BE KEPT WITH THE INSPECTION CARD.**

No additional work shall be done until the above violations have been corrected and reinspected.

Building Dept. 225-4013  
Inquiries Requests 1-866-458-7319

Frank C. Hansen  
Inspector

# ATTACHMENT E

## Nagel, Bill

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**From:** Jim Green <green\_jim@att.net>  
**Sent:** Tuesday, July 01, 2014 3:47 PM  
**To:** Nagel, Bill  
**Subject:** Re: 1800 Eureka St. Final Inspection, Permit # 2014-00965

Thank you

Sent from my iPhone

On Jul 1, 2014, at 3:30 PM, "Nagel, Bill" <[bnagel@ci.redding.ca.us](mailto:bnagel@ci.redding.ca.us)> wrote:

OK. I will look at the plans and talk to Jim Wright and then we can talk.

Thanks.

Bill Nagel, SE  
Development Services Director  
City of Redding  
777 Cypress Ave.  
Redding, CA 96049-6071  
(530) 225-4127

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**From:** Jim Green [[mailto:green\\_jim@att.net](mailto:green_jim@att.net)]  
**Sent:** Tuesday, July 01, 2014 2:09 PM  
**To:** Nagel, Bill  
**Subject:** Re: 1800 Eureka St. Final Inspection, Permit # 2014-00965

Hello Bill.

Thank you for your response. I would like to resolve this issue. However, I am now out of state on projects for the summer, over a thousand miles from Redding. I am available on the cell phone or email. I will return on brief trips to California, but the dates have not been set.

Sent from my iPhone

On Jul 1, 2014, at 10:48 AM, "Nagel, Bill" <[bnagel@ci.redding.ca.us](mailto:bnagel@ci.redding.ca.us)> wrote:

Hello Mr. Green,

I am back in the office. Would it be possible to setup up a meeting to discuss the issues you have outlined?

I am available this week and next.

Thanks.

Bill Nagel, SE

Development Services Director  
City of Redding  
777 Cypress Ave.  
Redding, CA 96049-6071  
(530) 225-4127

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**From:** JIM Green [mailto:green\_jim@att.net]  
**Sent:** Sunday, June 29, 2014 8:42 PM  
**To:** bldgmail  
**Subject:** 1800 Eureka St. Final Inspection, Permit # 2014-00965

Attention: Bill Nagel CBO

The final inspection was called on this ADA improvement project on 6/24/2014. A correction notice was written, requesting a 48" path of travel, and not allowing pedestrian traffic through a new curb ramp. Jim Wright visited the site and asked me to demolish the new ramp to maintain a path of travel on an existing non-compliant path. My objection to this correction is as follows:

1. This property has never had a legal or designated path of travel to the sidewalk or anywhere else. A existing concrete walk has a hazardous crossing through the drive thru vehicle lane. No truncated domes are present, the walk has excessive slope to qualify as a legal ramp, and no handrails are present. No designation as a path of travel is present.
2. This property is exempt from the path of travel to a public sidewalk per CBC 11B-206.2.1.
3. All compliant curb ramps are legal accessible paths. That is why we do them in the first place. The slope requirements are listed in the Code for pedestrian traffic. A truncated dome warns the visually impaired person of entering a hazardous vehicle area.
4. Mr. Wright stated he would never approve, now or in the future, a path of travel through the vehicle drive. I find this totally inaccurate. There are paths of travel in all jurisdictions including Redding, that pass through or alongside vehicle paths. Just visit one of your shopping centers. Raley's is a good example. CBC 11B-705.1.2.5 addresses this issue.
5. My only business is ADA inspections (CASp), and ADA improvements. Mr. Wright would not recognize or acknowledge anyones experience but his own. He stated that if I did not demolish and move the new curb ramp, the owner would receive monetary penalties. I work throughout Northern California and have a collaborative and long standing working relationship with all the jurisdictions I work in , except the City of Redding. I am prepared to apply this Code interpretation to an appeals board, but much rather settle this at the lowest level. Please review and return a decision to this email.

Thank you,

Jim Green CBO

# ATTACHMENT F

# CITY OF REDDING



November 21, 2014

## DEVELOPMENT SERVICES DEPARTMENT

BUILDING & CODE ENFORCEMENT DIVISION

777 Cypress Avenue, Redding, CA 96001

P.O. Box 496071, Redding, CA 96049-6071

530.225.4013 FAX 530.225.4360

e-mail: bldg@mail@ci.redding.ca.us

J.D. Green & Associates  
PO Box 1462  
Portola, CA 96122

Subject: 1800 Eureka Way

Our records indicate that on April 28, 2014, building permit number 2014-00965 was issued for ADA improvements at the subject address.

As the owner of record, this letter is to inform you that this permit will expire on December 22, 2014.

Prior to the expiration date, the following options are available to you per Appendix Chapter 1 of the California Building Code:

1. Schedule a building/progress inspection which in turn verifies that work has not been suspended or abandoned on the project.
2. Apply in writing for a permit extension. The written request must provide valid justification for a permit extension. The Building Official may grant a one-time extension of 180 days.
3. In the event that you let your permit expire and you do not intend to proceed with the project, you may be entitled to a partial refund. Please provide a copy of your paid receipt.

If you have any questions or additional information regarding this project please call me at (530) 225-4013.

**If this project has been completed, please call to schedule a final inspection.**

Sincerely,

*Tricia Lawrenz*

Tricia Lawrenz  
Building Division

# ATTACHMENT G

November 30, 2014

City of Redding  
Building and Code Enforcement Division  
777 Cyprus Avenue  
Redding, Ca 96049-6071

Re: Permit # 2014-00965

Dear Tricia Lawrenz

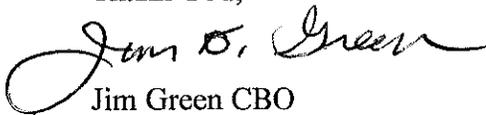
Please refer to your Building Official regarding this permit for ADA improvements at 1600 Eureka Way, Redding.

I had submitted an email to your Building Official a few months ago, outlining my response to a correction notice on this project. I included an explanation, with code sections, to reinforce my view as to why the correction notice dated 6/24/13 was incorrect.

I am waiting for a response as promised, from your Building Official via email. None has been received as of this date.

