

ADA TRANSITION PLAN

**City of Cohoes
August 2017**

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§ 35.105 Self-evaluation

- (a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.
- (b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.
- (c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:
 - (1) A list of the interested persons consulted;
 - (2) A description of areas examined and any problems identified; and
 - (3) A description of any modifications made.
- (d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

2015 Self-Evaluation Activities

The Engineering Office retained an intern to map all ADA facilities: sidewalks with ADA ramps, recreation and parks facilities, and the newly installed chairlift to City Hall. The mapping uncovered varying degrees of compliance as most ADA compliant facilities are installed during (re)construction of roads. Over time standards evolved and ramps completed in the 1990s fell out of compliance by 2010. For a description of modifications see map 1.

Interested Persons Consulted

In completing the self-evaluation the following titles were consulted: Traffic Commission, City Planner, City Engineer, Commissioner of Public Works, Code Enforcement, Fire Chief and Police Chief.

2017 Self-Evaluation Activities

In 2016 the City hired C&S Consultants to assess pavement conditions downtown in order to develop a Five-Year Infrastructure Improvement Plan for the downtown core. Downtown was defined as the area within west of Rte 787, east of the Mohawk Hudson Bike Path, north of Columbia Street and south of North Mohawk Street. The document was created to determine current conditions and costs for repairs.

In May 2017 the City hired consultants C&S Companies to inventory sidewalks in the downtown. The effort fits into the larger Five-Year Infrastructure Improvement Plan. In this case the consultant assessed sidewalk, curb and ADA ramp conditions.

At inception of construction in 2016, City DPW crews repaved and repaired/replaced sidewalks on the block around City Hall. Specific streets included Canvass St to Ontario St, that section of Ontario Street to Mohawk St, and that section of Mohawk Street to N Mohawk St. The mill and fill paving project and sidewalk replacements served both a new apartment complex renovated from a former mill building on Canvass Street as well as the sections around City Hall. ADA ramps were installed at all affected corners.

Interested persons consulted

The same interested persons were consulted, with the Mayor and Director of Operations added.

Notifying the public

Public notification was posted on the City's website, social media accounts, email distribution lists and through a Robocall. Paper and electronic copies of the plan are available to the public at all times.

§ 35.106 Notice

A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

Notice Requirements

Upon completion of the Transition Plan a copy will be submitted for approval to the Common Council by public meeting properly noticed as required under OML §104. Paper copies will also be made available in City Hall, with complaint forms available in the Code Enforcement office. The plan will also be posted to the City website: www.cohoes.com.

Notifying the public

Public notification was posted on the City's website, social media accounts, email distribution lists and through a Robocall. Paper and electronic copies of the plan are available to the public at all times.

§ 35.107 Designation of responsible employee and adoption of grievance procedures

- (a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.
- (b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

How to File a Complaint.

Residents and visitors can file a formal complaint with the City of Cohoes through the Building and Planning Department. The City Planner is the official ADA Coordinator and can be reached at: 518-233-2130 or codeenforcement@ci.cohoes.ny.us. The mailing address is City Hall room 17, 97 Mohawk Street, Cohoes NY 12047. Forms are also available in the Code Enforcement office in City Hall room 23. The completed ADA Accessibility Complaint Form requires the complainant to document the specific location with cross streets as well as the nature of the inaccessibility issue.

After submission of the written complaint, a city official from the building and planning department will inspect the conditions and make a recommendation for remedy. Follow-up must occur within two weeks UNLESS the complainant lists particular weather conditions as germane to the complaint. Complainants can request written findings from the department.

Please note: a copy of the complaint form can be found in the appendix.

How to File a FOIL Request

The City Clerk accepts Freedom of Information Law (FOIL) requests. Applications are available in the City Clerk’s office or on the City webpage: www.cohoes.com. Click on Form Center in the upper right hand corner and scroll to City Clerk FOIL request.

2017 Amendment

The Building and Planning Director is still the contact. However the email address is mcherubino@ci.cohoes.ny.us. No complaints were filed on the forms posted online. However one resident visiting City Hall complained in 2016 to the Mayor that the Chair Lift was not working properly. The City repaired the Chair Lift.

§§ 35.108—35.129 [Reserved]

Subpart B—General Requirements

§ 35.130 General prohibitions against discrimination

- (a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.
- (b)
 - (1) A public entity, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—
 - (i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
 - (ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;
 - (iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;
 - (iv) Provide different or separate aids, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others;
 - (v) Aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the public entity's program;
 - (vi) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;
 - (vii) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

- (2) A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.
- (3) A public entity may not, directly or through contractual or other arrangements, utilize criteria or methods of administration—
 - (i) That have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability;
 - (ii) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity's program with respect to individuals with disabilities; or
 - (iii) That perpetuate the discrimination of another public entity if both public entities are subject to common administrative control or are agencies of the same State.
- (4) A public entity may not, in determining the site or location of a facility, make selections—
 - (i) That have the effect of excluding individuals with disabilities from, denying them the benefits of, or otherwise subjecting them to discrimination; or
 - (ii) That have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the service, program, or activity with respect to individuals with disabilities.
- (5) A public entity, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
- (6) A public entity may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a public entity establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part.
- (7) A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are

necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

- (8) A public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered.
- (c) Nothing in this part prohibits a public entity from providing benefits, services, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities beyond those required by this part.
- (d) A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- (e)
 - (1) Nothing in this part shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit provided under the ADA or this part which such individual chooses not to accept.
 - (2) Nothing in the Act or this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.
- (f) A public entity may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part.
- (g) A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.
- (h) A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

City Events, Activities and Meetings

City activities all take place in accessible locations and accommodating people with mobility impairments. Indoor events are offered in accessible buildings: the Music Hall, Schools, Senior Center and Community Center. The City does not levy a surcharge for accommodation in any City sponsored event, meeting or activity. Nor does the City dissuade those with mobility impairments from participating in activities, meetings or events.

