521 CMR: ARCHITECTURAL ACCESS BOARD

3.1 SCOPE
All work performed on public buildings or facilities (see 521 CMR 5.00: DEFINITIONS), including construction, reconstruction, alterations, remodeling, additions, and changes of use shall conform to 521 CMR.

3.1.1 To determine the scope of compliance, refer to 521 CMR 3.2, New Construction and 521 CMR 3.3, Existing Buildings. In the absence of jurisdiction by 521 CMR, 780 CMR: the State Building Code may apply.

3.2 NEW CONSTRUCTION
All new construction of public buildings/facilities shall comply fully with 521 CMR.

3.3 EXISTING BUILDINGS
All additions to, reconstruction, remodeling, and alterations or repairs of existing public buildings or facilities, which require a building permit or which are so defined by a state or local inspector, shall be governed by all applicable subsections in 521 CMR 3.00: JURISDICTION.

For specific applicability of 521 CMR to existing multiple dwellings undergoing renovations, see 521 CMR 9.2.1.

3.3.1 If the work being performed amounts to less than 30% of the full and fair cash value of the building and

a. if the work costs less than $100,000, then only the work being performed is required to comply with 521 CMR or

b. if the work costs $100,000 or more, then the work being performed is required to comply with 521 CMR. In addition, an accessible public entrance and an accessible toilet room, telephone, drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided in compliance with 521 CMR.

Exception: General maintenance and on-going upkeep of existing, underground transit facilities will not trigger the requirement for an accessible entrance and toilet unless the cost of the work exceeds $500,000 or unless work is being performed on the entrance or toilet.

Exception: Whether performed alone or in combination with each other, the following types of alterations are not subject to 521 CMR 3.3.1, unless the cost of the work exceeds $500,000 or unless work is being performed on the entrance or toilet. (When performing exempted work, a memo stating the exempted work and its costs must be filed with the permit application or a separate building permit must be obtained.)

a. Curb Cuts: The construction of curb cuts shall comply with 521 CMR 21.00: CURB CUTS.

b. Alteration work which is limited solely to electrical, mechanical, or plumbing systems; to abatement of hazardous materials; or retrofit of automatic sprinklers and does not involve the alteration of any elements or spaces required to be accessible under 521 CMR. Where electrical outlets and controls are altered, they must comply with 521 CMR.

c. Roof repair or replacement, window repair or replacement, repointing and masonry repair work.

d. Work relating to septic system repairs, (including Title V, 310 CMR 15.00, improvements) site utilities and landscaping.

3.3.2 If the work performed, including the exempted work, amounts to 30% or more of the full and fair cash value (see 521 CMR 5.38) of the building the entire building is required to comply with 521 CMR.
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a. Where the cost of constructing an addition to a building amounts to 30% or more of the full and fair cash value of the existing building, both the addition and the existing building must be fully accessible.

3.3.3 Alterations by a tenant do not trigger the requirements of 521 CMR 3.3.1b and 3.3.2 for other tenants. However, alterations, reconstruction, remodeling, repairs, construction, and changes in use falling within 521 CMR 3.3.1b and 3.3.2, will trigger compliance with 521 CMR in areas of public use, for the owner of the building.

3.3.4 No alteration shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction.

3.3.5 If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, that space shall be made accessible.

3.3.6 No alteration of an existing element, space, or area of a building or facility shall impose a requirement for greater accessibility than that which would be required for new construction.

3.4 CHANGE IN USE
When the use of a building changes from a private use to one that is open to and used by the public, an accessible entrance must be provided, even if no work is being performed. When a portion of a building changes use from a private use to one that is open to an used by the public, then an accessible route must be provided from an accessible entrance even if no work is being performed.

3.4.1 RESERVED FOR FUTURE ACTION: Changes in use, from private to public, in private residential homes where no work is being performed.

3.5 WORK PERFORMED OVER TIME
When the work performed on a building is divided into separate phases or projects or is under separate building permits, the total cost of such work in any 36 month period shall be added together in applying 521 CMR 3.3, Existing Buildings.

3.6 MULTIPLE USES
When a building is occupied by two or more uses, the Regulations which apply to each use shall apply to such parts of the building within that use.

3.6.1 521 CMR 3.3, Existing Buildings shall apply based upon each use and not on the entire building.

Example: If a three story building valued at $300,000 has one floor of retail use and two floors of residential use, the full and fair cash value of the retail portion shall be a portion of the total value which would be $100,000.

3.7 PARTIAL APPLICATION
When only a portion of a building is subject to 521 CMR, the full and fair cash value shall be prorated by the ratio of the square footage of that portion to the square footage of the whole building.

Example: Where the whole building is 100,000 square feet, the full and fair cash value is $1,000,000, and the part subject to 521 CMR is 10,000 square feet (one-tenth of the total), then the full and fair cash value of the part subject to 521 CMR would be one-tenth of $1,000,000 or $100,000.

3.7.1 If the Board determines that such proration would cause an inequitable result, the Board may otherwise calculate the full and fair cash value of the portion of the building.

3.8 OUTDOOR FACILITIES
For facilities where the primary function areas are outdoors, including but not limited to beaches, parks, picnic areas, playgrounds, and campsites, the full and fair cash value shall include the value of the land as well as any buildings or facilities on the land.
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3.9 HISTORIC BUILDINGS
An historic building or facility that is listed or is eligible for listing in the National or State Register of Historic Places or is designated as historic under appropriate state or local laws may be granted a variance by the Board to allow alternate accessibility. If a variance is requested on the basis of historical significance, then consultation with the Massachusetts Historical Commission is required in order to determine whether a building or facility is eligible for listing or listed in the National or State Register of Historic Places. The Massachusetts Historical Commission may request a copy of the proposed variance request and supporting documentation to substantiate the variance request and its effect on historic resources. A written statement from the Massachusetts Historical Commission is required with the application for variance.

3.10 TEMPORARY STRUCTURES
Temporary buildings or facilities, including but not limited to reviewing stands, temporary classrooms, bleacher areas, exhibit areas, temporary banking facilities, temporary health screening services, or temporary pedestrian passageways around a construction site, shall comply with 521 CMR. Structures, sites and equipment directly associated with the actual processes of construction, such as scaffolding, bridging, materials hoists, or construction trailers, need not apply.

3.10.1 Effective February 15, 2012, temporary overnight shelters, as defined in 780 CMR: The Massachusetts State Building Code, shall provide at a minimum an accessible entrance and an accessible toilet room in compliance with 521 CMR 25.00: Entrances and 30.00: Public Toilet Rooms, regardless of whether other work is performed or change of use occurs.

3.11 SECURITY STRUCTURES
Accessibility is not required to observation galleries used primarily for security purposes.

3.12 NON-OCCUPIABLE SPACES
Spaces accessed only by ladders, catwalks, crawl spaces, or freight (non-passenger) elevators, and frequented only by service personnel for repair purposes, are exempt. Such spaces may include, but are not limited to, elevator pits, elevator penthouses, piping or equipment catwalks.
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