Again, I am requesting this permit be finalized as work has been completed, and work is compliant to the California Building Code section 11B.

Thank You,



Jim Green CBO  
J.D. Green and Associates  
530-798-8458  
green\_jim@att.net

# ATTACHMENT H

# CITY OF REDDING



## DEVELOPMENT SERVICES DEPARTMENT

BUILDING & CODE ENFORCEMENT DIVISION

777 Cypress Avenue, Redding, CA 96001

P.O. Box 496071, Redding, CA 96049-6071

530.225.4013 FAX 530.225.4360

e-mail: bldgmail@ci.redding.ca.us

December 18, 2014

Jim Green  
J.D. Green & Associates  
PO Box 1462  
Portola, CA 96122

Subject: 1800 Eureka Way

Dear Mr. Green,

On Tuesday, December 9, 2014 our office conducted a field inspection in order to follow up on the issue at the above address of whether or not the newly installed accessible ramp is compliant with the approved plans and 2013 California Building Code, Sections 11B-406 and 11B-403.5.1 exception #3.

It was observed at the time of inspection that the curb ramp as installed does not conform to the approved plans or the current building code. The specific issues are that the curb ramp exceeds the maximum allowable slope of 8.3% (measured at 9.1%) in the direction of travel and the previously compliant path of travel from the public right-of-way to the primary building entrance now exceeds the maximum allowable 2% cross slope due to the encroachment of the newly installed curb ramp into the required width.

One potential solution is to remove the recently installed curb ramp and construct a new compliant curb ramp approximately 4' to the west of the existing ramp which both meets the minimum slope requirements and also allows for the path of travel from the public right-of-way to maintain the full 4' of required width at a cross slope of 2% or less.

In order to avoid any future misunderstandings I request that prior to taking any corrective actions you submit to our office for approval a set of plans which sufficiently illustrates both existing conditions and that the proposed corrections are in accordance with the requirements of the 2013 California Building Code, Chapter 11B.

Once those plans have been approved by our office I also ask that prior to the placement of any concrete an inspection for the form set-up is to be requested and approved.

As your permit is set to expire on December 22, 2014, through this letter, I am extending the expiration date an additional 90 days to provide you with sufficient time to make the necessary corrections.

Please let me know if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Nagel", is written over a white background.

Bill Nagel, S.E.  
Development Services Director

BN  
LTR14\V12-18ljg.doc

Att: Photographs 1- 5





PARKING  
AND  
MINIMUM  
TIME 30 MIN  
VAN  
ACCESSIBLE

48" WID.

10 1/2" MAX

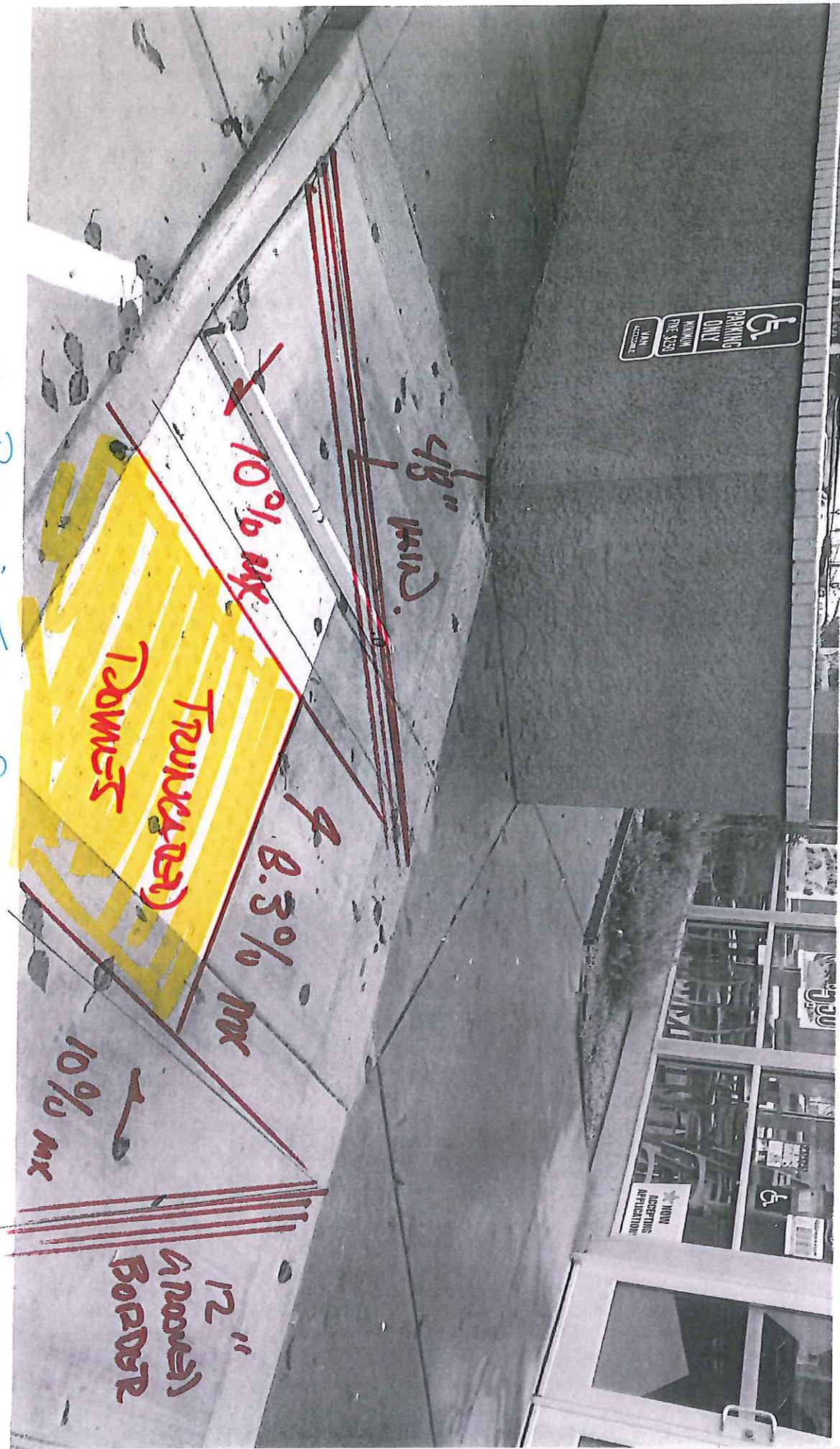
TRUCKS  
(TRUCKS)

8.3% MAX

10% MAX

12"  
A MAX  
BOARDER

\* POSSIBLE SOLUTION



# ATTACHMENT I

Jim D. Green  
J.D.Green & Associates  
P.O. Box 1462 Portola, Ca. 96122  
530-798-8458

RECEIVED  
MAR 23 2015  
DEVELOPMENT SERVICES DEPT.