City meetings take place in the Common Council Chamber. Although on the second floor, the City installed a camera in a first floor office accessible by chair lift with a television upstairs and taping of the Chamber. The set-up allows for interaction between the attendee with a mobility impairment and the attendees in the Chamber.

Other City services are discussed in the following sections.

§ 35.131 Illegal use of drugs

- (a) *General.*
 - (1) Except as provided in paragraph (b) of this section, this part does not prohibit discrimination against an individual based on that individual's current illegal use of drugs.
 - (2) A public entity shall not discriminate on the basis of illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who—
 - (i) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;
 - (ii) Is participating in a supervised rehabilitation program; or
 - (iii) Is erroneously regarded as engaging in such use.
- (b) *Health and drug rehabilitation services.*
 - (1) A public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.
 - (2) A drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.
- (c) *Drug testing.*
 - (1) This part does not prohibit a public entity from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual

who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

- o (2) Nothing in paragraph (c) of this section shall be construed to encourage, prohibit, restrict, or authorize the conduct of testing for the illegal use of drugs.

Illegal Drug Use

The City conducts drug testing of staff for whom use would create a safety hazard due to the nature of the work. DPW, Police and Fire personnel are subject to testing. Employees who use illegal drugs or who show up drunk to work are required to attend a rehabilitation program during a suspension. A second violation may result in dismissal for safety reasons.

§ 35.132 Smoking

This part does not preclude the prohibition of, or the imposition of restrictions on, smoking in transportation covered by this part.

Smoking

Smoking is permissible 50' from the City Hall entrance. Silliman Park located across the street from City Hall or the parking lot behind City Hall are an adequate distance.

§ 35.133 Maintenance of accessible features

- (a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.
- (b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.
- (c) If the 2010 Standards reduce the technical requirements or the number of required accessible elements below the number required by the 1991 Standards, the technical requirements or the number of accessible elements in a facility subject to this part may be reduced in accordance with the requirements of the 2010 Standards.

DPW Maintenance

City DPW maintains all City facilities.

§ 35.134 Retaliation or coercion

- (a) No private or public entity shall discriminate against any individual because that individual has opposed any act or practice made unlawful by this part, or because that individual made a charge, testified, assisted, or

participated in any manner in an investigation, proceeding, or hearing under the Act or this part.

- (b) No private or public entity shall coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by the Act or this part.

Retaliation or Coercion

The City Common Council passed harassment and workplace violence policies in order to prevent and establish procedures for addressing the same.

§ 35.137 Mobility devices.

- (a) *Use of wheelchairs and manually-powered mobility aids.* A public entity shall permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use.
- (b)
 - (1) *Use of other power-driven mobility devices.* A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to § 35.130(h).
 - (2) *Assessment factors.* In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a public entity shall consider—
 - (i) The type, size, weight, dimensions, and speed of the device;
 - (ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
 - (iii) The facility's design and operational characteristics (*e.g.*, whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

- (iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
 - (v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.
 - (c)
 - (1) *Inquiry about disability.* A public entity shall not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability.
 - (2) *Inquiry into use of other power-driven mobility device.* A public entity may ask a person using an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability. A public entity that permits the use of an other power-driven mobility device by an individual with a mobility disability shall accept the presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability as a credible assurance that the use of the other power-driven mobility device is for the individual's mobility disability. In lieu of a valid, State-issued disability parking placard or card, or State-issued proof of disability, a public entity shall accept as a credible assurance a verbal representation, not contradicted by observable fact, that the other power-driven mobility device is being used for a mobility disability. A “valid” disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of issuance’s requirements for disability placards or cards.

Subpart D—Program Accessibility

§ 35.149 Discrimination prohibited.

Except as otherwise provided in § 35.150, no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

§ 35.150 Existing facilities

- (a) *General.* A public entity shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—
 - (1) Necessarily require a public entity to make each of its existing facilities accessible to and usable by individuals with disabilities;
 - (2) Require a public entity to take any action that would threaten or destroy the historic significance of an historic property; or
 - (3) Require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with §35.150(a) of this part would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

- (b) *Methods.*
 - (1) *General.* A public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or any other methods that result in making its services, programs, or activities readily accessible to and usable by individuals with disabilities. A public entity is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. A public entity, in making alterations to existing buildings, shall meet the accessibility requirements of § 35.151. In choosing among available methods

for meeting the requirements of this section, a public entity shall give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

- (2)
 - (i) *Safe harbor*. Elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS), Appendix A to 41 CFR part 101–19.6 (July 1, 2002 ed.), 49 FR 31528, app. A (Aug. 7, 1984) are not required to be modified in order to comply with the requirements set forth in the 2010 Standards.
 - (ii) The safe harbor provided in § 35.150(b)(2)(i) does not apply to those elements in existing facilities that are subject to supplemental requirements (*i.e.*, elements for which there are neither technical nor scoping specifications in the 1991 Standards). Elements in the 2010 Standards not eligible for the element-by-element safe harbor are identified as follows—
 - (A) *Residential facilities dwelling units*, sections 233 and 809.
 - (B) *Amusement rides*, sections 234 and 1002; 206.2.9; 216.12.
 - (C) *Recreational boating facilities*, sections 235 and 1003; 206.2.10.
 - (D) *Exercise machines and equipment*, sections 236 and 1004; 206.2.13.
 - (E) *Fishing piers and platforms*, sections 237 and 1005; 206.2.14.
 - (F) *Golf facilities*, sections 238 and 1006; 206.2.15.
 - (G) *Miniature golf facilities*, sections 239 and 1007; 206.2.16.
 - (H) *Play areas*, sections 240 and 1008; 206.2.17.

