STATEWIDE CODE INTERPRETATION
NO. 14-01

Alterations and Application of the 25% Disproportionate Cost Limitation

Building Codes Division
Department of Consumer and Business Services

In accordance with OAR 918-008-0110, the information contained in this statewide code interpretation is legally binding on any party involved in activities regulated by applicable Oregon law, applicable Oregon regulations or the state building code. If the information contained in this statewide code interpretation is cited as a basis for a civil infraction, a representative of the jurisdiction must cite the interpretation number found in this document.

Statutory / code reference

2025 Oregon Structural Specialty Code (OSSC)—Chapter 11 / Section 3403.6
Oregon Revised Statute (ORS) 447.241

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Questions

When an alteration is made to an existing building, how much additional work is required to remove architectural barriers?

Answers

1. All new work must comply with OSSC Chapter 11, regardless of cost, to the maximum extent feasible.
2. Additional work to remove architectural barriers is only required when the existing building, or portion thereof, is an affected building.
3. When an alteration project to an affected building affects the usability of an area of primary function, the path of travel to the altered area must be made accessible, unless the additional work is disproportionate to the overall alteration to the primary function area. Oregon Revised Statute (ORS) 447.241 defines "disproportionate" as when the cost exceeds 25% of the alteration to the area of primary function and defines "path of travel" as the elements listed and prioritized in ORS 447.241(4).
4. For the purposes of the 25% allocation and application of ORS 447.241, additions must follow the same evaluation required for alterations, as indicated in OSSC Section 3403.6.
5. A barrier removal plan is approved in statute as an alternate method to spending up to 25% of the alteration that affects the usability of the area of primary function.

Analysis

1. All new work must comply with OSSC Chapter 11, regardless of cost. For changes to existing buildings, consideration should be given to OSSC Section 3403.6. This section provides essentially identical provisions from the Americans with Disabilities Act of 1990 (ADA) for alteration projects. The intent is to provide accessibility to the maximum extent feasible.
    - Example 1.1: A new exit is required from an existing building due to a change in occupancy classification. The new exit must be accessible, or have an area of refuge, regardless of cost. However, any existing exits that are not accessible are not required to have an area of refuge.
    - Example 1.2: Additional plumbing fixtures are required in an existing building due to the change in occupancy classification. The new fixtures must be accessible, but any existing fixtures are not required to be upgraded.

- Example 1.3: A parking lot that serves an affected building is restriped. The new parking lot striping is required to comply with the appropriate number of accessible parking spaces and access aisles required by ORS 447.233.

2. Additional work to remove architectural barriers is only required when the existing building, or portion thereof, is an affected building. ORS 447.241 does not apply to other facilities such as covered multifamily dwellings. This is consistent with OSSC Chapter 11 and Section 3403.6.

3. When an alteration project to an affected building affects the usability of an area of primary function, other accessible path of travel elements must be added, or existing path of travel elements must be made accessible, unless the additional work is disproportionate to the overall alteration. ORS 447.241 states that alterations made to the path of travel to an altered area may be deemed disproportionate to the overall alteration when the cost exceeds 25 percent of the alteration to the primary function area. The ADA uses 20 percent of the alteration. The following detailed discussion of this determination is essentially what is printed in the ADA Title II and Title III Technical Assistance Manuals. Access manuals are available at ada.gov.

   To be considered in the disproportionate cost calculation, an alteration or the portion of a larger renovation project must affect usability of the area of primary function. Such alterations include remodeling, renovation, rearrangements in structural parts, and changes or rearrangements of walls and full height partitions. The following are not considered by the state or the U.S. Department of Justice as alterations that affect usability, unless the project involves alteration to elements required to be accessible: Normal maintenance; reroofing; painting; wallpapering; asbestos, lead, or other hazardous material removal; automatic sprinkler retrofitting; and changes to electrical, mechanical and plumbing systems.

   - Example 3.1: An electrical outlet is being relocated. The location of the new outlet is required to be within reach ranges if it were part of new construction. Therefore, the outlet must be located according to Chapter 11. However, if the electrical wiring inside the wall is being changed, usability by an individual with disabilities is not affected. Thus, that work is not considered an alteration that affects usability.