March 15, 2015

Bill Nagel,  
Development Services Director  
City of Redding

Re: Permit # 2014-00965  
1800 Eureka Way

Dear Mr. Nagel,

On 4/28/2014 I obtained a building permit from the City of Redding for the following scope of work:

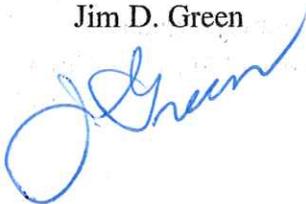
REMOVE AND REPLACE HANDICAP PARKING AND ACCESS ISLE, RESTRIPE AND SIGNAGE.

On 6/14/2014 I requested a final inspection. A correction notice was issued by your department requesting a path of travel of 48" around the new curb ramp to accommodate a "compliant" path of travel.

1. The issue is, my scope of work on the contract, and permit, does not include a path of travel to the sidewalk. The CASp report dated Sept 13, 2013 for this property clearly states a compliant path of travel does NOT exist to the sidewalk. The walk to the sidewalk is non-compliant in many ways, including excessive slope, lack of warnings across a drive thru, lack of handrails, lack of signage, to even designate an accessible path. Under my contract, I have never included improvements for a compliant path that you state is in existence. Remember, ADA is only enforceable by civil law suits, city, county, or states have no jurisdiction to request improvements on existing properties.
2. You have discovered six months later, an excessive slope on the new curb ramp. Yes, it does exceed the maximum 8.33% by 1/2" in 6 ft. (approx 9.1%) at one point. The reason is, what you don't see. The building roof drainage piping (which daylight just to the right side of the ramp in the face of curb.) is directly underneath the curb ramp. The ramp slope cannot be lowered to 8.33% with all the roof drainage piping in place. Believe me, I would have been happy to comply with the 8.33% if possible.

With the above issue's, I ask that the permit be finalized at this time. Both Federal and State regulations allow a deviation in slope of curb ramps if necessary to accommodate existing conditions.

Sincerely,  
Jim D. Green



# ATTACHMENT J

RECEIVED  
APR 06 2015  
DEVELOPMENT SERVICES DEPT.

April 6, 2015  
A-050-250-030

Jim Green  
J.D. Green & Associates  
PO Box 1462  
Portola, CA 96122

Subject: 1800 Eureka Way – Permit # 2014-00965

Dear Mr. Green,

I am writing in response to your March 15, 2015 letter regarding compliance with accessibility requirements at the above referenced address.

You are correct in pointing out that the City of Redding does not have the legal authority to enforce Federal ADA regulations. However, enforcement of the California Building Code (CBC) Accessibility provisions by Cities and Counties is mandated by the State of California.

CBC Section 3404.1 states “Alterations shall be such that the existing building or structure is no less complying with the provisions of this code than the existing building or structure was prior to the alteration”. By installing the new curb ramp in the selected location you have made a portion of the existing path of travel non-compliant by reducing the previously compliant width to less than that required by the CBC. This could have easily been avoided by locating the new curb ramp further to the west and needs to be corrected.

CBC Section 11B-201.1 requires that “altered portions of existing buildings and facilities shall comply with these requirements”. Accordingly, the newly constructed curb ramp is required to fully comply with the requirements for curb ramps including the maximum slope provisions. There are no exceptions for exceeding the maximum allowable slope of 8.33%. The ramp you installed is sloped 9% and is therefore non-compliant.

I ask that you submit revised plans which clearly depict existing site conditions and how the noted deficiencies will be corrected, obtain plan review approvals for the required corrections and obtain final inspection approvals. Failure to submit revised plans within 30 days and/or complete the necessary work within 60 days will result in our turning this file over to Code Enforcement for further action.

Please let me know if you have any further questions.

Sincerely,

Bill Nagel, S.E.  
Director Development Services

# ATTACHMENT K

J.D.Green & Associates  
P.O. Box 1462  
Portola, Ca 9612

RECEIVED  
APR 22 2015  
DEVELOPMENT SERVICES DEPT.

Bill Nagel, S.E.  
Director of Development Services  
777 Cypress Ave.  
Redding, Ca. 96001

Subject: 1800 Eureka Way-Permit #2014-00965

Dear Mr. Nagel,

I am writing in response to your letter dated April 6, 2015.

I am completely understanding of the California Building Codes you are charged with upholding in the City of Redding. I have been an inspector, plans examiner, and building official in Nevada and California for the last 37 years. I also understand the accessibility requirements for new and existing buildings. I think you would agree it is important that the Codes are interpreted correctly, and reasonably, as explained in the state and federal law.

1. On final inspection of the above permit, after a half hour on the phone to your office, the inspector issues a correction notice dated 6/24/13? I asked you at that time to review the notice, because of existing non compliant path of travel. How can I reduce a path of travel that has never existed in the first place? There are many issues with the walking path to the sidewalk that are non compliant. Six months later, you send me the same correction with nothing more than an incorrect referral to the CBC requirements for new construction.

2. Now you are responding stating Code sections with a new requirement to remove the new curb ramp because of a 9% grade which isn't allowed under new construction. You also state there are no exceptions. This is an incorrect statement. I mentioned the underground piping that runs under the ramp and under the existing patio. To achieve the maximum slope (for new construction), of 8.33 %, the entire front walk and patio would have to be removed and roof drains on the existing building removed. This is an unreasonable request.

I will enclose interpretations of state and federal law in CALDAG. My company uses the existing building requirements often because of terrain issues as well as existing circumstances which allow exceptions to absolute code dimensions. We could never achieve full compliance with new construction dimensions in California at all existing buildings. Please review all code references to EXISTING BUILDINGS.

If you cannot sign the final on this permit for your own reasons, then please send me an application for the appeals board in Redding.