- (I) *Saunas and steam rooms*, sections 241 and 612.
 - (J) *Swimming pools, wading pools, and spas*, sections 242 and 1009.
 - (K) *Shooting facilities with firing positions*, sections 243 and 1010.
 - (L) *Miscellaneous*.
 - (1) *Team or player seating*, section 221.2.1.4.
 - (2) *Accessible route to bowling lanes*, section 206.2.11.
 - (3) *Accessible route in court sports facilities*, section 206.2.12.
- (3) *Historic preservation programs*. In meeting the requirements of § 35.150(a) in historic preservation programs, a public entity shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraph (a)(2) or (a)(3) of this section, alternative methods of achieving program accessibility include—
 - (i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;
 - (ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or
 - (iii) Adopting other innovative methods.
- (c) *Time period for compliance*. Where structural changes in facilities are undertaken to comply with the obligations established under this section, such changes shall be made within three years of January 26, 1992, but in any event as expeditiously as possible.
- (d) *Transition plan*.
 - (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps

necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

- (2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.
- (3) The plan shall, at a minimum—
 - (i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
 - (ii) Describe in detail the methods that will be used to make the facilities accessible;
 - (iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and
 - (iv) Indicate the official responsible for implementation of the plan.
- (4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.

Transition Plan

physical limitations

- i. methods of accessibility
- ii. schedule for compliance
- iii. official responsible for plan implementation

Physical Limitations

Regarding physical limitations, the City's buildings are within the historic overlay district: City Hall, the Music Hall and the City Library. As a result, the age of the buildings preclude many alterations.

Methods of Accessibility

Even so, Cohoes added a chair lift to the police entrance of City Hall for wheelchair access. In addition, the Music Hall contains an elevator. Finally, the recreational facilities include handicap accessible ramps and playground equipment.

Schedule of Compliance

As the municipality improves roads, buildings and facilities construction will include ADA compliant accessibility. The informal committee of city officials working on ADA compliance will include the Community and Economic Development Director for planning application to obtain state and federal funds. The Common Council has been advised of the ADA Transition Plan as well as the cost of implementing sidewalk ramps during mill and fill paving projects. As the Common Council recommends a list of pavement projects, this ensures that all parties are aware of the requirements and are making arrangements for compliance.

Official Responsible for Plan Implementation

The City Planner will act as ADA Coordinator. However, an informal committee of titles will work collaboratively to develop, update and implement the ADA Transition Plan. That committee shall include the Traffic Commission, City Engineer, Commissioner of Public Works, and Code Enforcement.

§ 35.151 New construction and alterations

- (a) *Design and construction.*
 - (1) Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992.
 - (2) *Exception for structural impracticability.*
 - (i) Full compliance with the requirements of this section is not required where a public entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

- (ii) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.
 - (iii) If providing accessibility in conformance with this section to individuals with certain disabilities (*e.g.*, those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (*e.g.*, those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.
- (b) *Alterations.*
 - (1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.
 - (2) The path of travel requirements of § 35.151(b)(4) shall apply only to alterations undertaken solely for purposes other than to meet the program accessibility requirements of § 35.150.
 - (3)
 - (i) Alterations to historic properties shall comply, to the maximum extent feasible, with the provisions applicable to historic properties in the design standards specified in § 35.151(c).
 - (ii) If it is not feasible to provide physical access to an historic property in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of § 35.150.
 - (4) *Path of travel.* An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving

the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

- (i) *Primary function.* A “primary function” is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out.
 - (A) Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, *e.g.*, in highway rest stops.
 - (B) For the purposes of this section, alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.
- (ii) A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.
 - (A) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.
 - (B) For the purposes of this section, the term “path of travel” also includes the

restrooms, telephones, and drinking fountains serving the altered area.

- (C) *Safe harbor*. If a public entity has constructed or altered required elements of a path of travel in accordance with the specifications in either the 1991 Standards or the Uniform Federal Accessibility Standards before March 15, 2012, the public entity is not required to retrofit such elements to reflect incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.
- (iii) *Disproportionality*.
 - (A) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 % of the cost of the alteration to the primary function area.
 - (B) Costs that may be counted as expenditures required to provide an accessible path of travel may include:
 - (1) Costs associated with providing an accessible entrance and an accessible route to the altered area, for example, the cost of widening doorways or installing ramps;
 - (2) Costs associated with making restrooms accessible, such as installing grab bars, enlarging toilet stalls, insulating pipes, or installing accessible faucet controls;
 - (3) Costs associated with providing accessible telephones, such as

relocating the telephone to an accessible height, installing amplification devices, or installing a text telephone (TTY); and

- (4) Costs associated with relocating an inaccessible drinking fountain.
- (iv) *Duty to provide accessible features in the event of disproportionality.*
 - (A) When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.
 - (B) 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 or a single unisex restroom;
 - (4) Accessible telephones;
 - (5) Accessible drinking fountains; and
 - (6) When possible, additional accessible elements such as parking, storage, and alarms.
- (v) *Series of smaller alterations.*
 - (A) The obligation to provide an accessible path of travel may not be evaded by performing a series of small

alterations to the area served by a single path of travel if those alterations could have been performed as a single undertaking.

- (B)
 - (1) If an area containing a primary function 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 primary function 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.
 - (2) Only alterations undertaken on or after March 15, 2011, shall be considered in determining if the cost of providing an accessible path of travel is disproportionate to the overall cost of the alterations.
- (c) *Accessibility standards and compliance date.*
 - (1) If physical construction or alterations commence after July 26, 1992, but prior to September 15, 2010, then new construction and alterations subject to this section must comply with either the UFAS or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that

equivalent access to the facility or part of the facility is thereby provided.