   An alteration must affect the usability of an area of primary function. The term "primary function" is defined in statute as "a major activity for which the facility is intended." See OSSC Section 202. The U.S. Department of Justice's Title III Technical Assistance Manual further clarifies this definition as including customer service areas and employee work areas, such as offices. It specifically states that an area of primary function does NOT include mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, rest rooms, windows, hardware (such as on doors), electrical outlets, and signs.

   Therefore, in determining the 25 percent disproportionate limit that may apply to an alteration project, only work that affects the usability of an area of primary function (customer service areas and employee work areas) should be included.

   - Example 3.2: New flooring is installed throughout a store. The flooring affects the usability of the area because it affects whether or not a person in a wheelchair can travel in the store. The new flooring must comply with accessibility requirements. Additionally, no more than 25% of the cost of the flooring in the customer service areas and employee work areas must be spent to provide accessible elements as outlined in ORS 447.251(4).
   - Example 3.3: Remodeling a store's public restroom is proposed. The remodeled restroom must comply with the accessibility requirements in OSSC Section 1110.2. However, no additional work is required because the restroom is not an area of primary function of the store. An exception to this case is a highway rest stop building whose primary function is being a rest room.

- Example 3.4: A library is remodeling its public reading area at a cost of $20,000. The reading area is considered an area of primary function. Therefore the library must spend up to an additional $5,000 to bring into compliance, accessible paths of travel as described in ORS 447.241 Once the accessible path of travel to the area of primary function is in full compliance with OSSC Chapter 11, additional accessible elements within the building such as storage and alarms shall be improved until the $5,000 (25%) threshold is met, or until the entire building is in compliance as per ORS 447.241(4)(g).

Once it has been determined that the path of travel must be made accessible by spending up to 25% of the alteration that affects the usability of the area of primary function, priority shall be given to the list of elements, in the order provided, in ORS 447.241(4). This list is identical to the list provided by the U.S. Attorney General. Note that interestingly, "path of travel" is defined by both to include the rest rooms, telephones and drinking fountains. This is consistent with ADA.

Additionally, an owner cannot evade providing accessible path of travel elements by making several "small" alterations. Such alterations, if considered alone, would be so inexpensive that the 25% disproportionate limit would not result in additional accessible path of travel features. Whenever the usability of an area containing a primary function is altered, other alterations to this area (or to other areas on the same path of travel) made within the preceding three years are considered together in determining disproportionality. See ORS 447.241(6).

4. Alteration projects include additions as indicated in OSSC Section 3403.6. The intent of the code and ADA is that the addition itself must comply with all new construction provisions. Then, the paths of travel must be made accessible, unless the additional work is disproportionate to the alteration as previously explained. OSSC Section 3403.6 references the statutory requirement for path of travel upgrades, which takes precedence over the confusing code language.
5. A barrier removal plan is approved in statute as an alternate method to spending up to 25% of the alteration that affects usability of the area of primary function. The plan shall provide an equivalent or greater level of barrier removal than required by ORS 447.241.

   The plan shall include a letter of participation from the building owner, a building survey that identifies existing architectural barriers, an improvement plan, a time schedule for the removal of architectural barriers, and an implementation agreement.

   The plan MUST be reviewed and accepted through the waiver process under ORS 447.250 and shall be reviewed upon completion or every three years for compliance. Therefore, the Oregon Disabilities Commission designee must be consulted in this process.

   In developing an appropriate plan, consideration should be given to removing architectural barriers that are readily achievable. Readily achievable means easily accomplishable and able to be carried out without major difficulty or expense. The U.S. Department of Justice has a published list of items that are considered readily achievable, provided they can be accomplished without much difficulty or expense. The list includes: Installing ramps; making curb cuts in sidewalks and entrances; repositioning telephones; installing visual alarms; widening doors and installing accessible door hardware; installing accessible signage; installing grab bars, rearranging toilet stalls and insulating lavatory pipes in bathrooms; installing raised toilet seats, and full-length bathroom mirrors; repositioning paper towel dispensers; creating accessible parking spaces; installing accessible paper cup dispensers at existing inaccessible water fountains; and removing high-pile, low density carpeting.
6. In effect, the building owner may use a barrier removal plan, when approved, to defer costs of barrier removal over the lifetime of the barrier removal and improvement plan.

Contact

Visit the division website to contact a building code specialist.