Sincerely, Jim D.Green CBO

*Jim D. Green*  
4/16/15

- D. Accessible telephones,
- E. Accessible drinking fountains, and
- F. When possible, additional accessible elements such as parking, storage and alarms. 1134B.2.1

Following this list of priorities is not required (unless a building agency tells you it is) however it is highly recommended to do so. As a final note, although item "F" mentions parking as a last priority, this is for additional accessible parking if some accessible parking is already provided. Item "B" which asks for "an accessible route to the altered area" includes providing accessible parking and a path of travel. An accessible building is of no use to the disabled if they can't even get to the front door.

**Legal and physical constraints that prohibit full accessibility compliance**

Besides the cost limitations that may prevent full compliance with applicable guidelines in alterations, certain legal or physical constraints on a site may also prevent full compliance. One of these physical constraints is called "technical infeasibility":

*Technically Infeasible. Means, with respect to an alteration of a building or a facility, that it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility".*

4.1.6(1)(j) 202

Some examples of this would be a structural column that prohibits widening a toilet stall to the proper dimensions; or the significant structural modifications that would be necessary in order to install an elevator in an existing building. Some examples of legal constraints could include the inability to widen a toilet stall because it would require encroachment into another entities leased space; or because widening the stall would require removing an adjacent toilet that would cause the required fixture count for the occupancy load of the building to be deficient.

The fact that it may not be feasible to make a particular improvement "readily accessible" does not excuse the entity from providing partial accessibility to the improvement if possible, or from implementing other accessibility standards that are not affected by the subject constraints. The law requires an entity to ensure that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs:

*"To the maximum extent feasible. The phrase "to the maximum extent feasible," as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments)." ADA §36.402*

# ATTACHMENT L

# CITY OF REDDING



**DEVELOPMENT SERVICES DEPARTMENT**  
BUILDING & CODE ENFORCEMENT DIVISION  
777 Cypress Avenue, Redding, CA 96001  
P.O. Box 496071, Redding, CA 96049-6071  
530.225.4013 FAX 530.225.4360  
e-mail: bldg@mail@ci.redding.ca.us

April 21, 2015

Mr. Jim D. Green  
J.D. Green & Associates  
P.O. Box 1462  
Portola, CA 96122

Subject: Board of Appeals Application

Dear Mr. Green,

As requested in your letter to Bill Nagel, please find enclosed an application to appear before the Board of Appeals. Please complete this application and return it to the City of Redding Building Department prior to May 5, 2015. Your application will be reviewed and a meeting date will be appointed by the Board.

Sincerely,

*Tricia Lawrenz*

Tricia Lawrenz  
Administrative Assistant II  
tlawrenz@ci.redding.ca.us

encl: application

# ATTACHMENT M

Jim D. Green CBO  
Jim D. Green and Associates  
P.O. Box 1462  
Portola, Ca. 96122

May 5, 2015

Re: Permit # 2014-00965 ADA IMPROVEMENTS  
1800 Eureka Way Redding, Ca. 96001

Dear Appeals Board Members,

On June 24<sup>th</sup>, 2014 I received a final inspection and correction notice for the above permit.

I have sent several letters of communication to the City of Redding Building Official explaining the permitted project and ADA improvements at 1800 Eureka Way in Redding, ( AN EXISTING CARLS JR. RESTAURANT)

I had contracted ADA improvements with the owner as follows;

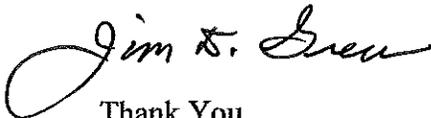
Remove and replace non-compliant handicap parking, van parking, access isle, and asphalt ramp.

The existing non compliant features were listed on a Casp report my company uses in California for features in need of improvements for ADA compliance.

The issue with the new concrete pedestrian ramp (9% slope instead of 8.33% for new construction) was entirely due to the existing restraints due to the existing roof drainage piping that exists directly under the new ramp. These pipes travel under the front patio and walkway to the building. It is not possible to obtain 8.33% without removing the entire patio concrete, walk, and ramp, and remove and replace the roof drainage piping. Both Federal and State law have provisions to allow less than absolute compliance due to "technically infeasible" conditions as explained in Section 1134B of the CBC.

As far as the correction notice given on 6/24/14, stating the path of travel requires 48 inches width, there is no existing accessible path of travel on this site. A walk exists that in no way complies or is even indicated an accessible path of travel for this site. The Building Dept is requiring I improve a path of travel to the sidewalk, which is not on this permit or contract.

Please review CBC chapter IIB for existing buildings, to understand why in several cases, full compliance with the absolute dimensions in the CBC for new construction is not possible when working on existing sites. We always strive to achieve compliance to the maximum extent feasible.



Thank You,  
Jim D. Green

# ATTACHMENT N



# BOARD OF APPEALS

## Application to Appear

**REDDING**  
CALIFORNIA  
City of Redding  
777 Cypress Avenue  
Redding CA 96001  
Telephone:  
(530) 225-4013  
FAX: (530) 225-4360

Date: May 5, 2015

Name: JIM D. GREEN

Address: PO BOX 1462 PORTOLA, CA

Phone No.: (530) 798-8458 96122

Project Address: 1800 EUREKA WAY  
PERMIT # 2014-00965

I would like to appeal the Building Official's order, decision, or determination regarding the **application** of:

Section 1134 B of the CALIFORNIA Building Code

I would like to appeal the Building Official's order, decision, or determination regarding the **interpretation** of:

Section 1134 B of the CALIFORNIA Building Code

My position on this issue is as follows: (attach additional sheets if necessary)

*Contrary to Federal and State law, as applied to accessibility for existing buildings, the Building Official of the City of Redding refused to interpret, recognize, or apply, Section 1134 CBC. Specifically, the "Technically Infeasible" provisions of 1134.B.*

*See attached explanation.*

Jim D. Green Signature      5/5/15 Date

For Agency Use Only		
Received by:	Date:	Scheduled for:

# ATTACHMENT O

## DIVISION 2: SCOPING REQUIREMENTS

### **11B-201 Application**

**11B-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.

**11B-201.2 Application based on building or facility use.** Where a site, building, facility, room, or space contains more than one use, each portion shall comply with the applicable requirements for that use.