- (2) If physical construction or alterations commence on or after September 15, 2010, and before March 15, 2012, then new construction and alterations subject to this section may comply with one of the following: the 2010 Standards, UFAS, or the 1991 Standards except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(k) of the 1991 Standards shall not apply. Departures from particular requirements of either standard by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.
- (3) If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.
- (4) For the purposes of this section, ceremonial groundbreaking or razing of structures prior to site preparation do not commence physical construction or alterations.
- (5) *Noncomplying new construction and alterations.*
 - (i) Newly constructed or altered facilities or elements covered by §§ 35.151(a) or (b) that were constructed or altered before March 15, 2012, and that do not comply with the 1991 Standards or with UFAS shall before March 15, 2012, be made accessible in accordance with either the 1991 Standards, UFAS, or the 2010 Standards.
 - (ii) Newly constructed or altered facilities or elements covered by §§ 35.151(a) or (b) that were constructed or altered before March 15, 2012 and that do not comply with the 1991 Standards or with UFAS shall, on or after March 15, 2012, be made accessible in accordance with the 2010 Standards.

Appendix to § 35.151(c)

Compliance Date for New Construction or Alterations	Applicable Standards
Before September 15, 2010	1991 Standards or UFAS
On or after September 15, 2010, and before March 15, 2012	1991 Standards, UFAS, or 2010 Standards

On or after March 15, 2012	2010 Standards
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- (d) *Scope of coverage.* The 1991 Standards and the 2010 Standards apply to fixed or built-in elements of buildings, structures, site improvements, and pedestrian routes or vehicular ways located on a site. Unless specifically stated otherwise, the advisory notes, appendix notes, and figures contained in the 1991 Standards and the 2010 Standards explain or illustrate the requirements of the rule; they do not establish enforceable requirements.
- (e) *Social service center establishments.* Group homes, halfway houses, shelters, or similar social service center establishments that provide either temporary sleeping accommodations or residential dwelling units that are subject to this section shall comply with the provisions of the 2010 Standards applicable to residential facilities, including, but not limited to, the provisions in sections 233 and 809.
 - (1) In sleeping rooms with more than 25 beds covered by this section, a minimum of 5% of the beds shall have clear floor space complying with section 806.2.3 of the 2010 Standards.
 - (2) Facilities with more than 50 beds covered by this section that provide common use bathing facilities, shall provide at least one roll-in shower with a seat that complies with the relevant provisions of section 608 of the 2010 Standards. Transfer-type showers are not permitted in lieu of a roll-in shower with a seat, and the exceptions in sections 608.3 and 608.4 for residential dwelling units are not permitted. When separate shower facilities are provided for men and for women, at least one roll-in shower shall be provided for each group.
- (f) *Housing at a place of education.* Housing at a place of education that is subject to this section shall comply with the provisions of the 2010 Standards applicable to transient lodging, including, but not limited to, the requirements for transient lodging guest rooms in sections 224 and 806 subject to the following exceptions. For the purposes of the application of this section, the term "sleeping room" is intended to be used interchangeably with the term "guest room" as it is used in the transient lodging standards.
 - (1) Kitchens within housing units containing accessible sleeping rooms with mobility features (including suites and clustered sleeping rooms) or on floors containing accessible sleeping rooms with mobility features shall provide turning spaces that comply with section 809.2.2 of the 2010 Standards and kitchen work surfaces that comply with section 804.3 of the 2010 Standards.
 - (2) Multi-bedroom housing units containing accessible sleeping rooms with mobility features shall have an accessible route

throughout the unit in accordance with section 809.2 of the 2010 Standards.

- (3) Apartments or townhouse facilities that are provided by or on behalf of a place of education, which are leased on a year-round basis exclusively to graduate students or faculty, and do not contain any public use or common use areas available for educational programming, are not subject to the transient lodging standards and shall comply with the requirements for residential facilities in sections 233 and 809 of the 2010 Standards.
- (g) *Assembly areas*. Assembly areas subject to this section shall comply with the provisions of the 2010 Standards applicable to assembly areas, including, but not limited to, sections 221 and 802. In addition, assembly areas shall ensure that—
 - (1) In stadiums, arenas, and grandstands, wheelchair spaces and companion seats are dispersed to all levels that include seating served by an accessible route;
 - (2) Assembly areas that are required to horizontally disperse wheelchair spaces and companion seats by section 221.2.3.1 of the 2010 Standards and have seating encircling, in whole or in part, a field of play or performance area shall disperse wheelchair spaces and companion seats around that field of play or performance area;
 - (3) Wheelchair spaces and companion seats are not located on (or obstructed by) temporary platforms or other movable structures, except that when an entire seating section is placed on temporary platforms or other movable structures in an area where fixed seating is not provided, in order to increase seating for an event, wheelchair spaces and companion seats may be placed in that section. When wheelchair spaces and companion seats are not required to accommodate persons eligible for those spaces and seats, individual, removable seats may be placed in those spaces and seats;
 - (4) Stadium-style movie theaters shall locate wheelchair spaces and companion seats on a riser or cross-aisle in the stadium section that satisfies at least one of the following criteria—
 - (i) It is located within the rear 60% of the seats provided in an auditorium; or
 - (ii) It is located within the area of an auditorium in which the vertical viewing angles (as measured to the top of the screen) are from the 40th to the 100th percentile of vertical viewing angles for all seats as

ranked from the seats in the first row (1st percentile) to seats in the back row (100th percentile).

COHOES MUSIC HALL

Cohoes Music Hall contains stadium style seating on third and fourth stories. The first floor of the building can be accessed. Once inside an elevator reaches all floors. The Music Hall sets aside handicap accessible seating for wheelchairs.

- (h) *Medical care facilities.* Medical care facilities that are subject to this section shall comply with the provisions of the 2010 Standards applicable to medical care facilities, including, but not limited to, sections 223 and 805. In addition, medical care facilities that do not specialize in the treatment of conditions that affect mobility shall disperse the accessible patient bedrooms required by section 223.2.1 of the 2010 Standards in a manner that is proportionate by type of medical specialty.
- (i) *Curb ramps.*
 - (1) Newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway.
 - (2) Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.
- (j) *Facilities with residential dwelling units for sale to individual owners.*
 - (1) Residential dwelling units designed and constructed or altered by public entities that will be offered for sale to individuals shall comply with the requirements for residential facilities in the 2010 Standards including sections 233 and 809.
 - (2) The requirements of paragraph (1) also apply to housing programs that are operated by public entities where design and construction of particular residential dwelling units take place only after a specific buyer has been identified. In such programs, the covered entity must provide the units that comply with the requirements for accessible features to those pre-identified buyers with disabilities who have requested such a unit.
- (k) *Detention and correctional facilities.*
 - (1) New construction of jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with section 807.2 of the 2010 Standards for a minimum of 3%, but no fewer than one, of the total number of

cells in a facility. Cells with mobility features shall be provided in each classification level.

- (2) *Alterations to detention and correctional facilities.*
Alterations to jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards except that public entities shall provide accessible mobility features complying with section 807.2 of the 2010 Standards for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in a facility shall provide mobility features complying with section 807.2. Altered cells with mobility features shall be provided in each classification level. However, when alterations are made to specific cells, detention and correctional facility operators may satisfy their obligation to provide the required number of cells with mobility features by providing the required mobility features in substitute cells (cells other than those where alterations are originally planned), provided that each substitute cell—
 - (i) Is located within the same prison site;
 - (ii) Is integrated with other cells to the maximum extent feasible;
 - (iii) Has, at a minimum, equal physical access as the altered cells to areas used by inmates or detainees for visitation, dining, recreation, educational programs, medical services, work programs, religious services, and participation in other programs that the facility offers to inmates or detainees; and,
 - (iv) If it is technically infeasible to locate a substitute cell within the same prison site, a substitute cell must be provided at another prison site within the corrections system.
- (3) With respect to medical and long-term care facilities in jails, prisons, and other detention and correctional facilities, public entities shall apply the 2010 Standards technical and scoping requirements for those facilities irrespective of whether those facilities are licensed.

§ 35.152 Jails, detention and correctional facilities, and community correctional facilities.

- (a) *General.* This section applies to public entities that are responsible for the operation or management of adult and juvenile justice jails, detention and

correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or in part, including private correctional facilities.

- (b) *Discrimination prohibited.*
 - (1) Public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.
 - (2) Public entities shall ensure that inmates or detainees with disabilities are housed in the most integrated setting appropriate to the needs of the individuals. Unless it is appropriate to make an exception, a public entity–
 - (i) Shall not place inmates or detainees with disabilities in inappropriate security classifications because no accessible cells or beds are available;
 - (ii) Shall not place inmates or detainees with disabilities in designated medical areas unless they are actually receiving medical care or treatment;
 - (iii) Shall not place inmates or detainees with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed; and
 - (iv) Shall not deprive inmates or detainees with disabilities of visitation with family members by placing them in distant facilities where they would not otherwise be housed.
 - (3) Public entities shall implement reasonable policies, including physical modifications to additional cells in accordance with the 2010 Standards, so as to ensure that each inmate with a disability is housed in a cell with the accessible elements necessary to afford the inmate access to safe, appropriate housing.

Jail and Detention Facility via the Police Department Cohoes Police Department operates from the east side of City Hall. Officers convey detainees with mobility impairments into City Hall through the Public Entrance on the south side of the building. A chair lift carries detainees with disabilities to the first floor. Upon arriving on the first floor, detainees can enter the police department through double doors. The booking and detention areas are located on the first floor. If the chair lift fails to operate, the police basement entrance leads to suitably secure offices for both booking and detaining. The police department does not use medical offices for

detaining inmates. Bathrooms and sleeping quarters are available in both settings. Detainees are transported from Cohoes Police Department to a permanent facility within the day.

Subpart E—Communications

§ 35.160 General.

- (a)
 - (1) A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
 - (2) For purposes of this section, “companion” means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate.

- (b)
 - (1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.
 - (2) The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

- (c)
 - (1) A public entity shall not require an individual with a disability to bring another individual to interpret for him or her.
 - (2) A public entity shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except—

- (i) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
 - (ii) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.
 - (3) A public entity shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.
- (d) *Video remote interpreting (VRI) services.* A public entity that chooses to provide qualified interpreters via VRI services shall ensure that it provides—
 - (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication;
 - (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position;
 - (3) A clear, audible transmission of voices; and
 - (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

Communications

The City relies on visual communication for those with hearing impairments, and telephone audio access for those with vision impairments.

§ 35.161 Telecommunications.

- (a) Where a public entity communicates by telephone with applicants and beneficiaries, text telephones (TTYs) or equally effective telecommunications systems shall be used to communicate with individuals who are deaf or hard of hearing or have speech impairments.
- (b) When a public entity uses an automated-attendant system, including, but not limited to, voice mail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system

must provide effective real-time communication with individuals using auxiliary aids and services, including TTYs and all forms of FCC-approved telecommunications relay system, including Internet-based relay systems.

- (c) A public entity shall respond to telephone calls from a telecommunications relay service established under title IV of the ADA in the same manner that it responds to other telephone calls.

Telephone Access

City of Cohoes staff members answer all direct lines and treat calls from TTY and other auxiliary aids the same as all other calls. In addition, the City provides the same information on its website that is send by robo-call to residents who sign-up for the service. Finally, e-mail addresses for all staff are available on the website.

§ 35.162 Telephone emergency services

Telephone emergency services, including 911 services, shall provide direct access to individuals who use TDD's and computer modems.

Emergency Dispatch

City of Cohoes uses County dispatch under a memorandum of understanding for the merging of services. The County dispatch office has access for TDDs and computer modems.

§ 35.163 Information and signage

- (a) A public entity shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.
- (b) A public entity shall provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each accessible entrance of a facility.

Information and Signage

A sign is posted at the building front indicating access at the side entrance for mobility impaired visitors.