**11B-201.3 Temporary and permanent structures.** These requirements shall apply to temporary and permanent buildings and facilities.

**11B-201.4 Construction support facilities.** *These requirements shall apply to temporary or permanent construction support facilities for uses and activities not directly associated with the actual processes of construction, including but not limited to offices, meeting rooms, plan rooms, other administrative or support functions. When provided, toilet and bathing facilities serving construction support facilities shall comply with Section 11B-213. When toilet and bathing facilities serving construction support facilities are provided by portable units, at least one of each type shall be accessible and connected to the construction support facilities it serves by an accessible route.*

**Exception:** *During construction an accessible route shall not be required between site arrival points or the boundary of the area of construction and the entrance to the construction support facilities if the only means of access between them is a vehicular way not providing pedestrian access.*

### **11B-202 Existing buildings and facilities**

**11B-202.1 General.** Additions and alterations to existing buildings or facilities shall comply with Section 11B-202.

**11B-202.2 Additions.** Each addition to an existing building or facility shall comply with the requirements for new construction and shall comply with Section 11B-202.4.

**11B-202.3 Alterations.** Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Division 2, including Section 11B-202.4.

#### **Exceptions:**

1. **Reserved.**
2. **Technically infeasible.** In alterations, where the enforcing authority determines compliance with applicable requirements is technically infeasible, the alteration shall provide equivalent facilitation or comply with the requirements to the maximum extent feasible. *The details of the finding that full compliance with the requirements is technically infeasible shall be recorded and entered into the files of the enforcing agency.*

3. Residential dwelling units not required to be accessible in compliance with *this code* shall not be required to comply with Section 11B-202.3.

**11B-202.3.1 Prohibited reduction in access.** An alteration that decreases or has the effect of decreasing the accessibility of a building or facility below the requirements for new construction at the time of the alteration is prohibited.

**11B-202.3.2 Extent of application.** An alteration of an existing element, space, or area of a building or facility shall not impose a requirement for accessibility greater than required for new construction.

**11B-202.3.3 Alteration of single elements.** *If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire room or space shall be made accessible.*

**11B-202.4 Path of travel requirements in alterations, additions and structural repairs.** *When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:*

1. A primary entrance to the building or facility,
2. Toilet and bathing facilities serving the area,
3. Drinking fountains serving the area,
4. Public telephones serving the area, and
5. Signs.

#### **Exceptions:**

1. Residential dwelling units shall comply with Section 11B-233.3.4.2.
2. *If the following elements of a path of travel have been constructed or altered in compliance with the accessibility requirements of the immediately preceding edition of the California Building Code, it shall not be required to retrofit such elements to reflect the incremental changes in this code solely because of an alteration to an area served by those elements of the path of travel:*
  1. A primary entrance to the building or facility,
  2. Toilet and bathing facilities serving the area,
  3. Drinking fountains serving the area,
  4. Public telephones serving the area, and
  5. Signs.
3. *Additions or alterations to meet accessibility requirements consisting of one or more of the following items shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4:*
  1. Altering one building entrance.
  2. Altering one existing toilet facility.

# ATTACHMENT P

# SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS

**Disciplines:** Accessibility

**History:**

04-27-15 Issued

**PURPOSE:** This Interpretation of Regulations (IR) provides guidance for projects submitted for accessibility review to the Division of the State Architect (DSA) on the upgrade of path of travel elements to the current edition of the California Building Code (CBC) when the area they serve is altered, added to or structurally repaired.

**BACKGROUND:** A project at an existing site is an alteration of that facility and subject to the requirements of CBC Section 11B-202.4: Path of travel requirements in alterations, additions and structural repairs. This applies to 1) alteration or structural repair of an existing building or feature on the site or 2) addition of a new building or new elements to an existing building, facility or site.

## INTERPRETATION:

**1. SCOPING CONSIDERATIONS FOR ALTERATION PROJECTS:** A project at an existing facility is an alteration of that facility. This applies when either 1) existing elements are altered or 2) new elements, up to and including new buildings, are added.

**1.1 Maintenance and Repair Projects:** Projects limited to maintenance or repair are not alterations and do not trigger accessibility requirements. Definitions related to alteration projects are included in [Attachment 1](#) of this IR.

**1.2 Compliance with New Construction Requirements:** The basic work of any project, whether new construction, an addition to an existing building or facility or an alteration of an existing building or facility, must comply with the following requirements for new construction:

- **"11B-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.*"<sup>1</sup>
- **"11B-202.3 Alterations.** *Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Division 2, including Section 11B-202.4."*

**1.3 General Exceptions:** The code then provides general exceptions to the requirements in 11B-203.<sup>2</sup> Many of these exceptions are applicable to public school, community college and higher education projects; a copy of Section 11B-203 is provided as [Attachment 2](#) to this IR.

**1.4 Accessible Route Requirements:** For additions, the new construction provisions require an accessible route from the area of the addition to other accessible areas of the building, site or facility:

- **"11B-206.2.2 Within a site.** *At least one accessible route shall connect accessible buildings, accessible facilities, accessible elements and accessible spaces that are on the same site."*

<sup>1</sup> "These requirements" means the accessibility provisions of Chapter 11B and related sections within the California Building Code, current edition.

<sup>2</sup> **"11B-203.1 General.** Sites, buildings, facilities and elements are exempt from these requirements to the extent specified by Section 11B-203."

## SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS

**1.5 Accessible Route Requirements for Campus Settings:** For campus-style school facilities with multiple buildings and functional areas, the accessible route/path of travel situation can become more complex. The following factors may apply to projects on existing campus facilities:

- New construction on an existing site must be connected, as part of the basic project scope, with an accessible route to existing on-site circulation paths and accessible routes.
- When multiple paths of travel to a specific area of alteration, addition or structural repair are present but not code compliant, Section 11B-202.4 requires the upgrade of only a single primary path of travel to the project area. Upgrades of secondary paths of travel shall not be required.
- Path of travel (POT) upgrades only apply to existing construction; any new POT elements or accessible routes being provided as part of the basic project scope are not considered path of travel upgrades.
- The cost of new POT elements or a new accessible route is part of the project's adjusted construction cost and cannot be used to satisfy the 20-percent disproportionate cost limitation for path of travel upgrades on projects with an adjusted construction cost below the valuation threshold. See Section 3.1 of this IR.