§ 35.164 Duties

This subpart does not require a public entity to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service,

program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

§§ 35.165—35.169 [Reserved]

Subpart F—Compliance Procedures

§ 35.170 Complaints

- (a) *Who may file.* An individual who believes that he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint under this part.
- (b) *Time for filing.* A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the designated agency for good cause shown. A complaint is deemed to be filed under this section on the date it is first filed with any Federal agency.
- (c) *Where to file.* An individual may file a complaint with any agency that he or she believes to be the appropriate agency designated under subpart G of this part, or with any agency that provides funding to the public entity that is the subject of the complaint, or with the Department of Justice for referral as provided in §35.171(a)(2).

§ 35.171 Acceptance of complaints

- (a) *Receipt of complaints.*
 - (1)
 - (i) Any Federal agency that receives a complaint of discrimination on the basis of disability by a public entity shall promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504.
 - (ii) If the agency does not have section 504 jurisdiction, it shall promptly determine whether it is the designated agency under subpart G of this

part responsible for complaints filed against that public entity.

o (2)

- (i) If an agency other than the Department of Justice determines that it does not have section 504 jurisdiction and is not the designated agency, it shall promptly refer the complaint to the appropriate designated agency, the agency that has section 504 jurisdiction, or the Department of Justice, and so notify the complainant.
- (ii) When the Department of Justice receives a complaint for which it does not have jurisdiction under section 504 and is not the designated agency, it may exercise jurisdiction pursuant to § 35.190(e) or refer the complaint to an agency that does have jurisdiction under section 504 or to the appropriate agency designated in subpart G of this part or, in the case of an employment complaint that is also subject to title I of the Act, to the Equal Employment Opportunity Commission.

o (3)

- (i) If the agency that receives a complaint has section 504 jurisdiction, it shall process the complaint according to its procedures for enforcing section 504.
- (ii) If the agency that receives a complaint does not have section 504 jurisdiction, but is the designated agency, it shall process the complaint according to the procedures established by this subpart.

• (b) *Employment complaints.*

- o (1) If a complaint alleges employment discrimination subject to title I of the Act, and the agency has section 504 jurisdiction, the agency shall follow the procedures issued by the Department of Justice and the Equal Employment Opportunity Commission under section 107(b) of the Act.
- o (2) If a complaint alleges employment discrimination subject to title I of the Act, and the designated agency does not have section 504 jurisdiction, the agency shall refer the complaint to the Equal Employment Opportunity Commission for processing under title I of the Act.

- (3) Complaints alleging employment discrimination subject to this part, but not to title I of the Act shall be processed in accordance with the procedures established by this subpart.
- (c) *Complete complaints.*
 - (1) A designated agency shall accept all complete complaints under this section and shall promptly notify the complainant and the public entity of the receipt and acceptance of the complaint.
 - (2) If the designated agency receives a complaint that is not complete, it shall notify the complainant and specify the additional information that is needed to make the complaint a complete complaint. If the complainant fails to complete the complaint, the designated agency shall close the complaint without prejudice.

§ 35.172 Investigations and compliance reviews.

- (a) The designated agency shall investigate complaints for which it is responsible under § 35.171.
- (b) The designated agency may conduct compliance reviews of public entities in order to ascertain whether there has been a failure to comply with the nondiscrimination requirements of this part.
- (c) Where appropriate, the designated agency shall attempt informal resolution of any matter being investigated under this section, and, if resolution is not achieved and a violation is found, issue to the public entity and the complainant, if any, a Letter of Findings that shall include—
 - (1) Findings of fact and conclusions of law;
 - (2) A description of a remedy for each violation found (including compensatory damages where appropriate); and
 - (3) Notice of the rights and procedures available under paragraph (d) of this section and §§ 35.173 and 35.174.
- (d) At any time, the complainant may file a private suit pursuant to section 203 of the Act, 42 U.S.C. 12133, whether or not the designated agency finds a violation.

§ 35.173 Voluntary compliance agreements

- (a) When the designated agency issues a noncompliance Letter of Findings, the designated agency shall—
 - (1) Notify the Assistant Attorney General by forwarding a copy of the Letter of Findings to the Assistant Attorney General; and

- (2) Initiate negotiations with the public entity to secure compliance by voluntary means.
- (b) Where the designated agency is able to secure voluntary compliance, the voluntary compliance agreement shall—
 - (1) Be in writing and signed by the parties;
 - (2) Address each cited violation;
 - (3) Specify the corrective or remedial action to be taken, within a stated period of time, to come into compliance;
 - (4) Provide assurance that discrimination will not recur; and
 - (5) Provide for enforcement by the Attorney General.

§ 35.174 Referral.

If the public entity declines to enter into voluntary compliance negotiations or if negotiations are unsuccessful, the designated agency shall refer the matter to the Attorney General with a recommendation for appropriate action.

§ 35.175 Attorney's fees.

In any action or administrative proceeding commenced pursuant to the Act or this part, the court or agency, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

§ 35.176 Alternative means of dispute resolution.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Act and this part.

§ 35.177 Effect of unavailability of technical assistance.

A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.

§ 35.178 State immunity.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in Federal or State court of competent jurisdiction for a violation of this Act. In any action against a State for a violation of the requirements of this Act, remedies (including remedies both at law and in equity) are available for such a

violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

§§ 35.179—35.189 [Reserved]

Grievance Procedures

The City of Cohoes appointed an ADA Coordinator and posted procedures as well as a complain form on the City's website. The ADAC documents and investigates complaints, relying on the technical knowledge of the City Engineer and Traffic Commission. Complainants will receive a notice of finding(s) after completion of inspections. All appeals of any determination can be submitted to the City of Cohoes Corporation Counsel.

Subpart G—Designated Agencies

§ 35.190 Designated Agencies.

- (a) The Assistant Attorney General shall coordinate the compliance activities of Federal agencies with respect to State and local government components, and shall provide policy guidance and interpretations to designated agencies to ensure the consistent and effective implementation of the requirements of this part.
- (b) The Federal agencies listed in paragraph (b)(1)-(8) of this section shall have responsibility for the implementation of subpart F of this part for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas.
 - (1) *Department of Agriculture*: All programs, services, and regulatory activities relating to farming and the raising of livestock, including extension services.
 - (2) *Department of Education*: All programs, services, and regulatory activities relating to the operation of elementary and secondary education systems and institutions, institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and libraries.
 - (3) *Department of Health and Human Services*: All programs, services, and regulatory activities relating to the provision of health care and social services, including schools of medicine, dentistry, nursing, and other health-related schools, the operation of health care and social service providers and institutions, including "grass-roots" and community services organizations and programs, and preschool and daycare programs.

- (4) *Department of Housing and Urban Development*: All programs, services, and regulatory activities relating to state and local public housing, and housing assistance and referral.
 - (5) *Department of Interior*: All programs, services, and regulatory activities relating to lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.
 - (6) *Department of Justice*: All programs, services, and regulatory activities relating to law enforcement, public safety, and the administration of justice, including courts and correctional institutions; commerce and industry, including general economic development, banking and finance, consumer protection, insurance, and small business; planning, development, and regulation (unless assigned to other designated agencies); state and local government support services (*e.g.*, audit, personnel, comptroller, administrative services); all other government functions not assigned to other designated agencies.
 - (7) *Department of Labor*: All programs, services, and regulatory activities relating to labor and the work force.
 - (8) *Department of Transportation*: All programs, services, and regulatory activities relating to transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.
- (c) Responsibility for the implementation of subpart F of this part for components of State or local governments that exercise responsibilities, regulate, or administer services, programs, or activities relating to functions not assigned to specific designated agencies by paragraph (b) of this section may be assigned to other specific agencies by the Department of Justice.
 - (d) If two or more agencies have apparent responsibility over a complaint, the Assistant Attorney General shall determine which one of the agencies shall be the designated agency for purposes of that complaint.
 - (e) When the Department receives a complaint directed to the Attorney General alleging a violation of this part that may fall within the jurisdiction of a designated agency or another Federal agency that may have jurisdiction under section 504, the Department may exercise its discretion to retain the complaint for investigation under this part.

Designated Agency

The City of Cohoes is a local government under the regulation of the aforementioned agencies.

APPENDIX A

APPENDIX B

APPENDIX C

STANDARDS

In accordance with ADA standards, the City of Cohoes requires a minimum sidewalk width of 5' with ADA standard ramps containing a detectable pad. Any improvements to sidewalks are the responsibility of the adjacent property owner under the following local code:

SIDEWALK MAINTENANCE

The City of Cohoes local code places responsibility for sidewalk maintenance and repairs on the adjacent property owner. Section 244-13 through 14 details the responsible party and the consequence of noncompliance.

§ 244-13 Sidewalk maintenance, repair or replacement; penalties for offenses.

A. It shall be the duty of the owner of any premises, lot or piece of land to keep the sidewalks on or running along the street row adjoining the property in reasonably good and safe repair for users thereof, and said owner shall be responsible for all necessary preventative and corrective maintenance to accomplish such result.

B. Defective sidewalks.

(1) A defective sidewalk that is not in accordance with the standards set forth in Subsection A shall mean any sidewalk which has any or all of the following conditions:

(a) Unacceptable quality of sidewalk surface, including but not limited to, holes, depressions, breaks or projections.

(b) Ridges or gaps between adjoining sidewalk blocks.

(c) Differences in elevation of the surface or of adjoining sidewalk blocks.

(d) Peeling or crumbling of the surface of the sidewalk.

(e) Tilting of sidewalk or sidewalk blocks except in the case of handicap ramps, driveway approaches or other similar situations.

(f) Missing portions of surface.

(2) The above shall be applicable regardless of the type of sidewalk that exists, whether or not flagstone, brick, concrete, blacktop, or any other material.

(3) All defective sidewalks within the terms stated above are hereby declared to be a public nuisance.

C. The Commissioner of Public Works or his designee shall have authority to order the repair of a defective sidewalk and to take remedial action to make the surface in good repair pursuant to this article.

D. Upon receipt of information in writing that a sidewalk may be defective, the Commissioner shall make an inspection of the sidewalk and keep a report on file in his/her office.

E. If the Commissioner's report shall confirm the existence of a defective sidewalk as defined in this article, the Commissioner shall cause a notice to be served upon the owner or his or her agent, either personally or by certified mail, addressed to the last known address of said owner as said address is shown on the records of the Assessor, or to the business address of said owner's agent. If the name of the owner or place of residence cannot be ascertained, notice may be served by posting in a conspicuous place upon the premises.

F. The notice shall contain the following:

(1) Description of the premises upon which the sidewalk is located.

(2) A statement of the particulars in which the sidewalk is defective.

(3) A designation of the area in which repair or replacement is to be made.

(4) An order that the repair or correction of the defective portion of the sidewalk shall commence within 30 days of service.

(5) A procedure to schedule a hearing before the Commissioner of Public Works in accordance with rules promulgated by the Board of Managers to effectuate same, should the owner not agree with the findings of the Commissioner, which hearing shall be scheduled not less than 20 days from the date of service of written notice.

(6) A statement that in the event of neglect or refusal to comply with the order to repair or replace the defective sidewalk, the Commissioner of Public Works, after 30 days, is authorized to provide that the sidewalk be secured and repaired and that all expenses thereof be assessed against the land in which the sidewalk is located or abuts, including related necessary or incidental expenses.

G. The Commissioner may expand time requirements for good cause and in writing and upon reasonable terms and conditions.

H. The property owner and his or her contractor are responsible for the quality of the finished sidewalk. A representative of the Department of Public Works will inspect the project from time to time and may require the owner to remove and replace new construction that does not meet construction standards as set forth below and as may be modified from time to time.

I. Before engaging upon sidewalk repair or construction, the contractor, on behalf of the owner, must first obtain a permit from the Commissioner of Public Works or the Director of Code Enforcement and pay any applicable fee. No permit shall be issued to a contractor until he has filed with the Code Enforcement Director or City Clerk a certificate showing that he carries workers' compensation for all his employees together with such other insurance as the Code Enforcement Director's regulations require. Said permit shall be available from the persons performing the work for inspection by the Code Enforcement Officers or the Commissioner of Public Works.

J. No person shall repair or reconstruct a sidewalk unless the same shall be in accordance with the grade established and obtained from the Department of Public Works.

K. All replacement sidewalks shall be made of concrete. The exception shall be those sidewalks in the Historic District, which shall be replaced in accordance with this article as modified by the city's Historic Commission.

L. All sidewalk repairs or construction are to be performed in accordance with rules and regulations prepared by the Commissioner of Public Works and approved by the Board of Managers, which shall be filed in the Office of the City Clerk. Said rules and regulations shall include:

- (1) Minimum dimensions of width and depth of sidewalk blocks in residential and business areas.
- (2) Excavation and subbase requirements.
- (3) Forming and reinforcement.
- (4) Concrete mixture specifications.
- (5) Fine and coarse aggregate specifications.

- (6) Water quality.
- (7) Mixing of concrete ingredients.
- (8) Joints.
- (9) Finishing.
- (10) Protection of wet concrete.
- (11) Construction safeguards.
- (12) Any other matter or items that the Commissioner deems necessary, appropriate or desirable.

M. It shall be unlawful for any person, whether or not interested in the property affected by this article, to hinder or obstruct the Department of Public Works or any person acting on its behalf, including any contractor not performing the work pursuant to this article.

N. Sidewalk repair or replacement work performed by the city because of the neglect, refusal or failure of the owner to agree to the work shall make such work ineligible for any city sidewalk repair or construction reimbursement plan. Nothing in this subsection shall have any impact on the New York State CHIPS program.

O. Any person or persons, firm or corporation violating any provisions of this § 244-13 shall be subject to a fine not to exceed \$250 or a sentence of imprisonment not to exceed 15 days, or both. Such penalties may be in addition to any other remedies or actions that may be taken by the city either as provided herein or as may otherwise be permitted by law.

P. In the event of neglect or refusal to comply with the order to repair or replace the defective sidewalk, the Commissioner of Public Works, after 30 days, is authorized to provide that the sidewalk be secured and repaired and the necessary work performed by the City or its designee. The City shall be reimbursed for the cost of the work performed or services rendered as provided in this section by assessment against and collection from the lots or parcels of land where, or adjacent to where, such work was performed or services rendered, for so much of the actual and complete cost as incurred upon or adjacent to and from each lot or lots, and which, if unpaid within the prescribed time period, and the property owner having had an opportunity to be heard at a hearing convened by the Commissioner of Public Works, in accordance with rules promulgated by the Board of Managers to effectuate same, shall remain a

lien against such property and be collected by the City from the owner of such property in the same manner as taxes are collected. In no event shall such charge be less than \$75.

[Amended 1-13-2009 by L.L. No. 5-2009]

§ 244-14 Removal of snow and ice from sidewalks; penalties for offenses. It shall be the duty of the owner and occupant, jointly, of every parcel of real estate adjoining a public sidewalk, whether the parcel of real estate is occupied by a structure or not, to keep such sidewalks adjoining such property free from snow and ice for the full paved width of such sidewalk.

A. Snow and ice shall be removed within 24 hours after the end of the snowfall or within four hours after notice by the Commissioner of Public Works. In addition, sidewalks in front of commercial establishments and commercial parking lots shall be kept free of snow and ice at all times between the hours of 9:00 a.m. and 5:00 p.m.

B. In case snow and ice on any sidewalk shall be frozen so hard that it cannot be removed without injury to the sidewalk, it shall, within the time specified in Subsection A, be strewn and kept strewn with ashes, sand, sawdust or other suitable material, so as not to be dangerous. As soon as is practicable thereafter, the sidewalk shall be completely cleared of snow and ice.

C. Where there has been a failure to comply with the requirements of this section, the Commissioner of Public Works or his designee may, in the Commissioner's discretion, cause the sidewalk to be cleared of snow and ice. The city shall be reimbursed for the cost of the work performed or services rendered as provided in this section by assessment against and collection from the lots or parcels of land where, or adjacent to where, such work was performed or services rendered, for so much of the actual and complete cost as incurred upon or adjacent to and from each lot or lots, and which, if unpaid within the prescribed time period, and the property owner having had an opportunity to be heard at a hearing convened by the Commissioner of Public Works in accordance with rules promulgated by the Board of Managers to effectuate same, shall remain a lien against such property and be collected by the city from the owner of such property in the same manner as taxes are collected. In no event shall such charge be less than \$50.

D. The owners or occupants of buildings adjacent to public sidewalks shall take measures to protect the public from the falling snow, ice, or water from such buildings.

E. No person, firm, corporation, property owner or occupant shall remove snow or ice from any parcel of real estate and place, throw or cause to be deposited such snow or ice upon any street, avenue or roadway within the City of Cohoes, nor shall such snow or ice be placed or caused to be deposited upon another parcel of real estate without the express permission of the owner of the parcel of real estate upon which the snow or ice is to be placed.

F. Any person or persons, firm or corporation violating any provisions of this § **244-14** shall be subject to a fine not to exceed \$100 or a sentence of community service not to exceed 50 hours, or both. Such penalties may be in addition to any other remedies or actions that may be taken by the city, either as provided herein or as may otherwise be permitted by law. Each day that a violation continues may be charged as a separate offense.