**1.6 Vehicular Way Exception:** Again, there are exceptions to these general requirements. For example, if the only means of access between accessible buildings, accessible facilities, accessible elements and accessible spaces on a site is a vehicular way not providing pedestrian access, an accessible route connecting them is not required.<sup>3, 4</sup> The Section 11B-203 exceptions also apply to the extent specified.

## 2. PATH OF TRAVEL UPGRADE REQUIREMENTS FOR ALTERATION PROJECTS

**2.1 Path of Travel Elements:** Under the CBC, certain alteration, addition and structural repair projects trigger requirements for upgrades to accessibility elements outside the project's area of work. These "path of travel" upgrade requirements are found in:

- ***"11B-202.4 Path of travel requirements in alterations, additions and structural repairs. When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided."***
- *The primary path of travel shall include:*
  - A primary entrance to the building or facility,
  - Toilet and bathing facilities serving the area,
  - Drinking fountains serving the area,
  - Public telephones serving the area, and
  - Signs.

Section 11B-202.4 then provides nine exceptions to the path of travel requirements; see [Attachment 3](#) for the full text of these exceptions.

**2.2 Path of Travel Exterior Elements:** In addition to the five specific items listed above, the path of travel also includes an exterior approach to the project area. This requirement must be

<sup>3</sup> **11B-206.2.1 Site arrival points Exception 2.** An accessible route shall not be required between site arrival points and the building or facility entrance if the only means of access between them is a vehicular way not providing pedestrian access.

<sup>4</sup> **11B-206.2.2 Within a site Exception.** An accessible route shall not be required between accessible buildings, accessible facilities, accessible elements and accessible spaces on a site if the only means of access between them is a vehicular way not providing pedestrian access.

## SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS

evaluated on a project- and site-specific basis and could include parking, site arrival points, bus loading zones and the accessible route connecting them with the primary entrance to the project's area of work.

### 3. DISPROPORTINATE COST LIMITATIONS

**3.1 Disproportionate Costs for Small Projects:** Section 11B-202.4, Exception 8 addresses the issue of disproportionate costs for smaller projects and for projects where full compliance would be an unreasonable hardship.

- "When the adjusted construction cost is less than or equal to the current valuation threshold, as defined in Chapter 2, Section 202, the cost of compliance with Section 11B-202.4 shall be limited to **20 percent** of the adjusted construction cost of alterations, structural repairs or additions. When the cost of full compliance with Section 11B-202.4 would exceed 20 percent, compliance shall be provided to the greatest extent possible without exceeding 20 percent."
- Alteration, addition and structural repair projects with adjusted construction costs below the valuation threshold shall be permitted to use the disproportionate cost threshold of 20 percent to limit the scope and cost of path of travel upgrades.

**3.2 Projects with Adjusted Construction Costs Above the Valuation Threshold:** The 20-percent disproportionate cost limitation does not apply to projects with adjusted construction costs above the valuation threshold. These projects must comply with the path of travel upgrade requirements, whatever the cost, to provide a single accessible path of travel to the specific area of alteration. However, Section 11B-202.4 Exception 8 provides:

- *"When the adjusted construction cost exceeds the current valuation threshold, as defined in Chapter 2, Section 202, and the enforcing agency determines the cost of compliance with Section 11B-202.4 is an unreasonable hardship, as defined in Chapter 2, Section 202, full compliance with Section 11B-202.4 shall not be required."*
- *A finding of UNREASONABLE HARDSHIP may be made when the enforcing agency (DSA) finds that compliance with the building standard would make the specific work of the project affected by the building standard infeasible, based on an overall evaluation of the following factors:*
  1. *The cost of providing access.*
  2. *The cost of all construction contemplated.*
  3. *The impact of proposed improvements on financial feasibility of the project.*
  4. *The nature of the accessibility which would be gained or lost.*
  5. *The nature of the use of the facility under construction and its availability to persons with disabilities.*
- *"Compliance shall be provided by equivalent facilitation or to the greatest extent possible without creating an unreasonable hardship; but in no case shall the cost of compliance be less than 20 percent of the adjusted construction cost of alterations, structural repairs or additions."<sup>5</sup>*
- *"The details of the finding of unreasonable hardship shall be recorded and entered into the files of the enforcing agency and shall be subject to Chapter 1, Section 1.9.1.5, Special Conditions for Persons with Disabilities Requiring Appeals Action Ratification."*
- *The adjusted construction cost shall not include the cost of alterations to path of travel elements.*

<sup>5</sup> As long as there are noncompliant elements that need to be corrected, the cost of the path of travel upgrades cannot fall below 20 percent, as that is a requirement of both the 2013 CBC and the 2010 ADA Standards.

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## SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS

**3.3 Finding of Unreasonable Hardship:** A finding of unreasonable hardship is appropriate only when the cost of full compliance is significantly above the 20-percent disproportionate cost limitation and would make the project financially infeasible. A finding of unreasonable hardship may be made by the enforcing agency and should be based upon a detailed project-specific analysis. For projects within DSA's jurisdiction, a finding of unreasonable hardship must be approved by the access supervisor and the regional manager.

**3.4 Three Year History:** For areas that have been previously altered without providing an accessible path of travel to those areas, the cost of any subsequent alterations to areas served by the same path of travel during a preceding three-year period shall be considered in determining whether the cost of making the path of travel is disproportionate.

**3.5 Upgrades in Substantially Compliant Facilities:** For projects where the path of travel elements serving the area of alteration, addition or structural repair are largely compliant, it shall not be required that the full 20 percent of the adjusted construction cost be spent.

### 4. COMPLIANCE WITH IMMEDIATELY PRECEDING EDITION:

**4.1 Path of Travel Upgrades Not Required: 11B-202.4 Exception 2** does not require path of travel upgrades for certain elements that have been previously constructed or altered in compliance with the accessibility requirements of the immediately preceding edition of the California Building Code. Retrofit to reflect incremental changes in the code solely because of an alteration to an area served by the following elements shall not be required:

- A primary entrance to the building or facility,
- Toilet and bathing facilities serving the area,
- Drinking fountains serving the area,
- Public telephones serving the area, and
- Signs.

**4.2 Immediately Preceding Edition:** The immediately preceding edition of the code includes:

- The initially adopted and published code;
- Intervening Code Cycle Amendments adopted and issued as Supplements;
- Emergency Amendments, if any, adopted and issued as Supplements;
- Errata.

Compliance with any version of the immediately preceding code edition qualifies an element for this exception. Section 202.4 Exception 2 provisions in the immediately preceding edition of the CBC shall not be permitted to iteratively utilize provisions in earlier editions of the CBC.

### 5. ADJUSTED CONSTRUCTION COST

**5.1 Costs Included:** For the purposes of 11B-202.4, the adjusted construction cost for a project shall include:

- All direct or "hard" costs directly associated with the contractor's construction of the project.
- All fees and reimbursable expenses paid to construction managers, if any.

The direct or "hard" costs shall not be reduced by the value of components, assemblies, building equipment or construction not directly associated with accessibility or usability.

**5.2 Cost Not Included:** The adjusted construction cost shall not include:

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## SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS

- Project management fees and expenses.
- Architectural and engineering fees.
- Testing and inspection fees.
- Utility connection or service district fees.

### 6. WHEN FULL COMPLIANCE CANNOT BE REQUIRED

**6.1 Priority List:** For projects where full compliance of the path of travel elements cannot be required, based on the disproportionate cost limitation or a determination of unreasonable hardship, Section 11B-202.4, Exception 8 establishes the following priority list:

- "In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:
  1. An accessible entrance;
  2. An accessible route to the altered area;
  3. At least one accessible restroom for each sex;
  4. Accessible telephones;
  5. Accessible drinking fountains; and
  6. When possible, additional accessible elements such as parking, storage and alarms."

**6.2 Additional Accessible Elements:** The obligation to upgrade the additional accessible elements in Item 6 applies only to those elements within the primary path of travel serving the project-specific area of alteration. Typically, Item 6 will come into play only when all of the elements in the preceding items either 1) are in compliance with the requirements, 2) have been included in the project's path of travel upgrades scope of work or 3) are discretionary items, such as public telephones, and not present as existing elements.

**6.3 Operational Considerations:** In situations where a fully compliant path of travel cannot be required, from a civil rights perspective the public agency operating the facility still has an obligation to make its programs and services accessible. The fact that the building code did not require full compliance does not remove this **program delivery** obligation. However, this is an operational consideration outside of the building code and shall not be used as a condition of approval for projects under DSA's jurisdiction.

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### REFERENCES:

California Code of Regulations (CCR) Title 24  
Part 2, California Building Code, Sections 11B-202.4

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This Interpretation of Regulations (IR) is intended for use by the Division of the State Architect (DSA) staff, and as a resource for design professionals, to promote more uniform statewide criteria for plan review and construction inspection of projects within the jurisdiction of DSA which includes State of California public elementary and secondary schools (grades K-12), community colleges and state-owned or state-leased essential services buildings. This IR indicates an acceptable method for achieving compliance with applicable codes and regulations, although other methods proposed by design professionals may be considered by DSA.

This IR is reviewed on a regular basis and is subject to revision at any time. Please check the DSA website for currently effective IRs. Only IRs listed on the Web page at [www.dgs.ca.gov/dsa/Resources/IRManual.aspx](http://www.dgs.ca.gov/dsa/Resources/IRManual.aspx) at the time of plan submittal to DSA are considered applicable.

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**SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS**

## **Attachment 1**

# **Definitions**

The California Building Code defines "Alteration" as:

- "A change, addition or modification in construction, change in occupancy or use, or structural repair to an existing **building or facility**. Alterations include but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility."

"Facility" is defined in the CBC as:

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

"Alteration or Alter" is defined as:

- ". . . any change, addition or modification in construction or occupancy or structural repair or change in primary function to an existing **structure** made by, on behalf of or for the use of a public accommodation or commercial facility. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement of the structural parts of elements, and changes or rearrangement in the plan configuration of walls and full-height partitions."

The term "structure" within the definition of alteration is broadly defined as:

- "That which is built or constructed."

The underlying premise is clear—alterations are not limited to projects within buildings and can occur anywhere on a facility or site.

The CBC defines "path of travel" as:

- "An identifiable accessible route within an existing site, building or facility by means of which a particular area may be approached, entered and exited, and which connects a particular area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. When alterations, structural repairs or additions are made to existing buildings or facilities, the term "path of travel" also includes the toilet and bathing facilities, telephones, drinking fountains and signs serving the area of work."

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**SCOPING AND PATH OF TRAVEL UPGRADE REQUIREMENTS FOR FACILITY ALTERATION, ADDITION AND STRUCTURAL REPAIR PROJECTS**

**Attachment 2**

## **General Exceptions**

**11B-203.1 General.** Sites, buildings, facilities, and elements are exempt from these requirements to the extent specified by *Section 11B-203*.

**11B-203.2 Construction sites.** Structures and sites directly associated with the actual processes of construction, including but not limited to, scaffolding, bridging, materials hoists, materials storage and construction trailers shall not be required to comply with these requirements or to be on an accessible route. Portable toilet units provided for use exclusively by construction personnel on a construction site shall not be required to comply with *Section 11B-213* or to be on an accessible route.

**11B-203.3 Raised areas.** Areas raised primarily for purposes of security, life safety, or fire safety, including but not limited to, observation or lookout galleries, prison guard towers, fire towers or life guard stands shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.4 Limited access spaces.** Spaces *not customarily occupied and accessed only by ladders, catwalks, crawl spaces, or very narrow passageways* shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.5 Machinery spaces.** Spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment shall not be required to comply with these requirements or to be on an accessible route. Machinery spaces include, but are not limited to, elevator pits or elevator penthouses; mechanical, electrical or communications equipment rooms; piping or equipment catwalks; water or sewage treatment pump rooms and stations; electric substations and transformer vaults; and highway and tunnel utility facilities.

**11B-203.6 Single occupant structures.** Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels, shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.7 Detention and correctional facilities.** In detention and correctional facilities, common use areas that are used only by inmates or detainees and security personnel and that do not serve holding cells or housing cells required to comply with *Section 11B-232*, shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.8 Residential facilities.** In *public housing* residential facilities, common use areas that do not serve residential dwelling units required to provide mobility features complying with *Sections 11B-809.2 through 11B-809.4 and adaptable features complying with Chapter 11A, Division IV* shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.9 Employee work areas.** Spaces and elements within employee work areas shall only be required to comply with *Sections 11B-206.2.8, 11B-207.1, and 11B-215.3* and shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the employee work area.

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**11B-203.10 Raised refereeing, judging and scoring areas.** Raised structures used solely for refereeing, judging or scoring a sport shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

**11B-203.11 Water slides.** Water slides shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

**11B-203.12 Animal containment areas.** Animal containment areas that are not for public use shall not be required to comply with these requirements or to be on an accessible route. *Animal containment areas for public use shall be on an accessible route.*

**11B-203.13 Raised boxing or wrestling rings.** Raised boxing or wrestling rings shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

**11B-203.14 Raised diving boards and diving platforms.** Raised diving boards and diving platforms shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

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**Attachment 3**

**Path of Travel Upgrade Requirements**

**11B-202.4 Path of travel requirements in alterations, additions and structural repairs.**

When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:

1. A primary entrance to the building or facility,
2. Toilet and bathing facilities serving the area,
3. Drinking fountains serving the area,
4. Public telephones serving the area, and
5. Signs.

**Exceptions:**

1. Residential dwelling units shall comply with Section 11B-233.3.4.2.
2. If the following elements of a path of travel have been constructed or altered in compliance with the accessibility requirements of the immediately preceding edition of the California Building Code, it shall not be required to retrofit such elements to reflect the incremental changes in this code solely because of an alteration to an area served by those elements of the path of travel:
  1. A primary entrance to the building or facility,
  2. Toilet and bathing facilities serving the area,
  3. Drinking fountains serving the area,
  4. Public telephones serving the area, and
  5. Signs.
3. Additions or alterations to meet accessibility requirements consisting of one or more of the following items shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4:
  1. Altering one building entrance.
  2. Altering one existing toilet facility.
  3. Altering existing elevators.
  4. Altering existing steps.
  5. Altering existing handrails.
4. Alterations solely for the purpose of barrier removal undertaken pursuant to the requirements of the Americans with Disabilities Act (Public Law 101-336, 28 C.F.R., Section 36.304) or the accessibility requirements of this code as those requirements or regulations now exist or are hereafter amended consisting of one or more of the following items shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4:
  1. Installing ramps.

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2. Making curb cuts in sidewalks and entrance.
  3. Repositioning shelves.
  4. Rearranging tables, chairs, vending machines, display racks, and other furniture.
  5. Repositioning telephones.
  6. Adding raised markings on elevator control buttons.
  7. Installing flashing alarm lights.
  8. Widening doors.
  9. Installing offset hinges to widen doorways.
  10. Eliminating a turnstile or providing an alternative accessible route.
  11. Installing accessible door hardware.
  12. Installing grab bars in toilet stalls.
  13. Rearranging toilet partitions to increase maneuvering space.
  14. Insulating lavatory pipes under sinks to prevent burns.
  15. Installing a raised toilet seat.
  16. Installing a full-length bathroom mirror.
  17. Repositioning the paper towel dispenser in a bathroom.
  18. Creating designated accessible parking spaces.
  19. Removing high-pile, low-density carpeting.
5. Alterations of existing parking lots by resurfacing and/or restriping shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4.
  6. The addition or replacement of signs and/or identification devices shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4.
  7. Projects consisting only of heating, ventilation, air conditioning, reroofing, electrical work not involving placement of switches and receptacles, cosmetic work that does not affect items regulated by this code, such as painting, equipment not considered to be a part of the architecture of the building or area, such as computer terminals and office equipment shall not be required to comply with Section 11B-202.4. unless they affect the usability of the building or facility.
  8. When the adjusted construction cost is less than or equal to the current valuation threshold, as defined in Chapter 2, Section 202, the cost of compliance with Section 11B-202.4 shall be limited to 20 percent of the adjusted construction cost of alterations, structural repairs or additions. When the cost of full compliance with Section 11B-202.4 would exceed 20 percent, compliance shall be provided to the greatest extent possible without exceeding 20 percent.

When the adjusted construction cost exceeds the current valuation threshold, as defined in Chapter 2, Section 202, and the enforcing agency determines the cost of compliance with Section 11B-202.4 is an unreasonable hardship, as defined in Chapter 2, Section 202, full compliance with Section 11B-202.4 shall not be required.

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Compliance shall be provided by equivalent facilitation or to the greatest extent possible without creating an unreasonable hardship; but in no case shall the cost of compliance be less than 20 percent of the adjusted construction cost of alterations, structural repairs or additions. The details of the finding of unreasonable hardship shall be recorded and entered into the files of the enforcing agency and shall be subject to Chapter 1, Section 1.9.1.5, Special Conditions for Persons with Disabilities Requiring Appeals Action Ratification.

For the purposes of this exception, the adjusted construction cost of alterations, structural repairs or additions shall not include the cost of alterations to path of travel elements required to comply with Section 11B-202.4.

In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:

1. An accessible entrance;
2. An accessible route to the altered area;
3. At least one accessible restroom for each sex;
4. Accessible telephones;
5. Accessible drinking fountains; and
6. When possible, additional accessible elements such as parking, storage and alarms.

If an area has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area or a different area on the same path of travel are undertaken within three years of the original alteration, the total cost of alterations to the areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.

9. Certain types of privately funded, multistory buildings and facilities were formerly exempt from accessibility requirements above and below the first floor under this code, but as of, April 1, 1994, are no longer exempt due to more restrictive provisions in the federal Americans with Disabilities Act. In alteration projects involving buildings and facilities previously approved and built without elevators, areas above and below the ground floor are subject to the 20-percent disproportionality provisions described in Exception 8, above, even if the value of the project exceeds the valuation threshold in Exception 8. The types of buildings and facilities are:
  1. Office buildings and passenger vehicle service stations of three stories or more and 3,000 or more square feet (279 m<sup>2</sup>) per floor.
  2. Offices of physicians and surgeons.
  3. Shopping centers.
  4. Other buildings and facilities three stories or more and 3,000 or more square feet (279 m<sup>2</sup>) per floor if a reasonable portion of services sought and used by the public is available on the accessible level.

For the general privately funded multistory building exception applicable to new construction and alterations, see Section 11B-206.2.3, Exception 1.

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The elevator exception set forth in this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements in this code. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor.