

# Inclusive Public Space: Law, Universality and Difference in the Accessibility of Streets

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## Legal Report

**Name of country:** United States

**Names of authors:** Peter Blanck, Angel Baker, Cory Barrett, Joseph Battisto, Jake Gellerstein, Eromwon Iroque, Jonathan Martinis, Anthony Nanni, Mercedes Rees, Crystal Torres, Barry A. Whaley, Pamela Williamson, James G. Felakos—Burton Blatt Institute, Syracuse University USA, <http://bbi.syr.edu>

**Contact email address for authors:** Peter Blanck, [pblanck@syr.edu](mailto:pblanck@syr.edu); Barry A. Whaley, [bawhaley@law.syr.edu](mailto:bawhaley@law.syr.edu)

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# Introduction

This report from the Burton Blatt Institute at Syracuse University (“BBI”),<sup>1</sup> with funding from the University of Leeds Inclusive Public Space project, identifies and outlines relevant international, U.S. federal, state, and local laws that address and impact the accessibility of public spaces in the United States.

*BBI Background.* BBI reaches around the globe in its efforts to advance the civic, economic, and social participation of people with disabilities. BBI engages leading researchers and knowledge translation experts in multiple disciplines, across its offices in Syracuse, New York City, Atlanta, Washington, D.C., and Lexington Kentucky. BBI experts have led or taken part in scores of projects focused on enhancing community integration, public, social and cultural inclusion, self-determination, employment, technology, and legal and economic independence. The Chairman of BBI is Dr. Peter Blanck, who also is University Professor at Syracuse University which is the highest faculty rank at the University.

Among BBI’s projects is the Southeast ADA Center (formerly known as the Southeast DBTAC), which answers questions, provides training and materials and information about the Americans with Disabilities Act (“ADA”). The Southeast ADA Center, headquartered in Atlanta, Georgia, serves an eight-state geographic region (Alabama, Florida, Georgia, Kentucky, Mississippi North Carolina, South Carolina, and Tennessee) and has network of affiliates in each state that includes Centers for Independent Living (“CIL”), employers and businesses, nonprofit organizations, and state and local government agencies.

The Southeast ADA Center (or “SEADA”),<sup>2</sup> one of ten regional ADA centers in the ADA National Network, is funded by a five-year grant from the National Institute on Disability, Independent Living, and Rehabilitation Research (“NIDILRR”) within the Administration for Community Living (“ACL”), Department of Health and Human Services (“HHS”). As part of the ADA National Network, the Southeast ADA Center offers training and technical assistance to promote voluntary compliance with the ADA, including information about the rights of people with disabilities and the responsibilities of businesses, as well as state and local governments to provide equal opportunity to participate.

Beginning in September of 2020 and for the subsequent five years, BBI also is funded by NIDILRR to lead a new national Rehabilitation Research Training Center on Disability Inclusive Employment Policy (“RRTC DIEP”). The goal of the RRTC DIEP is to design and implement a series of studies that produce new data and evidence on policy levers to increase

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<sup>1</sup> <http://bbi.syr.edu>.

<sup>2</sup> <http://adasoutheast.org/>.

employment rates of persons with disabilities with the objective of informing current and future policy and program development.

Given the ongoing adverse impacts of COVID-19—and with more than 50 million individuals in the U.S. alone having lost jobs—the RRTC, along with the SEADA, is addressing current challenges to the employment and economic advancement of persons with disabilities. This includes examination of related barriers and opportunities in transportation, healthcare, housing, and technology.

Like the SEADA, the RRTC DIEP’s agenda is led by diverse and influential members of the U.S. disability community. The Center involves nationally recognized researchers from BBI, Harvard and Rutgers Universities, along with leading U.S. policy and disability organizations such as the National Governors Association, Disability:IN, Council of State Administrators of Vocational Rehabilitation, Independent Living Research Utilization, Association for People Supporting Employment First, National Disability Institute, American Association of People with Disabilities, and others. To inform policies and behavior, the RRTC team will target key audiences, including employers, service providers, policymakers, and people with disabilities and their families.

*Organization of this Report.* The Inclusive Public Space Project focuses on increasing access to public streets, sidewalks, and rights-of-way for people with disabilities. When people cannot access public byways and spaces, they are excluded from many areas and activities of public life, which can contribute to social isolation, diminished health prospects, and reduced life opportunities (Blanck; 2020; Davis 2014; Edwards and Tsouros 2006). Dr. Blanck’s 2020 book, *Disability Law and Policy*, provides an overview of the major themes and insights in disability law. It is also a compendium of stories about how the US legal system has responded to the needs of impacted individuals at the thirtieth anniversary of the ADA. During the past three decades, U.S. disability law and policy, including the law of the ADA itself, have evolved dramatically.

From a U.S. perspective, this report first identifies and discusses international treaties, multi-national laws, and international policies that impact accessibility of public streets and spaces. In particular, it identifies treaties, laws, and policies that may have a positive impact on the lives of Americans with disabilities. These include the landmark United Nations Convention on the Rights of Persons with Disabilities (“CRPD”), which the U.S. has not ratified, and other multi-national laws and policies that are supported by private councils or organizations independent of the U.S. Government.

Next, we discuss U.S. federal laws and policies that identify and protect the rights of people with disabilities, including their right to access public spaces and by-ways. These include the



Rehabilitation Act of 1973, the ADA and as amended (“ADAAA”), and laws that promote equal access to air travel and public transportation.<sup>3</sup>

Finally, we overview relevant state and local laws in Georgia and New York, with a focus on the cities, counties, and municipalities in and around Atlanta, GA, and Syracuse, NY. These sections discuss laws and policies addressing public sidewalk and transportation accessibility, planning, and civic engagement in each region.

Part A of this report focuses on the legal framework of international and domestic disability laws and the legal frameworks in New York and Georgia. Part A describes laws pertaining to accessibility of streets of these cities and the surrounding counties within each state—the City of Syracuse in Onondaga County, New York, and the City of Atlanta in Fulton and DeKalb counties, Georgia. Subsections include reports on city and county laws regarding equality and inclusion, transportation, planning, civil society engagement, and commentary on noteworthy accessibility issues and concerns.

Part B provides examples of state laws in New York and Georgia regarding accessibility of public streets and spaces. It includes a discussion on possible legal actions, remedies, and enforcement to remedy violations of those laws.

Part C reports on laws that may be used by pedestrians or by Non-Governmental Organizations (“NGOs”) in New York and Georgia. These include laws to safeguard pedestrians from holes, roadworks, traffic flow, and other hazards as well as laws regarding inaccessible or unsafe street features and designs that impact driving, cycling and other means of travel.

Part D describes laws that may be used by public bodies to challenge inaccessible conditions and other barrier problems faced by pedestrians in New York and Georgia.

Part E contains a discussion of findings and recommendations for future action.

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<sup>3</sup> For a current review of U.S. federal disability law and policy, see Blanck, Peter. *DISABILITY LAW AND POLICY* (Concepts and Insights) (p. 3). Foundation Press (2020).

# A1 Constitutional and Legal System

The United States is a constitutional federal republic, consisting of fifty states, one district (the capitol, Washington, D.C.), with several commonwealths, territories and possessions. The United States government, and each state's government, are representative democracies, with each having an executive (the president for the federal government, and governors for the states), legislatures (Congress at the federal level composed of the Senate and the House of Representatives), and courts. The United States and each state have written constitutions. State constitutions must comply with the United States Constitution. "The [Federal] Constitution stands above all other laws, executive acts and regulations, including treaties."<sup>4</sup>

The American governmental system is based on a system of federalism, or decentralization. While the national or "federal" government itself possesses significant powers, the individual states retain powers not specifically enumerated as exclusively federal.<sup>5</sup> Both the national and state governments are granted certain exclusive powers and share other powers. Under the U.S. Constitution, powers reserved to the national government include the authority to enter treaties with foreign governments, and regulate commerce between states, for example.<sup>6</sup> States retain broad powers within their state, and exclusively to ratify amendments to the Constitution. Other powers are shared or "concurrent" including the authority to: create and collect taxes, build highways, and borrow money.

Within the individual states, there are generally two or more layers of government, frequently defined as the state, counties or parishes, and cities and towns. In addition, school districts and special service districts provide systems of public education and various other services (for example, higher education, public transportation, water and sewer districts).<sup>7</sup>

At the federal level, the president is the chief of the executive branch, with broad powers to manage national affairs and the workings of the federal government. The president can issue instructions called executive orders which are binding on the federal agencies. The Congress may by law grant the president or federal agencies broad powers to make rules and regulations under standards set in those laws. The president appoints personnel to departments and agencies,

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<sup>4</sup> See 'Core document forming part of the reports of States parties: United States,' 12 September 2012, HRI/CORE/USA/2011, United Nations International Human Rights Instruments ("U.S. Common core document"), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=FhOD6sgqgzAhFXD9F%2feKaFMm83LbFY75RhkIFGrig%2b5b6UOubbZ2fg0Q7oydu8Qz3EqclvHNlxfA%2fZNxjfl%2ffmq%2fftpQuiAFyflRrIqg2%2b2X1kI3YWdfCn9AZSDrDI> (accessed 29 November 2020).

<sup>5</sup> Toni M. Fine, 'American Legal Systems. A Resource and Reference Guide' (Anderson Publishing, a member of the LexisNexis Group, 1997). <https://www.lexisnexis.com/en-us/lawschool/pre-law/intro-to-american-legal-system.page> (accessed 29 November 2020).

<sup>6</sup> U.S. Common core document (herein drawn from).

<sup>7</sup> *Id.*

as well as judges to the courts, typically requiring advice and consent of the Senate. Under the Constitution, the president is the federal official primarily responsible for the relations of the United States with foreign nations.<sup>8</sup> Through the Department of State, the president may negotiate treaties with other nations, which are binding on the United States when the Senate gives its advice and consent by two thirds of the Senators present and voting. Based on statutory authority as well as inherent constitutional powers, the President may negotiate executive agreements with foreign powers that are not subject to Senate advice and consent.

The legislature is composed of two houses, the Senate and the House of Representatives. Each may consider legislation (termed “bills” prior to enactment and as “acts” when approved) on their own initiative, but both houses must approve the legislation before it is forwarded to the president for approval or rejection to become law. Importantly, some authority is reserved to the Senate including the authority to confirm or reject presidential appointments of high officials, ambassadors, and judges, as well as authority to give advice and consent to the ratification of treaties by a two thirds vote.

The judicial branch is the third branch of the government. The judiciary consists of a system of courts headed by the Supreme Court of the United States and includes inferior courts throughout the country. The Supreme Court is the highest court of the United States and the only one specifically created by the Constitution. A significant amount of work of the Supreme Court consists of determining whether legislation or executive acts conform to the Constitution.

State governments generally mirror the composition of the federal government. The executive is headed by a governor, most state legislatures have two houses (except Nebraska), and each state has its own judicial branch. Most states grant or “devolve” power to county and towns for local control, and most of these have their own court systems.

Over the course of the American history, a complex set of relationships has arisen between state and federal courts.<sup>9</sup> In certain areas, the federal law may override state authority and federal courts and the Supreme Court have authority. In other areas, the state and its courts have exclusive authority. In many areas, cases may be heard by either federal or state courts.

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<sup>8</sup> U.S. Common core document.

<sup>9</sup> *Id.*

## A2 International Treaties, Laws, and Policies

A fundamental goal of the United Nations (“UN”) is to protect human rights in the world. The UN has facilitated treaties among member states, conventions, and declarations to achieve this goal.<sup>10</sup> While the UN has worked closely in human rights, “there were no international treaties solely directed to persons with disabilities until ratification of the CRPD.”<sup>11</sup> Other treaties sought to protect the rights of people with disabilities by including a non-discrimination clause. This clause typically provides that “state parties guarantee that the rights recognized in the treaty will be exercised without distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>12</sup>

International recognition and protection of the rights of people with disabilities has evolved over the last century through a series of treaties, charters, and policies. These include the United Nations Charter, United Nations Universal Declaration on Human Rights (“UDHR”), and United Nations Sustainable Development Goals (“SDGs”). Internationally, disability law is addressed in the context of human rights and is interpreted broadly to be included in UN human rights treaties such as the International Covenant on Economic, Social and Cultural Rights (“CESCR”), the International Covenant on Civil and Political Rights (“ICCPR”), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”), the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), and the Convention on the Rights of the Child (“CRC”). Each of these instruments addresses aspects of disability.<sup>13</sup> Protection for disability rights culminated in the adoption of the United Nations Convention on the Rights of Persons with Disabilities (“CRPD”).

The United States is a member of the UN and is one of the five permanent members of the UN Security Council.<sup>14</sup> The U.S has ratified and signed four of the nine core human rights treaties.<sup>15</sup> For example, the U.S. signed the CEDAW on July 17, 1980, and the CRC was signed February 16, 1995, but neither convention have been ratified, although two optional protocols to the CRC

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<sup>10</sup> See ‘International Instruments’ United Nations Human Rights Office of the High Commissioner [www.ohchr.org/en/professionalinterest/pages/universalhumanrightsinstruments.aspx](http://www.ohchr.org/en/professionalinterest/pages/universalhumanrightsinstruments.aspx) (accessed 8 February 2020).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Where the United States Stands on 10 International Human Right Treaties, The Leadership Conference Education Fund (Civil and Human Rights News 12 December 2013) <https://civilrights.org/edfund/resource/where-the-united-states-stands-on-10-international-human-rights-treaties/> (accessed 18 February 2020).

were ratified in 2000.<sup>16</sup> Also, the U.S. signed the CESC in 1977 but has not ratified it. The U.S. signed ICCPR in 1977 and ratified in 1992, signed CERD in 1966 and ratified in 1994, and Signed CAT in 1988 and ratified it in 1994.<sup>17</sup> The U.S. has signed, but has not ratified the CRPD.<sup>18</sup>

## **A2.1 United Nations Charter**

Article 1, of the UN Charter provides for cooperation amongst states in finding solutions to social, cultural, economic and humanitarian international problems “and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>19</sup> While the U.S is a party to the Charter and has a duty to perform its obligations,<sup>20</sup> the Charter does not, expressly or implicitly, include people with disabilities as a protected class or define “human rights.”<sup>21</sup>

## **A2.2 United Nations Universal Declaration on Human Rights (“UDHR”)**

The UDHR is the first UN document to expressly state and require that “fundamental human rights are to be universally protected.”<sup>22</sup> Although only one UDHR provision specifically includes the word disability, it is still considered highly influential in the protection and promotion of the rights of persons with disabilities.<sup>23</sup> However, the UDHR it is considered a “soft law” because it is not enforceable and only serves as a guide for state parties to the UN Charter.<sup>24</sup>

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<sup>16</sup> United States Ratification of International Human Rights Treaties, Human Rights Watch, [www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties](http://www.hrw.org/news/2009/07/24/united-states-ratification-international-human-rights-treaties) (accessed 18 February 2020).

<sup>17</sup> Supra note 15.

<sup>18</sup> *Id.*

<sup>19</sup> ‘Charter of the United Nations’ United Nations [www.un.org/en/charter-united-nations/index.html](http://www.un.org/en/charter-united-nations/index.html) (accessed 7 February 2020).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> ‘Universal Declaration on Human Rights’ United Nations Human Rights Office of the High Commissioner, [www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx](http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx) (accessed 10 February 2020).

<sup>23</sup> See article 25, which provides “the right to a standard of living adequate for the health and well-being of himself and of his family and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control;” ‘Human Rights and Disabled Persons’ United Nations Enable [www.un.org/esa/socdev/enable/dispaperdes1.htm](http://www.un.org/esa/socdev/enable/dispaperdes1.htm) (accessed 10 February 2020).

<sup>24</sup> *Id.* See also ‘What is the relevance of the universal declaration of human rights 70 years after its adoption?’ Amnesty International [www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/](http://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/) (accessed 10 February 2020).

## **A2.3 United Nations Sustainable Development Goals and Disability (“SDGs”)**

Goal 11 of the SDGs, titled “Sustainable Cities and Communities,” expresses the need for accessibility by everyone, but specifically for persons with disabilities.<sup>25</sup> It provided that States “would work to make cities and human settlements inclusive, safe, and sustainable” by providing “access to safe, affordable, accessible and sustainable transport systems for all, improving road safety, notably by expanding public transport, with special attention to the needs of those in vulnerable situations, such as persons with disabilities.”<sup>26</sup> The proposal calls for providing universal access to safe, inclusive and accessible green and public spaces, particularly for persons with disabilities.<sup>27</sup>

Goal 17 of the SDGs is titled “Partnerships for the Goals,” and lays out the mechanism for enforcement via monitoring. The Goal states that collection of data, monitoring and accountability are needed for the successful achievement of the SDGs.<sup>28</sup> The U.S., in line with this Goal, compiles data and releases reports online.<sup>29</sup> However, the U.S. is exploring ways to compile and release reports on providing inclusive cities and communities, pursuant to Goal 11, which is to be measured by calculating the “proportion of urban area allocated to open public places including streets and sidewalks.”<sup>30</sup>

## **A2.4 United Nations Convention on the Rights of Persons with Disabilities (“CRPD”)**

The CRPD expressly recognizes and respects “the need for persons with disabilities to be guaranteed their full enjoyment without discrimination.”<sup>31</sup> The CRPD recognizes the necessity of “accessibility to the physical, social, economic and cultural environment ... in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms.”<sup>32</sup> The treaty

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<sup>25</sup> ‘Sustainable Development Goals and Disability’ United Nations [www.un.org/development/desa/disabilities/about-us/sustainable-development-goals-sdgs-and-disability.html](http://www.un.org/development/desa/disabilities/about-us/sustainable-development-goals-sdgs-and-disability.html) (accessed 10 February 2020).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> ‘Make Cities and Human Settlements Inclusive, Safe, Resilient and Sustainable’ Sustainable Development Goals <https://sdg.data.gov/sustainable-cities-communities/> (accessed 23 September 2020).

<sup>30</sup> *Id.*

<sup>31</sup> ‘Convention on Rights of Persons with Disabilities’ United Nations Human Rights Office of Commissioner, [www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx](http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx) (accessed 12 September 2020).

<sup>32</sup> *Id.*, Preamble v. Article 9 (1) covers accessibility and provides “States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation... and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility.” to Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities

recognizes the diversity of persons with disabilities<sup>33</sup> and emphasizes the need to include gender perspective in all attempts to improve the lives and protect the rights of persons with disabilities.<sup>34</sup> As mentioned, the U.S. influenced the creation of CRPD and signed it in 2009, but has not ratified it.

## **A2.5 Policy and Strategy, Oversight, and Enforcement Mechanisms**

The UN has established three key approaches to guide its strategy for disability inclusiveness: (1) twin-track approach and targeted programming track; (2) intersectionality; and (3) coordination.<sup>35</sup> Organizations—separately and jointly—within the UN state their intention and commitment to continue to pursue the goals of inclusion and empowerment of persons with disabilities and their human rights, well-being, and perspectives.<sup>36</sup>

Article 33 of the CRPD requires that Member States (i.e., countries) set up national focal points in order to monitor implementation of the Convention.<sup>37</sup> Member States must also establish independent monitoring mechanisms, which usually take the form of an independent national human rights institution.<sup>38</sup> International monitoring is achieved via the Committee on the Rights of Persons with Disabilities and the Conference of States Parties.<sup>39</sup> However, because the U.S. has not ratified the CRPD, the role of the U.S in collaborating with other Member States to monitor the implementation and the advancement of this treaty is extremely limited.<sup>40</sup> This limits the United States' role in utilizing the CRPD to advance disability rights in other countries.

## **A3 Multinational Law and Policy**

The evolution of the rights of people with disabilities has also been shaped by multinational laws and policies, including the Inter-American Convention on the Elimination of all Forms of

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and workplaces; Article 9(2) provides for measures to be taken by state parties in this area- “Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public; Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities; Provide training for stakeholders on accessibility issues facing persons with disabilities.”

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> ‘United Nations Disability Inclusion Strategy’ United Nations (20 March 2019)

[www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/03/UNDIS\\_20-March-2019\\_for-HLCM.P.pdf](http://www.un.org/development/desa/disabilities/wp-content/uploads/sites/15/2019/03/UNDIS_20-March-2019_for-HLCM.P.pdf) (accessed 12 February 2020).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> ‘Monitoring of the Implementation of the Convention’ United Nations

[www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/monitoring-of-the-implementation-of-the-convention.html](http://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/monitoring-of-the-implementation-of-the-convention.html) (accessed 12 February 2020).

<sup>40</sup> *Id.*

Discrimination against People with Disabilities, and the International Labor Organization (“ILO”) Global Business and Disability Network.

### **A3.1 Inter-American Convention on the Elimination of all Forms of Discrimination against People with Disabilities<sup>41</sup>**

The goals of the Inter-American Convention on the Elimination of all Forms of Discrimination against People with Disabilities are: (1) prohibit and end various types of discrimination suffered by individuals with disabilities;<sup>42</sup> and (2) improve assimilation and acceptance of people with disabilities in larger society.<sup>43</sup> States parties to the convention engage in “legislative, social, educational, labor-related, or any other measures” and encourage multi-national cooperation to meet these goals.<sup>44</sup>

The U.S. has not signed or ratified the Convention and is, therefore, not a party to it.<sup>45</sup>

### **A3.2 International Labor Organization (“ILO”) Global Business and Disability Network**

The ILO is a multinational, voluntary organization comprised of businesses, companies and disability organizations around the world.<sup>46</sup> The ILO seeks to provide a working system that will accommodate persons with disabilities across the globe.<sup>47</sup> To achieve this goal, members work to create awareness of the interrelationship between disability inclusiveness and business success.<sup>48</sup>

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<sup>41</sup> ‘Inter-American Convention on The Elimination of All Forms of Discrimination Against Persons with Disabilities’ Department of International Law, OAS <http://oas.org/juridico/english/treaties/a-65.html> (accessed 12 September 2020).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> ‘Signatories and Ratifications’ Department of International Law, OAS <http://www.oas.org/juridico/english/sigs/a-65.html> (accessed 14 September 2020).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*



The U.S.<sup>49</sup>, U.S. Council for International Business<sup>50</sup>, and several U.S. companies are members of the ILO.<sup>51</sup>

Part of the ILO's mission and work is to create “smart environments...and influence the rollout of smart city programs.”<sup>52</sup> This includes encouraging workplace inclusiveness as well as “smart cities” that provide accessibility through using technological applications.<sup>53</sup> For example, as the ILO states, “Organizations like Alphabet’s Sidewalk Labs are already exploring what smart city applications will look like.”<sup>54</sup> Applications that rebalance crosswalk wait times based on real-time pedestrian foot traffic or help drivers find available parking spaces all require a sensor-rich environment that can augment the urban experience.”<sup>55</sup>

## A4 U.S. Federal Strategy, Law and Policy

In the U.S., federal law and policy frame the obligations of public and private entities to protect and respect the rights of people with disabilities. As discussed in Section A1, the United States’ federal structure provides overlapping bases for policy and law between the federal government and the states. “In the United States, disability law is almost wholly statutory. That is, it is derived primarily from federal and state laws and policies, as opposed to sweeping interpretations under the Constitution.”<sup>56</sup> At the federal level, “[b]efore the [passage of the Americans with Disabilities Act (“ADA”) in 1990],<sup>57</sup> the Supreme Court was not willing to identify people with disabilities as a group deserving of “special” or “heightened” protection under the Equal Protection Clause of the Fourteenth Amendment” of the U.S. Constitution.”<sup>58</sup> In 1985 the U.S. Supreme Court addressed the question of whether and how the Constitution

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<sup>49</sup> ‘United States of America’ International Labour Organization [www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110\\_COUNTRY\\_ID:102871](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11110:0::NO::P11110_COUNTRY_ID:102871) (accessed 14 February 2020).

<sup>50</sup> ‘Charter Resources, International Labour Organization [www.businessanddisability.org/charter-resources/?type=accessibility&sort=DESC](http://www.businessanddisability.org/charter-resources/?type=accessibility&sort=DESC) (accessed 13 September 2020); ‘The Accessibility Advantage: Why Businesses Should Care About Inclusive Design’ Accenture (2018) [www.accenture.com/t20181212T093302Z\\_\\_w\\_\\_pl-en/\\_acnmedia/PDF-91/Accenture-Accessibility-Advantage-PoV-FINAL.pdf#zoom=50](http://www.accenture.com/t20181212T093302Z__w__pl-en/_acnmedia/PDF-91/Accenture-Accessibility-Advantage-PoV-FINAL.pdf#zoom=50) (accessed 13 September 2020); ‘Global Business Disability Network’ United States Council on International Business [www.uscib.org/global-business-and-disability-network-ud-4690/](http://www.uscib.org/global-business-and-disability-network-ud-4690/) (accessed 14 February 2020).

<sup>51</sup> *Id.*

<sup>52</sup> *Supra* note 50, ‘The Accessibility Advantage: Why Businesses Should Care About Inclusive Design.’

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Blanck, Peter. *DISABILITY LAW AND POLICY (Concepts and Insights)* (p. 3). Foundation Press (2020).

<sup>57</sup> The Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12101 et seq.

<sup>58</sup> Blanck, Peter. *DISABILITY LAW AND POLICY (Concepts and Insights)* (p. 9). Foundation Press (2020).

applied to disability in *City of Cleburne v. Cleburne Living Center*.<sup>59</sup> The Court held that people with intellectual disabilities are not entitled to heightened protection from discrimination under the Constitution, unlike people of different genders, races, or national origins.<sup>60</sup> However, the Court held that even without heightened scrutiny, the local zoning ordinance in the case discriminated against people with intellectual disabilities. In an influential concurring opinion, Justice Thurgood Marshall recounted that persons with mental retardation (now termed “intellectual and developmental disabilities”) had been subject to a tragic history of discrimination and of purposeful unequal treatment that demonstrated heightened protection was warranted.<sup>61</sup>

In the absence of strong constitutional protections, needed reform began to be achieved through legislation demanded by social movements in the 1960s and 1970s.<sup>62</sup> These led to the passage of federal laws including the Rehabilitation Act of 1973, the Urban Mass Transportation Act, the Federal-Aid Highway Act, and the Air Carrier Access Act. Most important of these, Section 504 of the Rehabilitation Act of 1973 and its implementing regulations enlarged the reach of federal policy to require non-discrimination by recipients of federal funding (for purposes of this report, including the federal executive branch, states and localities). The progress of legislative change culminated with the enactment of the ADA in 1990.

When the U.S. government passes laws, the statute can define law and policy across the country and may define a minimum requirement or become the exclusive authority. In most cases, these federal laws created minimum requirements and states subsequently passed similar laws affecting disability issues within the states. In some cases, these state laws have provided more substantial protections for people with disabilities than that found in federal Constitutional or statutory law.

## **A4.1 Equality and Inclusion**

### **A4.1.1 Equality**

The United States has no equality framework as used in other countries but has certain antidiscrimination laws which generate certain negative rights, as discussed below. People with disabilities have a right to “program accessibility” in government services where the government chooses to provide services. This right is similar analytically to equality measures but is addressed below in the Accessibility section.

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<sup>59</sup> *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 44-446 (1985).

<sup>60</sup> Michael E. Waterstone, ‘Disability Constitutional Law’ (2014) 63 Emory Law 527 <https://scholarlycommons.law.emory.edu/elj/vol63/iss3/1> (accessed 17 January 2021).

<sup>61</sup> See Blanck, Peter. DISABILITY LAW AND POLICY (Concepts and Insights) (p. 9). Foundation Press (2020).

<sup>62</sup> *Id.* (p. 14-19).

### A4.1.2 Accessibility

Section 504 of the Rehabilitation Act of 1973 (“Section 504”) and its 1992 Amendments prohibit discrimination against otherwise qualified people with disabilities under any U.S. program or activity receiving federal financial assistance.<sup>63</sup> Section 504 was the first explicit Congressional statement recognizing “discrimination” against people on the basis of their disabilities.”<sup>64</sup> For example, because the U.S. Department of Transportation (“DOT”) receives federal financial assistance for “pedestrian facilities in the public right-of-way,”<sup>65</sup> it developed and implemented accessibility standards to ensure that people with disabilities are able to access those facilities.<sup>66</sup>

The U.S. Congress passed the ADA in 1990 to ensure that people with disabilities are not subjected to discrimination and to ensure that they have access to legal remedies if they are the victims of discrimination.<sup>67</sup> In passing the law, Congress noted that people with disabilities have historically been discriminated against in transportation, due to architectural barriers, because of “outright intentional exclusion.”<sup>68</sup>

The ADA is divided into five sections referred to as titles. Title I of the ADA prohibits discrimination in employment. Title II of the ADA prohibits discrimination by state and local government agencies and organizations. Title III of the ADA prohibits discrimination by public accommodations (i.e., private businesses). For example, Titles II and III of the ADA mandate that new facilities must be “readily accessible to and usable by individuals with disabilities.”<sup>69</sup> The law requires public accommodations covered under Title III to “remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.”<sup>70</sup> Public and private entities must also make “reasonable modifications in policies, practices, or procedures” and provide “auxiliary aids and services” to ensure equal access for people with disabilities.<sup>71</sup> Title IV provides that manufacturers and providers of telecommunications equipment and

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<sup>63</sup> ‘The Rehabilitation Act of 1973’ U.S. Department of Labor <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973> (accessed 17 January 2021).

<sup>64</sup> Blanck, Peter. *DISABILITY LAW AND POLICY (Concepts and Insights)* (p. 20). Foundation Press (2020).

<sup>65</sup> ‘Questions and Answers About ADA/Section 504’ U.S. Department of Transportation, Federal Highway Administration [https://www.fhwa.dot.gov/civilrights/programs/ada/ada\\_sect504qa.cfm](https://www.fhwa.dot.gov/civilrights/programs/ada/ada_sect504qa.cfm) (accessed 17 January 2021).

<sup>66</sup> *Id.*

<sup>67</sup> See 42 U.S. Code § 12101.

<sup>68</sup> *Id.*

<sup>69</sup> Adam A. Milani, ‘Wheel Chair Users Who Lack “Standing”: Another Procedural Threshold Blocking Enforcement of Title II and III of The ADA’ (2004) 39 Wake Forest L. Rev. 69. P. 74.

<sup>70</sup> 28 CFR 26 Americans with Disabilities Act Title III Regulations, U.S. Department of Justice § Part 36 Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities (September 15, 2010). See § 36.304(a).

<sup>71</sup> *Id.*

services must, when readily achievable, ensure their equipment and services are accessible to and useable by people with disabilities. Title V provides miscellaneous provisions of the ADA, including for how to interpret the ADA in relation to Section 504 of the Rehabilitation Act, and declaring that the ADA would not limit other federal or state laws that provide greater protection than that found in the ADA,

The U.S. Department of Justice (“DOJ”) issued regulations to interpret and implement the ADA. In particular, the Title II regulations explicitly prohibit public (state and local governmental) entities from excluding people with disabilities from services because of inaccessible or unusable facilities.<sup>72</sup> The regulations define “facility” broadly to include “all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.”<sup>73</sup>

Facilities constructed after January 26, 1992 must be “readily accessible to and usable by individuals with disabilities.”<sup>74</sup> Any alteration of a facility that “could affect the usability of the facility or part of the facility” must be readily accessible to the “maximum extent feasible.”<sup>75</sup>

Existing facilities under ADA Title II—those constructed or last altered before January 26, 1992—are subject to the “program access” standard. To meet this standard, public entities are not “necessarily required” to make every existing facility accessible, as long as the entity's programs, services, or activities, viewed in their entirety, are accessible.<sup>76</sup> Accordingly, public entities do not have to make structural changes to existing facilities if the entity can achieve compliance through other means.<sup>77</sup> Additionally, public entities are not required to make existing facilities accessible where doing so “would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens.”<sup>78</sup> Public entities are required to evaluate their services, policies and practices and make modifications necessary to comply with the Title II regulations (“transition plans”)<sup>79</sup>

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<sup>72</sup> See 28 C.F.R. § 35.149. See also Sarah Jones, ‘Walk This Way: Do Public Sidewalks Qualify as Services, Programs, or Activities Under Title II of The American with Disabilities Act?’ (2011) 79 FORDHAM L. REV. 2259.

<sup>73</sup> 28 C.F.R. § 35.104 (Emphasis added).

<sup>74</sup> *Id.* § 35.151(a).

<sup>75</sup> 28 C.F.R. § 35.151(b).

<sup>76</sup> See 28 C.F.R. § 35.150(a); The DOJ's Interpretive Guidance for ADA Title II notes that Title II requires existing facilities to comply with a program access standard “because the cost of retrofitting existing facilities is often prohibitive.” 28 C.F.R. pt. 35, app. A, § 35.150

<sup>77</sup> 28 C.F.R. § 35.150(b)(1); see also U.S. Dep’t of Justice § II-5.2000 “A public entity must make its ‘programs’ accessible. Physical changes to a building are required only when there is no other feasible way to make the program accessible.”

<sup>78</sup> 28 C.F.R. § 35.150.

<sup>79</sup> 28 C.F.R. § 35.105.

While generally requiring “program access,” the ADA and its implementing regulations single out installation of curbs cuts to existing sidewalks to be implemented as part of the required original ADA transition plans.<sup>80</sup>

Public entities are required to 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....”<sup>81</sup> The FHWA has interpreted this to include reasonable maintenance of sidewalks including snow removal and correction of other disruptions.<sup>82</sup>

The United States Access Board, originally named the Architectural and Transportation Barriers Compliance Board, is an independent federal agency created in 1973 for the purpose of ensuring access to programs funded by the federal government.<sup>83</sup> It is a leading source for accessible design information for the built environment and transit vehicles.<sup>84</sup>

The Access Board provides technical assistance and training related to accessibility.<sup>85</sup> Since 1994, it has published hundreds of design standards and guidelines, many of them related to the built environment.<sup>86</sup> Its most important guidance are the ADA Accessibility Guidelines for Buildings and Facilities (“ADAAG”).<sup>87</sup> The term “ADAAG” and “1991 ADA Standards for Accessible Design” are often used interchangeably. These standards were developed by the U.S. Access Board and have since been used by the U.S. Department of Justice (“DOJ”) and the U.S. Department of Transportation (“DOT”) to set enforceable standards for accessible design.

In 1991, the U.S. Department of Justice incorporated the ADA Accessibility Guidelines (“ADAAG”) into the 1991 ADA Standards for Accessible Design. They were revised and printed as Appendix A of the ADA Title III regulation in the Code of Federal Regulations on

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<sup>80</sup> See interpretation of 28 C. F. R. 35.151(d)(2) in U.S. DOJ 1991 Section By Section Analysis, 28 C. F. R. 35, p. 202-203 (transition plan must include schedule for curb cuts at existing crosswalks).

<sup>81</sup> 28 C.F.R § 35.133(a) (2015).

<sup>82</sup> ‘Questions and Answers About ADA/Section 504’ U.S. Department of Transportation, Federal Highway Administration [https://www.fhwa.dot.gov/civilrights/programs/ada/ada\\_sect504qa.cfm](https://www.fhwa.dot.gov/civilrights/programs/ada/ada_sect504qa.cfm) (accessed 17 January 2021). (“A public agency must maintain its walkways in an accessible condition, with only isolated or temporary interruptions in accessibility. 28 CFR §35.133. Part of this maintenance obligation includes reasonable snow removal efforts.”)

<sup>83</sup> ‘About the U.S. Access Board’ U.S. Access Board <https://www.access-board.gov/about/> (accessed 17 January 2021).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Laura Rothstein, ‘Disability Discrimination Statutes or Tort Law: Which Provides the Best Means to Ensure an Accessible Environment?’ (2014) 75 Ohio St. L.J. 1263, 1297.

July 1, 1994. The 1991 ADA Standards for Accessible Design were used for new construction and alterations under Titles II and III until March 14, 2012.<sup>88</sup>

On September 15, 2010, the U.S. Department of Justice adopted the revised, 2004 ADA Accessibility Guidelines. These became the enforceable accessibility standards for program accessibility and barrier removal called the 2010 ADA Standards for Accessible Design (“2010 Standards”). The 2010 Standards were published in the Federal Register as part of the revised regulations for Titles II and III of the Americans with Disabilities Act of 1990 (“ADA”) and went into effect on March 15, 2012.<sup>89</sup>

The ADA Standards for Transportation Facilities issued by the Department of Transportation (“DOT”) apply to facilities used by state and local governments to provide designated public transportation services, including bus stops and stations, and rail stations.<sup>90</sup> These accessibility standards, while developed primarily for buildings, are to be used for the features in the public right of way covered by the standards.<sup>91</sup>

Two additional technical assistance providers who provide assistance to covered entities (but not direct oversight or legal advice) are the ADA National Network (“ADANN”) and the National Center on Accessibility (“NCA”).

The ADA National Network (“ADANN”) is funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (“NIDILRR”) to provide technical assistance, information, guidance and training on how to implement the ADA (see BBI’s SEADA Center referenced prior). The ADANN consists of an ADA Knowledge Translation Center and ten Regional ADA Centers located throughout the United States. The ADANN serves those with responsibilities under the ADA such as businesses, employers, state and local governments, architects, disability organizations and individuals with disabilities whose rights are protected under the ADA. ADA Information Specialists address questions on a wide range of ADA topics ADA Title II and II regulations, ADA Standard for Accessible Design, building codes for new construction projects, and accessible housing.<sup>92</sup>

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<sup>88</sup> ‘ADA Standards for Accessible Design’ ADA.GOV [www.ada.gov/2010ADASTandards\\_index.htm](http://www.ada.gov/2010ADASTandards_index.htm) (accessed 10 November 2020).

<sup>89</sup> ‘About the ADA Accessibility Standards’ United States Access Board [www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards](http://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards) (accessed 27 October 2020).

<sup>90</sup> ‘ADA Standards for Transportation Facilities’ United States Access Board [www.access-board.gov/guidelines-and-standards/transportation/facilities/ada-standards-for-transportation-facilities](http://www.access-board.gov/guidelines-and-standards/transportation/facilities/ada-standards-for-transportation-facilities) (accessed 27 October 2020).

<sup>91</sup> ‘Pedestrians and Accessible Design’ U.S. Department of Transportation, Federal Highway Administration <https://www.fhwa.dot.gov/programadmin/pedestrians.cfm> (accessed 21 January 2021).

<sup>92</sup> ‘Learn About the National Network’ ADA National Network <https://adata.org/national-network> (accessed 26 October 2020); The ADA National Network (“ADANN”) has been funded since 1991 by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) to provide technical assistance, information, guidance and training on how to implement the Americans with Disabilities Act.

The National Center on Accessibility (“NCA”) was established in a cooperative agreement between Indiana University and the National Park Service.<sup>93</sup> It is regarded as a leading authority on access issues for parks and recreation programs and facilities (including museums, performing arts facilities, and 5 programs).<sup>94</sup>

### **A4.1.3 Disability**

The United States applies multiple strategies on disability. The Administration for Community Living (“ACL”) is a Department of Health and Human Services unit which advocates across the federal government for older adults, people with disabilities, and families and caregivers; funds services and supports provided primarily by states and networks of community-based programs; and invests in training, education, research, and innovation. The United States also aims to increase opportunities for people with disabilities through its antidiscrimination framework, expecting that this pathway will increase opportunities for people with disabilities. The ADA, as discussed above, requires public entities to evaluate their services, policies and practices and make modifications necessary to comply with the ADA regulations (“transition plans”). Guidance requiring making streets safe for pedestrians regardless of age or disability does recognize the differing needs of people with disabilities and is discussed in section A4.4 Planning below.

### **A4.1.4 Older People**

The Administration for Community Living is a Department of Health and Human Services unit which advocates across the federal government for older adults, people with disabilities, and families and caregivers; funds services and supports provided primarily by states and networks of community-based programs; and invests in training, education, research, and innovation. There is no antidiscrimination law on aging applicable to public rights of way akin to the ADA. Federal guidance recognizes that aging changes the way people use public rights of way, for example. These are found in regulations implementing Federal transportation funding and generally require planners consider the needs of all users, including older pedestrians. (See discussion in A4.4 Planning below.)

## **A4.2 Transport**

The Urban Mass Transportation Act (“UMTA”)<sup>95</sup> of 1964 created the Urban Mass Transit Administration (renamed the Federal Transit Administration (“FTA”) in 1991). The Act

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> Pub. L. 88–365, USC Title 49, Chapter 53 [1].

provided, for the first time, federal subsidies to public transit agencies for mass transit projects.<sup>96</sup> Now referred to as the Federal Transit Act, it is implemented and administered by the FTA, an agency within the U.S. Department of Transportation (“DOT”). FTA ensures compliance with the ADA through its Office of Civil Rights.<sup>97</sup> This group is responsible for the civil rights compliance and monitoring to ensure nondiscriminatory provision of public transit services.<sup>98</sup>

Title II of the ADA prohibits discrimination based on disability in public transportation such as city buses, subways, and commuter trains.<sup>99</sup> “Public transportation services must comply with accessibility requirements in newly purchased vehicles, make good faith efforts to purchase or lease accessible used buses, remanufacture buses in an accessible manner and provide paratransit (assisted transportation) where they operate fixed route bus or rail systems, unless it would cause an undue burden.”<sup>100</sup>

“The [Federal Highway Administration (“FHWA”) is responsible for implementation of pedestrian access requirements under the Americans with Disabilities Act of 1990 (ADA) and Section 504.... This is accomplished through stewardship and oversight over all Federal, State, and local governmental agencies that build and maintain highways and roadways, whether or not they use Federal funds on a particular project.”<sup>101</sup>

Federal aid recipients under the FHWA are: (1) informed of their responsibilities to provide reasonable accommodation in their employment practices; and provide accessibility in their programs, activities, and facilities (i.e., public rights-of-way); (2) ensure that recipients/sub-recipients are applying appropriate accessibility standards to all transportation facilities, and (3) ensure that all complaints filed under Section 504 or the ADA are processed in accordance with

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<sup>96</sup> ‘Urban Mass Transit Act’ U.S. Department of Transportation [www.transportation.gov/content/urban-mass-transit-act](http://www.transportation.gov/content/urban-mass-transit-act) (accessed 14 October 2020).

<sup>97</sup> ‘Civil Rights and Americans with Disabilities Act’ Federal Transit Administration, [www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/americans-disabilities-act](http://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/americans-disabilities-act) (accessed 13 February 2020).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> ‘Transportation’ American Association of People with Disabilities (summarizing ADA and Section 504 of the Rehabilitation Act of 1973 requirements) [www.aapd.com/advocacy/transportation/](http://www.aapd.com/advocacy/transportation/) (accessed 13 February 2020).

<sup>101</sup> Frederick D. Isler, Associate Administrator for Civil Rights, Memorandum, Public Rights-of-Way Access Advisory, U.S. Department of Transportation, Federal Highway Administration, January 23, 2006 TA \1 "Frederick D. Isler, Associate Administrator for Civil Rights, Memorandum, Public Rights-of-Way Access Advisory, U.S. Department of Transportation, Federal Highway Administration, January 23, 2006" \s "Isler Memorandum" \c 3 (“Isler Memorandum”) [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/resources/prwaa.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/resources/prwaa.cfm) (accessed 29 January 2021).



established complaint procedures.<sup>102</sup> Regulations require public entities with more than 50 employees to make ADA transition plans to remove barriers to physical access.

The transition plan must include a schedule for providing access features, including curb ramps for walkways.<sup>103</sup> The schedule should first provide for pedestrian access upgrades to State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. The transition plan<sup>104</sup> should accomplish the following four tasks:

1. identify physical obstacles in the public agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
2. describe in detail the methods that will be used to make the facilities accessible;
3. specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements in each year following the transition plan; and
4. indicate the official responsible for implementation of the plan.<sup>105</sup>

The DOJ regulations state that any "newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas" at intersections featuring curbs or other such barriers to sidewalk access and [n]ewly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways."<sup>106</sup> Federal guidance has clarified that any resurfacing of a stretch of road constitutes alteration, not only where the roadway is milled prior to resurfacing.<sup>107</sup>

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<sup>102</sup> 'Pedestrians and Accessible Design' U.S. Department of Transportation, Federal Highway Administration <https://www.fhwa.dot.gov/programadmin/pedestrians.cfm> (accessed 21 January 2021).

<sup>103</sup> 28 CFR §35.150(d)(2).

<sup>104</sup> Broadly speaking, enforcement is through litigation whether by the DOJ, a state AG, or private plaintiffs including NGO's. The transition plan itself is not enforceable but is intended to engage the entity and the public in helping the public entity achieve compliance.

<sup>105</sup> 'Questions and Answers About ADA/Section 504' U.S. Department of Transportation, Federal Highway Administration [https://www.fhwa.dot.gov/civilrights/programs/ada/ada\\_sect504qa.cfm](https://www.fhwa.dot.gov/civilrights/programs/ada/ada_sect504qa.cfm) (accessed 17 January 2021). See also Yochai Eisenberg, Amy Heider, Rob Gould, and Robin Jones, 'Are communities in the United States planning for pedestrians with disabilities? Findings from a systematic evaluation of local government barrier removal plans' (July 2020) Vol. 102 <https://doi.org/10.1016/j.cities.2020.102720> (accessed 1 November 2020).

<sup>106</sup> *Id.*, § 35.151(i)(1); see also *Kinney v. Yerusalim*, 9 F.3d 1067, 1075 (3d Cir. 1993) (holding that the "resurfacing of the city streets is an alteration within the meaning of 28 C.F.R. § 35.151(b) which must be accompanied by the installation of curb cuts under 28 C.F.R. § 35.151(e)"); 'Department of Justice/Department of Transportation Joint Technical Assistance1 on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing' U.S. DOJ Civil Rights Division & U.S. DOT/FHWA (8 July 2013) [https://www.fhwa.dot.gov/civilrights/programs/doj\\_fhwa\\_ta.cfm](https://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm) (accessed 21 January 2021).

<sup>107</sup> The guidance notes: "Resurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling. Examples include, but are not limited to the following treatments or

Regarding sidewalks themselves and other features of the public rights-of-way, the regulations are less clear, which has led to confusion. The DOT takes the position that public rights of way are covered by the ADA and required to be accessible.<sup>108</sup> The Access Board has been in the process of formulating formal policies for all aspects of the public rights-of-way since the early 1990s. After initial proposals met with various criticism, the Access Board has sponsored research and issued refined proposed guidelines several times.

On July 26, 2011, the Access Board issued its latest proposed guidelines incorporating the research and responses. While not yet formally adopted as standards, these guidelines form the recommended best practices to address accessibility for all aspects of the pedestrian rights-of-way. In addition to curb ramps and accessible sidewalk conditions, the Access Board Public Rights-of-Way Guidelines (“PROWAG”)<sup>109</sup> require:

- Detectable warning surfaces on curb ramps and blended transitions at pedestrian street crossings (see R208.1 and R305);
- Accessible (audible) pedestrian signals and pedestrian pushbuttons (vibrotactile) (see R209);
- Pedestrian activated signals at roundabout intersections with multi-lane pedestrian street crossings (see R206 and R306.3.2).

Neither the PROWAG, nor other standards we observe contain explicit requirements addressing accessibility issues other than mobility, visual or auditory disabilities.

Certain requirements in federal regulations reflect changes to accommodate the needs of aging pedestrians. “To accommodate the aging pedestrian who typically has a shorter stride, slower gait, and delayed 'start-up' time before leaving from a position further back from the curb at signalized crossings, the joint application of the following practices is recommended” to use a

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their equivalents: addition of a new layer of asphalt, reconstruction, concrete pavement rehabilitation and reconstruction, open-graded surface course, micro-surfacing and thin lift overlays, cape seals, and in-place asphalt recycling.” See *Department of Justice/Department of Transportation Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing*. Available at: [http://www.fhwa.dot.gov/civilrights/programs/doj\\_fhwa\\_ta.cfm](http://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta.cfm). A glossary of these terms as used by the FHWA is available at: [https://www.fhwa.dot.gov/civilrights/programs/doj\\_fhwa\\_ta\\_glossary.cfm](https://www.fhwa.dot.gov/civilrights/programs/doj_fhwa_ta_glossary.cfm).

<sup>108</sup> See, e.g. ‘Subject: FHWA/FTA Memorandum: Announcement of USDOT Accessibility Regulations’ Nuria I. Fernandez (Acting FTA Administrator) and Kenneth R. Wykle (FHWA Administrator) (25 September 2000) [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/resources/atl.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/resources/atl.cfm) (accessed 1 February 2021); ‘Brief for the United States as Amicus Curiae Supporting Appellant’s Petition for Rehearing En Banc’ *Frame v. City of Arlington*, No. 08-10630 (5th Cir. 24 Sept. 2010) <https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/framebrief.pdf> (accessed 1 February 2021).

<sup>109</sup> ‘(Proposed) Public Rights-of-Way Accessibility Guidelines’ U. S. Access Board <https://www.access-board.gov/prowag/> (accessed 1 February 2021).

slower walking speed of three feet per second to calculate the WALK signal and measure the crossing distance six feet back from the curb in light of surveys that show older pedestrians wait further back from the curb.<sup>110</sup>

Finally, the DOT, which oversees all matters relating to transportation, has issued ADA regulations regarding accessibility in public transportation for vehicles and transportation facilities owned by government or private entities.<sup>111</sup> Challenges remain to improving access and mobility in transportation for people with disabilities, older adults, and individuals with low income.<sup>112</sup> In 2019, the Secretary of Transportation announced plans to fund inclusive design challenges, the 2020 Mobility for all Program, and a strategic plan for the Coordinating Council on Access and Mobility (“CCAM”) to “improve accessibility of vehicles... and spark development for future automated vehicles.”<sup>113</sup>

### A4.3 Funding

The Fixing America’s Surface Transportation (FAST) Act (Pub. L. No. 114-94)<sup>114</sup> is the current U.S. legislation authorizing all highway and transit funding,<sup>115</sup> including funding and some requirements for sidewalks, paratransit and grant programs related to transportation for people with disabilities.<sup>116</sup>

The Enhanced Mobility of Seniors and Individuals with Disabilities Program provides funding to support specialized public transportation for older adults and people with disabilities.<sup>117</sup> Under the program, 60% of the funds are apportioned to large urbanized areas, 20% to small urbanized areas, and 20% to rural areas.<sup>118</sup> Within these categories, funds are distributed to specific areas

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<sup>110</sup> ‘Handbook for Designing Roadways for the Aging Population’ Chapter 2 United States Department of Transportation, Federal Highway Administration (June 2014)

[https://safety.fhwa.dot.gov/older\\_users/handbook/ch2.cfm#ss15](https://safety.fhwa.dot.gov/older_users/handbook/ch2.cfm#ss15) (accessed 25 May 2021).

<sup>111</sup> ‘ADA Regulations’ United States Department of Transportation [www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/ada-regulations](http://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/ada-regulations) (accessed 10 February 2020).

<sup>112</sup> ‘Accessibility: Access and Mobility for All Summit’ U.S. Department of Transportation (29 July 2020) [www.transportation.gov/accessibility](http://www.transportation.gov/accessibility) (accessed 10 February 2020).

<sup>113</sup> *Id.*

<sup>114</sup> See ‘The Fast Act’ United States Department of Transportation, Federal Highway Administration <https://www.fhwa.dot.gov/fastact/> (accessed 4 February 2021). The FAST Act was extended for one year in October 2020 by a continuing resolution. ‘FAST Act’s Yearlong Extension Signed into Law’ Transport Topics (1 October 2020) <https://www.ttnews.com/articles/fast-acts-yearlong-extension-signed-law> (accessed 4 February 2021).

<sup>115</sup> *Id.*

<sup>116</sup> ‘Equity in Transportation for People with Disabilities’ AAPD [www.civilrightsdocs.info/pdf/transportation/final-transportation-equity-disability.pdf](http://www.civilrightsdocs.info/pdf/transportation/final-transportation-equity-disability.pdf) (accessed 9 February 2020).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

based on the relative size of their senior and disabled population.<sup>119</sup> The program requires that projects originate from a locally developed, coordinated human services transportation plan.<sup>120</sup>

As with other funding plans, Section 504 prohibits discrimination by recipients of funding under these statutes.

## **A4.4 Planning**

The Federal government does not actively plan most individual transportation projects, but delegates these to the states, and supports these through financing projects that meet requirements. Since the 1980's, this federalist approach has been dominant.<sup>121</sup>

Under the federal transit funding laws, states are required to develop long-range statewide transportation plans that allow for public participation, including specifically “representatives of users of pedestrian walkways and bicycle transportation facilities, [and] representatives of the disabled....”<sup>122</sup> The Federal government requires and funds the creation of metropolitan planning organizations (‘MPO’) for each metropolitan area with a population greater than 50,000 people.<sup>123</sup> These organizations create a framework for coordinating transportation investment decisions in metropolitan areas across multiple localities.

Each MPO must publish a plan to “identify how the metropolitan area will manage and operate a multi-modal transportation system (including transit, highway, bicycle, pedestrian, and accessible transportation) to meet the region’s economic, transportation, development and sustainability goals – among others – for a 20+-year planning horizon, while remaining fiscally constrained.”<sup>124</sup> “The MPOs shall develop and use a documented participation plan that defines a process for providing...representatives of users of pedestrian walkways and bicycle transportation facilities, and representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan planning process.”<sup>125</sup>

The federal government has, as described above, developed standards for projects to follow. Currently, the 2010 Standards are the standards for curb ramps and sidewalks. The PROWAG

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> Leckrone, J. Wesley ‘Federalism in America: An Encyclopedia, Transportation Policy’ The Center for the Study of Federalism [http://encyclopedia.federalism.org/index.php/Transportation\\_Policy](http://encyclopedia.federalism.org/index.php/Transportation_Policy) (accessed 28 January 2021).

<sup>122</sup> 23 CFR § 450.210(a).

<sup>123</sup> FAST Act § 1201; 23 U.S.C. § 134.

<sup>124</sup> ‘Metropolitan Transportation Plan (MTP)’ Federal Transit Administration <https://www.transit.dot.gov/regulations-and-guidance/transportation-planning/metropolitan-transportation-plan-mtp> (accessed 5 February 2021).

<sup>125</sup> 23 CFR § 450.316(a).

are described as the recommended best practices to address accessibility for all aspects of the pedestrian rights-of-way, but its suggestions are not *per se* enforceable.<sup>126</sup>

The federal government supports community designs that include accessible pedestrian and bicycle transportation through funding, policy guidance, program management, and resource development.<sup>127</sup> More recently, the Federal government has been supporting a planning strategy known as Complete Streets (though this is advisable not mandatory).<sup>128</sup> “Complete Streets are streets designed and operated to enable safe use and support mobility for all users. Those include people of all ages and abilities, regardless of whether they are travelling as drivers, pedestrians, bicyclists, or public transportation riders.”<sup>129</sup> Complete Street roadway design features include sidewalks, lane striping, bicycle lanes, paved shoulders suitable for use by bicyclists, signage, crosswalks, pedestrian control signals, bus pull-outs, curb cuts, raised crosswalks, ramps and traffic calming measures. These features provide separate areas for cars, bicycles, and pedestrians, and provides features to decrease conflict where they interact. This builds upon the bicycle and pedestrian approaches the federal government has supported under transportation funding statutes since 1991.<sup>130</sup>

While design guidance has prioritized increasing focus on pedestrians and bicyclists over prior priority on vehicles over the past three decades, federal guidance has not been issued to address newer concerns such as e-bikes and scooters.

The federal government updated a strategic agenda to increase pedestrian and bicyclist safety and opportunity in September 2016.<sup>131</sup> It “establishes a strategic, collaborative approach for making walking and bicycling viable transportation options for people of all ages and abilities in

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<sup>126</sup> Frederick D. Isler, Associate Administrator for Civil Rights, Memorandum, Public Rights-of-Way Access Advisory, U.S. Department of Transportation, Federal Highway Administration, January 23, 2006 TA \1 "Frederick D. Isler, Associate Administrator for Civil Rights, Memorandum, Public Rights-of-Way Access Advisory, U.S. Department of Transportation, Federal Highway Administration, January 23, 2006" \s "Isler Memorandum" \c 3 ("Isler Memorandum"). Available at:

[https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/resources/prwaa.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/resources/prwaa.cfm)

<sup>127</sup> ‘Federal Highway Administration Bicycle and Pedestrian Planning, Program, and Project Development’ U.S. Department of Transportation, Federal Highway Administration (26 February 2019) [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/guidance/guidance\\_2019.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/guidance_2019.cfm) (accessed 28 January 2021).

<sup>128</sup> ‘Complete Streets’ Department of Transportation <https://www.transportation.gov/mission/health/complete-streets> (accessed 28 January 2021).

<sup>129</sup> *Id.*

<sup>130</sup> ‘Federal Highway Administration Bicycle and Pedestrian Planning, Program, and Project Development’ FHWA (26 September 2019) [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/guidance/guidance\\_2019.cfm](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/guidance/guidance_2019.cfm) (accessed 7 February 2021).

<sup>131</sup> ‘Strategic Agenda for Pedestrian and Bicycle Transportation’ FHWA (2016) [https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/strategic\\_agenda/fhwahep16086.pdf](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/strategic_agenda/fhwahep16086.pdf) (accessed 7 February 2021).

communities throughout the U.S. (note that references to “walking” in this document are intended to encompass people using mobility aids including wheelchairs).” It establishes goals to improve safety. It also states that FHWA will “[p]roactively encourage MPOs and State DOTs to address equity as part of the planning process. For example, multimodal plans should routinely address complete bicycle, pedestrian, and transit access to jobs and essential services, particularly for disadvantaged communities and for people with disabilities.”<sup>132</sup> These policy goals of creating safe opportunities for bicycles and pedestrians do not specify how to create safety for each, but leave to professionals to design for and include them with “due consideration”.<sup>133</sup>

The federal government produces publications “that provide insight into the planning and decision process common to building a connected, multimodal transportation system that focuses on accessibility and safety.”<sup>134</sup> These publications compile standards, best practices and research, including on accessibility.

The FHWA has published guidance on a challenging street design known as a shared street.<sup>135</sup> In a shared street, pedestrians, bicyclists, and motor vehicles mix in the same space. This is accomplished with a design that encourages low vehicle speeds and volumes, lacks design elements like curbs that prioritize vehicles and segregates transportation modes, and includes design elements that suggest pedestrian priority and the function of the street as a place for social, economic, and cultural exchange. Because this design frequently lacks segregated sidewalks with curbs (though not necessarily), and features other mixed design elements, it can present challenges particularly for people with visual disabilities. At the same time, it is easier to navigate for people with physical disabilities. The guidance provides information on the use of tactile surfaces to help pedestrians with vision disabilities navigate the built environment.<sup>136</sup> The guidance also recommends involvement of people with disabilities and particularly visual disabilities, seniors, and groups that represent pedestrians and bicyclists at early stages.

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<sup>132</sup> *Id.* at 15.

<sup>133</sup> 23 U.S.C. 217(g)(1).

<sup>134</sup> ‘Bicycle and Pedestrian Program - Publications’ FHWA

[https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/) (accessed 11 February 2021).

<sup>135</sup> ‘Accessible Shared Streets: Notable Practices and Considerations for Accommodating Pedestrians with Vision Disabilities’ FHWA October 2017

[https://www.fhwa.dot.gov/environment/bicycle\\_pedestrian/publications/accessible\\_shared\\_streets/](https://www.fhwa.dot.gov/environment/bicycle_pedestrian/publications/accessible_shared_streets/) (accessed 31 May 2021).

<sup>136</sup> <sup>136</sup> *Id.*

## A4.5 Civil Society Engagement

The United States supports a robust civil society representing many interests.<sup>137</sup> Civil society engagement in the United States on disability issues takes two primary forms. Non-governmental organizations lobby state and the Federal Government for policy changes and also utilize civil rights law like the ADA and Section 504 through administrative complaints and litigation in the courts. The disability community, including activists in social organizations like Disabled in Action, ADAPT, the Paralyzed Veterans Association, and myriad NGOs, was actively involved throughout the development of disability rights laws in the United States.<sup>138</sup> Litigation brought by activists and NGOs has advanced the law and disability rights in the US for decades. Some of these precede the ADA,<sup>139</sup> and litigation has continued after the ADA's passage.<sup>140</sup>

The P&A's are independent and typically NGO's granted their authority under contract. Designated entities in each state have the authority to investigate abuse and neglect of people with disabilities, provide legal representation to people with disabilities and engage in other advocacy to advance the rights of individuals with disabilities.<sup>141</sup>

## A5 State-Level Strategy, Law, and Policy

This section reports on laws in the U.S. states of New York and Georgia that are relevant to the accessibility of public streets and spaces and how those laws interact with the U.S. federal

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<sup>137</sup> 'Fact Sheet: Non-Governmental Organizations (NGOs) in the United States' U.S. State Department, Bureau of Democracy, Human Rights and Labor <https://www.state.gov/non-governmental-organizations-ngos-in-the-united-states/#:~:text=Civil%20society%20in%20the%20United,interests%2C%20needs%2C%20and%20priorities> (20 January 2021) (accessed 3 .

<sup>138</sup> Arlene Mayerson, 'The History of the Americans with Disabilities Act, A Movement Perspective' (1992) <https://dredf.org/about-us/publications/the-history-of-the-ada/>.

<sup>139</sup> See, e.g., *Wyatt v. Stickney*, 325 F.Supp. 781 (M.D. Ala. 1971) (federal court in Alabama held for the first time that people who are involuntarily committed to state institutions because of mental illness or developmental disabilities have a constitutional right to treatment that will afford them a realistic opportunity to return to society). *New York State Ass'n for Retarded Children, Inc., et al. v. Carey, et al.*, 393 F.Supp. 715 (E.D.N.Y. 1975) (The Willowbrook case seeking deinstitutionalization of people with developmental disabilities was brought by the NYCLU amongst others); *Eastern Paralyzed Veteran's Ass'n, et al., v. Metropolitan Transportation Authority, et al.*, 426 N.Y.S.2d 406 (N.Y. Sup. Ct. 1980) (action brought under state law that eventually brought accessibility improvements to New York City busses, subways and trains).

<sup>140</sup> 'Barden v. Sacramento', Disability Rights Advocates <https://dralegal.org/case/barden-v-sacramento/> (accessed 2 November 2020) (See below at A4.4); *National Association of the Deaf, et al. v. Netflix, Inc.*, No. 11-30168-Map (W.D. Mass. 2011) (Settlement agreement in case brought by Disability Rights Education & Defense Fund ('DREDF') requiring Netflix to provide closed captioning on 100% of content within two years).

<sup>141</sup> 'Our History' Disability Rights New York ('DRNY') <https://www.drny.org/page/our-history-8.html> (accessed 5 February 2021). DRNY, for example, is the P & A in New York State.

framework described above. This section discusses accessibility requirements in terms of broad equality and inclusion, transport, planning, civil society engagement, and other noteworthy issues and concerns.

## **A5.1 New York State**

### **a. New York Equality and Inclusion**

#### **a.1 Equality**

New York State has no equality framework as used in other countries but has certain antidiscrimination laws which generate certain negative rights, as discussed below. New York State was the first state to pass a human rights law, affording every citizen “an equal opportunity to enjoy a full and productive life.”<sup>142</sup> Despite the language used, the New York Human Rights Law (NYSHRL) is not enforceable as an equality measure, but is interpreted as other antidiscrimination statutes in the United States.<sup>143</sup> This law is thus analyzed in the Accessibility section below.

#### **a.2 Accessibility**

New York State was the first state to pass a human rights law, affording every citizen “an equal opportunity to enjoy a full and productive life.”<sup>144</sup> The New York Human Rights Law (NYSHRL)<sup>145</sup> prohibits discrimination on various bases including disability. With regard to disability, the NYSHRL is modeled on the ADA and requires reasonable modifications in policies, practices, or procedures and removal of architectural barriers, and communication barriers when doing so is readily achievable or not an undue burden.<sup>146</sup> However, the definition of disability under the NYSHRL is somewhat broader than that under the ADA and protects more individuals with disabilities than the federal law does. It provides for enforcement via mediation or administrative actions brought by the N. Y. State Division of Human Rights and through private suits brought in state or federal court. The Division of Human Rights will investigate complaints brought to it and initiates investigations on its own initiative. See Section B1.2.a below for further discussion.

#### **a.3 Disability**

New York State does not have a distinct strategy on disability but aims to increase opportunities for people with disabilities through its antidiscrimination framework, expecting that this pathway

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<sup>142</sup> ‘Mission Statement’ N. Y. State Division of Human Rights <https://dhr.ny.gov/mission-statement> (accessed 4 February 2021).

<sup>143</sup> N.Y. Exec. Law Art. 15 Human Rights § 290 *et seq.*

<sup>144</sup> ‘Mission Statement’ N. Y. State Division of Human Rights <https://dhr.ny.gov/mission-statement> (accessed 4 February 2021).

<sup>145</sup> N.Y. Exec. Law Art. 15 Human Rights § 290 *et seq.*

<sup>146</sup> N.Y. Exec. Law Art. 15 Human Rights § 296 (Unlawful discriminatory practices).



will increase opportunities for people with disabilities. Various departments and agencies publish non-discrimination statements that meet the requirements of the DOJ under the ADA, including the NYS Department of Transportation.<sup>147</sup> Certain departments and agencies do have transition plans, such as the Department of Transportation transition plan discussed below. Guidance requiring making streets safe for pedestrians regardless of age or disability does recognize the differing needs of people with disability and is discussed in section A5.1.d Planning below.

#### **a.4 Older People**

New York maintains an Office for the Aging to “improve access to, and availability of services that enable Older New Yorkers to live, work and age in their community of choice.”<sup>148</sup> Local offices coordinate community services, information for caregivers, and access to subsidized in-home and long-term care and nutrition. Some offices assist with transportation.<sup>149</sup>

The NYSHRL prohibits discrimination in employment based on age. It specifies the opportunity to use public accommodations without discrimination based on age in public accommodations but does not clearly require modifications to architectural barriers on account of age.<sup>150</sup> (See discussion in B.1.2.a below.)

#### **b. Transport**

New York State Law and policy sets forth standards for accessible construction of public rights of way including non-state roads. For example, New York State Highway Law states that “[n]o public street, sidewalk adjacent to a curb, sidewalk adjacent to a parking lot, sidewalk adjacent to a private road open to public motor vehicle traffic or highway shall be constructed or reconstructed unless the curbing thereof is designed and constructed so as to allow reasonable access to pedestrian crosswalks for persons with disabilities, in accordance with accessibility guidelines mandated pursuant to the federal Americans with Disabilities Act of 1990, as amended.”<sup>151</sup>

Similarly, the New York State Highway Design Manual (“HDM”) includes specific standards for constructing new pedestrian facilities, including sidewalks, walkways, and crosswalks.<sup>152</sup> The HDM interprets the FHWA guidance on the PROWAG to require that standard “be referenced

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<sup>147</sup> ‘Americans with Disabilities Act Transition Plan’ New York State Department of Transportation (2016) at p. 4 (“NY ADA Transition Plan”) [www.dot.ny.gov/programs/adamanagement/repository/NYSDOT%20ADA%20TRANSITION%20PLAN%20FINAL.pdf](http://www.dot.ny.gov/programs/adamanagement/repository/NYSDOT%20ADA%20TRANSITION%20PLAN%20FINAL.pdf) (accessed 17 September 2020).

<sup>148</sup> New York Office for the Aging <https://aging.ny.gov/> (accessed 7 June 2021).

<sup>149</sup> New York Office for the Aging <https://aging.ny.gov/programs/transportation> (accessed 7 June 2021).

<sup>150</sup> N.Y. Exec. Law Art. 15 Human Rights § 296 (Unlawful discriminatory practices)

<sup>151</sup> N.Y. High. Law § 330 (McKinney 2020).

<sup>152</sup> NY ADA Transition Plan at p. 4.

and used when possible and documentation provided if they cannot be used.”<sup>153</sup> In 2007, New York adopted the MUTCD and, as such, it is imperative that each government in the State of New York comply with these standards.<sup>154</sup> As New York has adopted PROWAG, accessible pedestrian signals as defined the PROWAG and the MUTCD should be used whenever signals are upgraded, at a minimum.

Sidewalk construction and repairs on non-state roads are conducted or supervised by local municipalities.<sup>155</sup> For example, a review of Onondaga County, where Syracuse is located, found that local regulations typically specified that sidewalks are either necessary or can be required by local authorities.<sup>156</sup> When sidewalks are deemed necessary, they must meet accessibility requirements specified in local ordinances.<sup>157</sup> In general, final planning and approval decisions were left to a Planning Board or a similar body.<sup>158</sup> For example, half of the Onondaga County municipalities reviewed had ordinances with language similar to “sidewalks shall be installed one or both sides of a street or road as the board may require depending on local conditions or public safety.”<sup>159</sup> Sidewalk maintenance may be delegated to adjacent property owners.<sup>160</sup>

The New York State Department of Transportation (“NYSDOT”) has a Transition Plan with the goal of identifying and removing structural barriers associated with public facilities.<sup>161</sup> Under the Transition Plan, NYSDOT states that it applies design and construction guidance to ensure accessibility, inventories infrastructure, provides guidance to other governmental entities, ensures ADA compliance when state-owned and NYSDOT facilities are maintained or upgraded, ensuring ADA compliance in projects it funds, provides training to staff and periodically updates its transition plan.<sup>162</sup>

According to NYSDOT, 82 percent of state-owned sidewalks and 66 percent of curb ramps met ADA Standards, which represent minimum requirements.<sup>163</sup> Nevertheless, as of 2014, 395 miles (636 km) of New York sidewalks and 14,262 curb ramps were ADA deficient.<sup>164</sup> From the last time NYSDOT’s Transition Plan was revised in 2009 to its current 2016 version, the agency has

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<sup>153</sup> New York State Highway Design Manual at p. 18-10.

<sup>154</sup> *Id.*

<sup>155</sup> N.Y. High. Law § 330 (McKinney 2020).

<sup>156</sup> *Id.*

<sup>157</sup> ‘Municipal Codes’ [http://walkbikecny.org/wp-content/uploads/2014/06/SSM\\_ch3\\_Municipal\\_Codes.pdf](http://walkbikecny.org/wp-content/uploads/2014/06/SSM_ch3_Municipal_Codes.pdf) (accessed 19 October 2020).

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> New York State’s Property Maintenance Code, Section 302.

<sup>161</sup> NY ADA Transition Plan.

<sup>162</sup> *Id.* at 3.

<sup>163</sup> *Id.* at p. 2.

<sup>164</sup> *Id.* at p. 8.

improved 110 miles (177 km) of deficient sidewalks, 3,541 street crossings, constructed 195 miles (314 km) of new sidewalks, and installed 1,062 street crossings.<sup>165</sup>

New York State Highway Law states that it is the responsibility of the Town Superintendent to

[m]aintain all sidewalks in the town constructed by the state adjacent to state highways and all sidewalks in the town constructed by the county adjacent to county roads and, when authorized by the town board, cause the removal of snow therefrom, and the cost thereof shall be paid from the miscellaneous or other town funds.<sup>166</sup>

Even though villages, towns, and cities have the legal responsibility to maintain public sidewalks, New York state law requires property owners to maintain the exterior of their premises, including the upkeep of sidewalks and walkways.<sup>167</sup> Towns can fine property owners for non-compliance.<sup>168</sup>

NYSDOT administers the Statewide Mass Transportation Operating Assistance Program (“STOA”), which \$3 billion per year in transit operating assistance.<sup>169</sup> For non-MTA systems, more than \$100 million is applied annually to providing ADA complementary paratransit service.<sup>170</sup> In 2014, \$580 million was spent on paratransit services statewide.<sup>171</sup>

NYSDOT administers FTA programs for purchasing accessible vehicles and improving the accessibility of transit facilities.<sup>172</sup> The New York State Office of General Services works with NYSDOT to develop an Adult Bus contract that public systems may use to purchase accessible vehicles with a wheelchair lift or ramp.<sup>173</sup> New York State capital programs match funds from federal programs to contribute to ADA compliance projects.<sup>174</sup>

NYSDOT supports the development of accessible railway stations, in tandem with the National Railroad Passenger Corporation’s (Amtrak) efforts to ensure ADA compliance.<sup>175</sup> These projects

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<sup>165</sup> *Id.* at p. 9.

<sup>166</sup> N.Y. Highway Law § 140 (McKinney).

<sup>167</sup> N.Y. Town Law Art. 12 § 200-A (“Construction and repair of sidewalks pursuant to order of town board”). See also New York State’s Property Maintenance Code, Section 302. (“All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions.”).

<sup>168</sup> *Id.*

<sup>169</sup> NY ADA Transition Plan at p. 13.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 13-14.

<sup>174</sup> *Id.* at 14.

<sup>175</sup> *Id.* at 14-15.

generally include accessible restrooms, entrance ramps, walkway improvements, door upgrades, compliant parking spaces, and much more.<sup>176</sup>

### **c. Planning**

NYSDOT's Transition Plan includes a goal of improving access for two-thirds of the people who live within a quarter mile of an inaccessible facility by 2027.<sup>177</sup> Accessibility improvements will be made as part of existing highway projects; projects to address sidewalk, crosswalk, and curb ramp repairs or construction; and, as municipalities and authorities perform maintenance of state-owned facilities.<sup>178</sup> The NYSDOT Transition Plan adopts the heightened accessibility standards of the PROWAG.<sup>179</sup> The Local Programs Bureau provides guidance to municipalities and organizations to assist in the development, design, and construction of accessible, ADA-compliant facilities.<sup>180</sup> The Consolidated Local Street and Highway Improvement Program funds municipalities to support the construction and repair of highways, bridges, crossings, and other facilities.<sup>181</sup>

General transportation planning is done at many levels in the state. For areas with larger metropolitan areas, there are 14 Metropolitan Planning Areas and Organizations in New York State.<sup>182</sup> Each organizes plans for integrated transportation planning and include public participation opportunities.

New York adopted a Complete Streets approach by statute.<sup>183</sup> The law requires state, county and local agencies to consider the convenience and mobility of all users when developing transportation projects that receive state and federal funding.<sup>184</sup> “The initiative presents an opportunity to expand upon existing programs and collaborate with bicyclists, pedestrians, people with disabilities and others to identify best practices and designs for transportation facilities.”<sup>185</sup> As with federal guidance, it does not delineate priority amongst users, but requires the input of all in the planning stage.

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<sup>176</sup> *Id.*

<sup>177</sup> *Id. at 2.*

<sup>178</sup> *Id. at 9.*

<sup>179</sup> *Id. at 4.*

<sup>180</sup> *Id. at 9-10.*

<sup>181</sup> *Id. at 10.*

<sup>182</sup> New York State Association of Metropolitan Planning Organizations

<sup>183</sup> N.Y. Veh. & Traf. Law § 398-A.

<sup>184</sup> ‘Complete Streets’ NYSDOT <https://www.dot.ny.gov/programs/completestreets/> (accessed 7 February 2021).

<sup>185</sup> *Id.*

#### d. Civil Society Engagement

The federally funded protection and advocacy organization in New York is Disability Rights New York (“DRNY”). DRNY advocates for the civil and legal rights for New Yorkers with disabilities.<sup>186</sup>

Several notable early cases in the disability rights movement in the United States occurred in New York. In *Eastern Paralyzed Veterans’ Association v. Metropolitan Transportation Authority*, the EPVA brought action under state law that eventually brought accessibility improvements to New York City busses, subways and trains.<sup>187</sup> Other notable cases brought by NGOs addressed issues outside the transit realm before the ADA.<sup>188</sup>

Following passage of the ADA, in *Eastern Paralyzed Veterans Association v. City of New York*, the EPVA filed a lawsuit and reached a settlement agreement with the City to improve accessibility on New York City sidewalks.<sup>189</sup> With sidewalk accessibility still not resolved, and many street corners still needing curb ramps and curb ramps upgrades, Disability Rights Advocates brought a subsequent action against New York City.<sup>190</sup> The parties settled the case and consolidated the earlier EPVA settlement.<sup>191</sup>

In *Lugo v. City of Troy, NY* the New York P & A, has filed suit against the City of Troy for failing to maintain accessible sidewalks, curb cuts and pedestrian crossings in violation of Title II of the ADA and Section 504.<sup>192</sup>

Other actions brought by or on behalf of NGOs have challenged disability discrimination in other areas of life.<sup>193</sup>

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<sup>186</sup> ‘Who We Are’ Disability Rights New York <https://www.drny.org/page/who-we-are-1.html> (accessed 6 February 2021).

<sup>187</sup> *Eastern Paralyzed Veteran’s Ass’n, et al., v. Metropolitan Transportation Authority, et al.*, 426 N.Y.S.2d 406 (N.Y. Sup. Ct. 1980).

<sup>188</sup> In 1973, in *New York State Association for Retarded Children v. Carey*, the NYCLU, the Mental Health Law Project (now the Bazelon Center for Mental Health Law) and others challenged conditions at the Willowbrook State Developmental Center where people with developmental disabilities and other disabilities were housed in shocking, inhumane conditions. The case held that the conditions violated the Constitution and led to a consent decree which improved conditions and eventually a process of deinstitutionalization to more community-based housing.

<sup>189</sup> *Eastern Paralyzed Veterans Association v. City of New York*, No. 94CV0435 (TPG) (S.D.N.Y. 10 September 2002) (Settlement Agreement).

<sup>190</sup> *Center for Independence of the Disabled New York v. City of New York* No. 14 CV 5884 (GBD) (KNF) (S.D.N.Y. 2014). See <https://dralegal.org/case/center-independence-disabled-new-york-cidny-et-al-v-city-new-york-et-al/> for case documents (accessed 5 February 2021).

<sup>191</sup> *Id.*, Settlement Agreement and Release of Claims (19 March 2019).

<sup>192</sup> *Lugo v. The City of Troy, NY* No. 1:19-CV-67 [GLS/TWD] (W.D.N.Y. 18 January 2019).

<sup>193</sup> See, e.g., *Hirschfeld v. New York City Health and Hospitals Corp., et al.*, Civil Action No. CV-07-1819 (KAM) (E.D.N.Y. May 2, 2007) (challenging medical conditions at mental health hospital); *Brooklyn Center for*

## e. Noteworthy Issues or Concerns

The delegation of maintenance responsibilities under New York State Law to individual property owners, rather than state or local governments, may lead in practice to accessibility issues on public rights of way like sidewalks. Some property owners will be more diligent than others. Municipalities need to maintain effective efforts and deterrence to prevent problems from accumulating. In an Onondaga County review, 36 out of 42 municipal areas (85.7%) had ordinances requiring private property owners to maintain sidewalks adjacent to their property.<sup>194</sup> However, only half of the municipalities reviewed instituted any type of penalty for property owners who failed to do so.<sup>195</sup> The majority of municipalities who impose a penalty allow for the municipality to repair or maintain the sidewalk if the owner fails to do so and then charge the owner for costs associated with the work.<sup>196</sup>

Snow removal is similarly delegated under the code. In the Onondaga County review, half of the municipalities that have sidewalk ordinances specify that it is the property owners' responsibility to clear ice and snow from sidewalks. Some, like the City of Syracuse, specify a timeframe (by 6:00 p.m. in the evening following the snow event).<sup>197</sup> Others, however, only indicate that an owner bears tort liability for an injury if he fails to clear the sidewalk.<sup>198</sup> If municipalities do not survey sidewalks adequately or exercise adequate enforcement, impediments to access can accumulate. Failures to clear snow from sidewalks are a substantial enough area of complaint that DRNY, the P & A, maintains a program to document instances to demonstrate prevalence.<sup>199</sup> By having diffuse responsibility for sidewalk maintenance, some sidewalk areas may not be adequately maintained in practice. It also leads to delays addressing defects (e.g., while protecting due process rights of individual property owners, the defect may remain as an impediment to people attempting to use the sidewalk).

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*Independence of the Disabled v. Bloomberg*, 980 F. Supp. 2d 588 (S.D.N.Y. 2013) (opinion determining that New York City discriminated against people with disabilities in its failure to plan for their needs in large scale disasters such as Hurricanes Irene and Sandy; *United Spinal Ass'n v. Bd. of Elections*, 882 F. Supp. 2d 615, 624 (S.D.N.Y. 2012) (challenging inaccessible polling locations and conditions).

<sup>194</sup> 'Municipal Codes' [http://walkbikecny.org/wp-content/uploads/2014/06/SSM\\_ch3\\_Municipal\\_Codes.pdf](http://walkbikecny.org/wp-content/uploads/2014/06/SSM_ch3_Municipal_Codes.pdf) (accessed 19 October 2020).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.*

<sup>197</sup> 'Sidewalk Snow Removal' City of Syracuse <http://www.syracuse.ny.us/sidewalks-in-winter.html> (accessed 6 May 2021).

<sup>198</sup> *Id.*

<sup>199</sup> 'Snow Documentation Protocol' Disability Rights New York <https://www.dropbox.com/s/1v19x8gnuloamsl/snow-protocol.pdf?dl=0> (accessed 6 February 2021).

In 2020, New York authorized the use of e-bikes and e-scooters on certain streets in New York.<sup>200</sup> The new rules allow e-bikes and e-scooters to be used in streets and in bike lanes, but they remain prohibited on sidewalks. Localities can impose additional requirements. In New York City they are launching a pilot program to provide e-scooters in the Bronx. The program will include docks at busy areas and require locking e-scooters to parking meters or bike racks. The pilot will test compliance with this requirement. The pilot also includes various models selected to be usable by people with disabilities including seated, tandem, and wheelchair attachment models.<sup>201</sup> The Mayor’s Office for People with Disabilities (“MOPD”) was involved in the design of the pilot and states its intent to monitor compliance to maintain clear sidewalks.<sup>202</sup>

## **A5.2 State of Georgia**

### **a. Georgia Equality and Inclusion**

#### **a.1 Equality**

Georgia has no state equality framework as used in other countries.

#### **a.2 Accessibility**

Georgia has no state law analog to the ADA. Under the Official Code of Georgia (“OCGA”), pedestrians only have the right-of-way over vehicles when they have already entered the roadway and cross the road within a marked crosswalk or an unmarked crosswalk at an intersection.<sup>203</sup> However, the OCGA creates an exception for pedestrians who are blind, stating that drivers must yield the right-of-way to any pedestrian accompanied by a guide dog or carrying a walking cane that is white or white with a red tip.<sup>204</sup>

#### **a.3 Disability**

Georgia does not appear to have a distinct strategy on disability. The state maintains an office of ADA Coordinator to “provide comprehensive educational and technical support for State agencies so that those programs, services and activities operated by the State of Georgia are

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<sup>200</sup> ‘Electric scooters and bicycles and other unregistered vehicles’ New York State Department of Motor Vehicles. <https://dmv.ny.gov/registration/electric-scooters-and-bicycles-and-other-unregistered-vehicles> (accessed 6 May 2021).

<sup>201</sup> See ‘DOT Announces Three Companies Selected for E-Scooter Pilot in the East Bronx, Along with Major New Bike Network Projects’ NYC Department of Transportation 14 April 2021 <https://www1.nyc.gov/html/dot/html/pr2021/pr21-015.shtml> (accessed 6 May 2021). Rebecca Bellan ‘Bird, Lime and Veo selected for NYC e-scooter pilot’ TechCrunch 14 April 2021 <https://techcrunch.com/2021/04/14/bird-lime-and-veo-selected-for-nyc-e-scooter-pilot/> (accessed 6 May 2021).

<sup>202</sup> *Id.*

<sup>203</sup> ‘2018 Georgia Code’ Justia US Law <https://law.justia.com/codes/georgia/2018/> (last accessed 22 September 2020).

<sup>204</sup> *Id.*

accessible and usable by everyone ... [and] to maintain compliance with the Americans with Disabilities Act.”<sup>205</sup>

#### **a.4 Older People**

The Georgia Department of Human Services (DHS) Division of Aging Services (DAS) supports the larger goals of DHS by assisting older individuals, at-risk adults, persons with disabilities, their families and caregivers to achieve safe, healthy, independent and self-reliant lives. It has produced a State Plan on Aging that reflects the focus areas outlined by the United States Department of Health and Human Services Administration for Community Living (ACL).<sup>206</sup> It notes that transportation for older people is a significant issue (but the report is focused on alternatives to driving as older people drive less).

#### **b. Transport**

Under the OCGA, the Georgia Department of Transportation (“GDOT”) has the power to plan, designate, improve, manage, control, construct and maintain a state highway system, and places the responsibility of all construction, maintenance, or other work regarding this system upon the GDOT.<sup>207</sup> To do so, the GDOT created the Design Policy Manual, which provides standards and guidance to ensure compliance with all federal and state laws regarding street-related construction.<sup>208</sup>

Georgia has adopted a Complete Streets approach to transit design.<sup>209</sup> “GDOT’s primary strategy for implementing Complete Streets is to incorporate bicycle, pedestrian, and transit accommodations into roadway construction and maintenance projects.”<sup>210</sup>

With regard to accessibility, the GDOT refers to the standards set forth in federal legislation and policy, including: the Architectural Barriers Act (“ABA”), the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act (“Section 504”), the Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (“PROWAG”), the Manual for Erosion and Settlement Control in Georgia (“Green Book”), and the Manual on Uniform Traffic

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<sup>205</sup> Georgia State ADA Coordinator’s Office ‘Mission, Purpose and Website Accessibility’ <https://ada.georgia.gov/about-us/mission-purpose-and-website-accessibility> (accessed 8 June 2021).

<sup>206</sup> ‘Georgia State Plan on Aging’ Georgia Department of Human Services Division of Aging Services <https://aging.georgia.gov/document/document/2020-2023-state-plan/download> (accessed 6 June 2021).

<sup>207</sup> ‘Design Policy Manual’ Georgia Department of Transportation (24 August 2020) [www.dot.ga.gov/PartnerSmart/DesignManuals/DesignPolicy/GDOT-DPM.pdf#search=design%20policy](http://www.dot.ga.gov/PartnerSmart/DesignManuals/DesignPolicy/GDOT-DPM.pdf#search=design%20policy) (accessed 22 September 2020).

<sup>208</sup> *Id.* at 1-1.

<sup>209</sup> *Id.* at 9-1.

<sup>210</sup> *Id.*



Control Devices (“MUTCD”).<sup>211</sup> GDOT adopts the PROWAG requirements, as discussed below, as minimum standards for the design of pedestrian accommodations.<sup>212</sup>

On some elements, GDOT adopts more accessible standard (e.g., a GDOT five feet (1.52 meters) minimum sidewalk width, compared to the PROWAG minimum of four foot (1.22 meters)).<sup>213</sup> Should a contractor decide to select or retain an existing condition that does not meet any of these standards due to structural impracticability or technical infeasibility, a comprehensive study by a GDOT engineer must be completed, and approval of a design variance from the GDOT Chief Engineer must be obtained prior to implementing the non-compliant condition.<sup>214</sup> If full compliance with PROWAG is structurally impracticable or technically infeasible (based on an approved design variance), compliance is required to the maximum extent possible.<sup>215</sup>

GDOT states that accessible curb ramps or blended transitions must be used at provided at all pedestrian street crossings. GDOT requires perpendicular curb ramps wherever feasible, but allows for parallel curb ramps where there is little or no room between the sidewalk and the curb for the preferred ramp.<sup>216</sup> New construction must include a separate curb ramp at each pedestrian street crossing, but alterations are only required to install a single, diagonal curb ramp where existing constraints prevent two ramps from being installed.<sup>217</sup> GDOT allows contractors to seek a design variance to circumvent curb ramp requirements only after determination of structural impracticability (in new construction) or technical infeasibility (for alterations) by prior approval of the GDOT Chief Engineer.<sup>218</sup>

GDOT mandates that detectable warning surfaces be placed at the bottom of curb ramps and at locations like depressed corners, borders of medians and islands, edges of transit platforms, and where railroad tracks cross the street.<sup>219</sup> GDOT defers to the guidance and exact measurement requirements regarding curb ramp construction and detectable warning surface placement set forth in PROWAG’s standards.<sup>220</sup>

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<sup>211</sup> *Id.*

<sup>212</sup> *Id.* at 9-20.

<sup>213</sup> *Id.* at 9-19-20.

<sup>214</sup> *Id.* at 9-20.

<sup>215</sup> *Id.*

<sup>216</sup> A parallel curb ramp runs parallel to the street, thus when crossing the street one must turn 90 degrees to climb the ramp or if one is continuing along the sidewalk one would need to go down one ramp and the climb a subsequent ramp. Parallel curb ramps are only appropriate where limited space prevents the inclusion of a perpendicular ramp and top landing. See Access Board Guide to the ADA Accessibility Standards <https://www.access-board.gov/ada/guides/chapter-4-ramps-and-curb-ramps/#parallel-curb-ramps> (accessed 6 June 2021).

<sup>217</sup> GDOT ‘Design Policy Manual’ at 9-23.

<sup>218</sup> *Id.* at 9-20 and 11-3.

<sup>219</sup> *Id.* at 9-23.

<sup>220</sup> *Id.*

GDOT recommends installing mid-block crosswalks along roadways where pedestrian mid-block crossing movements are heavy, where there are clear pedestrian points of interest and where there is a long distance between crosswalks. Decisions regarding mid-block crossings are made on a case-by-case basis and should also take roadway and traffic conditions into consideration.<sup>221</sup>

GDOT requires that sidewalks be provided along urban shoulders and recommends a pedestrian buffer area six feet (1.83 meters) wide from the back of the curb to the street edge of the sidewalk.<sup>222</sup> Buffer areas should be no less than two feet (0.61 meters); however, where right-of-way constraints do not permit even a two foot (0.61 meters) buffer, the sidewalk may be constructed adjacent to the back of the curb.<sup>223</sup>

GDOT requires that sidewalks be five feet (1.52 meters) wide, and that sidewalk width must not be reduced by the placement of fixed objects such as signs and signal mast arms.<sup>224</sup> However, GDOT concedes that sidewalks may be narrowed at points as necessary for construction, and should be allowed in some cases as long as there is a four foot (1.22 meters) clear zone of unobstructed space.<sup>225</sup> In areas of higher pedestrian traffic, GDOT recommends wider sidewalks and states that contractors should follow PROWAG standards for passing spaces in all areas.<sup>226</sup> Medians and pedestrian refuge islands should also meet a five foot (1.52 meters) length minimum standard.<sup>227</sup> However, islands that are at street level should be at a minimum six feet (1.83 meters) in length and should align with the direction of pedestrian travel.<sup>228</sup>

GDOT states that sidewalks must be firm, stable and slip-resistant.<sup>229</sup> Sidewalks should be planar (i.e., flat or level) and smooth, containing changes in level that are no greater than one quarter of an inch (0.64 centimeters) without a bevel.<sup>230</sup> Level changes of one quarter of an inch (0.64 centimeters) to one half of an inch (1.27 centimeters) must be beveled to a slope that does not exceed 1V:2H, and any sidewalk with a level change greater than one half of an inch (1.27 centimeters) must be replaced or repaired.<sup>231</sup> Likewise, horizontal openings greater than one half of an inch (1.27 centimeters) cannot be retained.<sup>232</sup> To mitigate the effects of these openings, GDOT requires the placement of elongated openings in grates installed so that the long

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<sup>221</sup> *Id.* at 9-24.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> *Id.*

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> *Id.*

dimension is perpendicular with the dominant flow of traffic.<sup>233</sup> Additionally, flangeway gaps at pedestrian rail crossings may not exceed two and a half inches (6.35 centimeters) for non-freight track, and three inches (7.62 centimeters) on freight rail track.<sup>234</sup>

### **c. Planning**

In its “Pedestrian and Streetscape Guide,” the GDOT sets forth its Complete Streets Policy, which establishes the standards for where pedestrian infrastructure should be provided and requires that pedestrian, bicycle and transit accommodations be incorporated into transportation projects.<sup>235</sup> The Pedestrian Guide also stresses a context-sensitive design process of research and public engagement, which both identifies opportunities for increased accessibility and addresses concerns in preserving the existing identity of the area.<sup>236</sup> This design places great importance on the preservation of neighborhoods and environments surrounding projects in an effort to consider the needs of the people living in the area as well as those who pass through.<sup>237</sup> The GDOT also stresses the importance of minimizing pedestrian disruptions during construction.<sup>238</sup>

Georgia adopted a new pedestrian safety plan in 2018.<sup>239</sup> The plan notes that between 2011-2015, pedestrian fatalities increased 58%.<sup>240</sup>

The GDOT issued Special Provision “Section 150-Traffic Control” in an effort to supplement its Work Zone Safety and Mobility Policy and its Design Policy Manual.<sup>241</sup> There, the GDOT adopts published standards from a number of organizations regarding the placement of the numerous traffic control and safety devices the state uses to manage its pedestrian and vehicular traffic,<sup>242</sup> including those set forth in the Manual for Accessing Safety Hardware (“MASH”); Test Level 3 and National Cooperative Highway Research Program (“NCHRP”); Test Level 3 regarding traffic control devices; American Traffic Safety Services Association regarding

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<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> ‘Pedestrian and Streetscape Guide’ Georgia Department of Transportation (2019) [www.dot.ga.gov/PartnerSmart/DesignManuals/TrafficOps/GDOT%20Pedestrian%20and%20Streetscape%20Guide.pdf#search=pedestrian%20and%20streetscape%20guide](http://www.dot.ga.gov/PartnerSmart/DesignManuals/TrafficOps/GDOT%20Pedestrian%20and%20Streetscape%20Guide.pdf#search=pedestrian%20and%20streetscape%20guide) (accessed 22 September 2020).

<sup>236</sup> *Id.*

<sup>237</sup> *Id.*

<sup>238</sup> *Id.*

<sup>239</sup> ‘Pedestrian Safety Action Plan’ Georgia Department of Transportation (2018) <http://www.dot.ga.gov/DriveSmart/Travel/BikePed/BikePedSAP.pdf#search=pedestrian%20safety%20action%20plan> (accessed 11 February 2021).

<sup>240</sup> *Id.* at 5.

<sup>241</sup> ‘State of Georgia Supplemental Specifications Modifying the 2013 Standard Specifications Construction of Transportation Systems’ Georgia Department of Transportation (2016) [www.dot.ga.gov/PartnerSmart/Business/Source/special\\_provisions/2016%20Supplemental%20Specifications/2016SupplementalSpecBook.pdf](http://www.dot.ga.gov/PartnerSmart/Business/Source/special_provisions/2016%20Supplemental%20Specifications/2016SupplementalSpecBook.pdf) (accessed 22 September 2020).

<sup>242</sup> *Id.*

temporary traffic control devices; American Standard for Testing and Materials (“ATSM”); Type XI regarding the reflectivity of signs and Types III or IV for devices installed prior to May 2018; Type VI for devices placed after June 2018 regarding channelization devices; and MUTCD regarding arrow panels and the placement of channelization devices.<sup>243</sup>

Sub-sections of the Special Provision set standards for accessibility to pedestrian facilities throughout the construction process.<sup>244</sup> GDOT provides that when existing pedestrian facilities are disrupted, closed or relocated to a Temporary Traffic Control (“TTC”) zone, those facilities must be detectable and should include accessibility features consistent with those required in permanent facilities.<sup>245</sup> Access to existing pedestrian facilities, including transit stops, is required by these temporary routes.<sup>246</sup> GDOT states that safe passage of pedestrians and traffic through and around TTC zones and minimizing confusion and disruption to vehicular and pedestrian traffic should be top priorities.<sup>247</sup>

Prior to closing pedestrian facilities, contractors must place detectable barriers across the full length of the sidewalk to ensure that pedestrians who are blind or have low vision are aware of the closure.<sup>248</sup> GDOT also provides that prior to commencing construction, the contracting party must place advance closure signing at intersections to provide ample warning to pedestrians and avoid confronting them with the sudden appearance of mid-block worksites that might require pedestrians to cross the street to avoid the site.<sup>249</sup> These signs and barriers are not to intrude on the usable width of the pedestrian walkway and should be placed so as to protect at least a two-foot (0.61 meters) wide path.<sup>250</sup>

When using temporary walkways during construction the material must be firm, stable, and slip resistant.<sup>251</sup> To meet this standard, compacted soils, sand, crushed stone, and asphaltic pavement millings are prohibited as construction materials.<sup>252</sup> Section 150 recommends concrete with a broom finish or pressure treated plywood that is at least three-quarters of an inch (1.91 centimeters) thick.<sup>253</sup> Other materials are permitted if the contractor can prove the proposed temporary walkway meets the ADA Accessibility Guidelines (“ADAAG”) requirements.<sup>254</sup>

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<sup>243</sup> *Id.*

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

Temporary walkway surfaces must include detectable edging as defined by the MUTCD and should be five feet (1.52 meters) wide where practical.<sup>255</sup> When practicality is compromised, Section 150 provides that the walkway should meet a minimum width of two feet (0.61 meters), and if the five foot (1.52 meters) standard is not met, a five foot by five foot (1.52 x 1.52 meters) passing area must be provided every two hundred feet (61 meters) to allow pedestrians who are using wheelchairs to pass.<sup>256</sup> Additionally, temporary walkways must include curb cut wheelchair ramps that are constructed per the GDOT's requirements.<sup>257</sup> A detectable warning surface must also be included to provide notice, and must meet the standards for permanent detectable warning surfaces.<sup>258</sup>

Where a shift is made to the location of pedestrian traffic or to the flows of pedestrian traffic, Section 150 requires the contractor to ensure that all required, permanent safety features are installed and fully operational prior to making the change.<sup>259</sup> The non-exhaustive list of safety features includes: guardrails including their anchors and delineation with properly lapped panels; impact attenuators; traffic signals; warning devices; pavement markings including words, symbols, stop bars, and crosswalks; and roadway signs including those that are regulatory, warning, and/or guiding in nature.<sup>260</sup> While discretion is usually granted to the contractor regarding construction operations, GDOT also retains the right to restrict construction operations where a GDOT Engineer determines the means of construction is or would prove a serious hindrance to pedestrian traffic flow or is or would be needlessly disruptive or unnecessarily inconvenient to pedestrians.<sup>261</sup>

Additionally, Special Provision 150 requires that temporary audible information devices be placed and installed in accordance with the manufacturer's recommendations, and that the contractor be responsible for all necessary materials, labor, site preparation, maintenance, and removal associated with such devices.<sup>262</sup> While contractors are expected to cover the cost of such devices, they will be reimbursed for the cost of obtaining the device once for each of their projects.<sup>263</sup> After the initial purchase, the contractor retains possession of the device and can be reimbursed for its use on subsequent projects, despite not having to buy the product again.<sup>264</sup>

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<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

#### **d. Civil Society Engagement**

The Georgia Association of Metropolitan Planning Organizations (“GAMPO”) provides a forum for the exchange of ideas and experiences to enhance the practice of metropolitan planning across the state and educational opportunities to those engaged in metropolitan planning state-wide.<sup>265</sup> GAMPO allows state and federal transportation agencies to collectively disperse relevant information and guidelines regarding transportation to Metropolitan Planning Organizations (“MPOs”).<sup>266</sup> The Atlanta Regional Commission (“ARC”) is the GAMPO member that serves DeKalb and Fulton counties.<sup>267</sup> ARC engages in the following activities: transit, freight, Intelligent Transportation Systems (“ITS”), land use and bike/pedestrian planning, corridor, congestion management, socioeconomic studies, travel demand forecasting, air quality conformity analysis, vehicle emissions modelling, and commuter assistance programs.<sup>268</sup>

## **A6 City-Level Strategy, Law and Policy**

This section reports on city-level laws and ordinances in the City of Syracuse, New York, and the City of Atlanta, Georgia, regarding equality and inclusion, transport, planning, civil society engagement. This section also provides commentary on noteworthy accessibility issues and concerns.

### **A6.1 City of Syracuse**

#### **a. Equality and Inclusion**

The City of Syracuse maintains a policy of non-discrimination on the basis of disability.<sup>269</sup> It has designated an ADA coordinator to whom complaints can be addressed.<sup>270</sup> In January 2020, the Mayor of Syracuse announced the creation of the new office of Inclusion, Diversity, Equity and Accessibility.<sup>271</sup>

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<sup>265</sup> ‘Georgia Association of Metropolitan Planning Organizations’ GAMPO [www.gampo.org/](http://www.gampo.org/) (accessed 22 September 2020).

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> ‘Policy of Non-Discrimination on the Basis of Disability’ City of Syracuse <http://www.syracuse.ny.us/uploadedFiles/Departments/Personnel/Disability%20Policy.pdf> (accessed 7 February 2021).

<sup>270</sup> *Id.*

<sup>271</sup> Chris Baker, ‘Read the full text of Ben Walsh’s 2020 State of the City address’ (Syracuse.com, 1 November 2020) [www.syracuse.com/news/2020/01/read-the-full-text-of-ben-walshs-2020-state-of-the-city-address.html](http://www.syracuse.com/news/2020/01/read-the-full-text-of-ben-walshs-2020-state-of-the-city-address.html) (accessed 22 September 2020).

Similarly, Onondaga County maintains a policy of non-discrimination on the basis of disability.<sup>272</sup> The Onondaga County/Syracuse Commission on Human Rights focuses on addressing prejudice and discrimination on the basis of color, creed, sex, age, religion, nationality/national origin, language used for communication, disability, marital status, and sexual orientation.

The Human Rights Commission was founded in 1963 as an entity of the City of Syracuse. It later became a joint City of Syracuse - Onondaga County entity. In 1997 the Onondaga County/Syracuse Human Rights Commission became an entity that was housed in and supported by Onondaga County. The City retained the ability to appoint 6 members of the Commission.<sup>273</sup>

## **b. Transport**

Article 2, Section 24 of the City of Syracuse's Code of Ordinances provides for the continued maintenance of sidewalks.<sup>274</sup> Section 24-30 requires the owners and occupants of property to maintain the sidewalks that abut their property. That section states, "No owner of any land within the city limits shall allow any sidewalk adjoining said land to be at any time other than in good repair and in a good and safe condition. The occupant of each and every tenement or building in the city fronting upon any park, street or alley, or the owner or the agent of the owner of any vacant lot fronting as aforesaid, shall at all times keep the sidewalk along the said premises clean and free from all obstructions of any kind and shall keep closely cut all grass or weeds along said sidewalk."<sup>275</sup>

Further, "No owner of any land within the city limits fronting upon any street shall permit weeds, flowers, bushes, shrubs or grass along said street to grow to such a height as shall constitute, in the opinion of the commissioner of transportation or his designated representative, a visual obstruction to persons operating motor vehicles upon said street and in such event, the commissioner of transportation or the director of the division of home improvement may order the owner to cut said weeds, flowers, bushes, shrubs or grass to a height of two feet (0.61 meters) above the ground level."<sup>276</sup>

Section 24-3 addresses the removal of snow and ice from sidewalks, stating, "The owner, agent or occupant of any structure or vacant lot fronting upon any park, street or alley, shall clear or

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<sup>272</sup> 'County Executive Order No. 4-2016' (accessed 7 February 2021).

<http://www.ongov.net/humanrights/documents/TitleVI.ADA.LEP.Plan.docx>.

<sup>273</sup> 'About Us' Onondaga County Human Rights Commission <http://www.ongov.net/humanrights/about.html> (accessed 7 February 2021).

<sup>274</sup> City of Syracuse's Code of Ordinances. The City's website directs to a private company's web site for online access to the City's codes. Chapter 24 of its code is available at [https://library.municode.com/ny/syracuse/codes/code\\_of\\_ordinances?nodeId=REGGEOR\\_CH24STSI](https://library.municode.com/ny/syracuse/codes/code_of_ordinances?nodeId=REGGEOR_CH24STSI) (accessed 9 February 2021).

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

cause to be cleared, the sidewalk along the said premises from all snow and ice that may fall or accumulate thereon every day by six o'clock in the afternoon of the following day, except as hereinafter provided.”<sup>277</sup>

Further, “the owner, agent, or occupant of any structure or vacant lot fronting upon any park, street or alley within the area of the special assessment district, as described in chapter 38 herein, shall within four (4) hours after snow ceases to fall clear or cause to be cleared the sidewalk along the said premises from all snow and ice; the time between 8:00 p.m. to 8:00 a.m. the following day not being included in the above four-hour period nor shall the foregoing be applicable to Sundays.”<sup>278</sup> In the event of the accumulation of snow and snow ceases to fall: between 8:00 p.m. and 8:00 a.m. the following day, such snow shall be removed by 12:00 p.m. of said day except Sundays and on Sundays, such snow shall be removed by 12:00 p.m. the following Monday.”<sup>279</sup> Section 24-3 (3) states “In case the snow and ice on the sidewalk shall be frozen so hard that it cannot be removed without injury to the pavement, the owner, agent or occupant of any structure or vacant lot fronting thereon may within the time specified in the preceding paragraphs cause the sidewalk to be strewn with salt, sand or some similar suitable material and shall thereafter as soon as the weather shall permit, thoroughly clean such sidewalk.”<sup>280</sup>

Section 24-39-1 provides for sidewalk construction to facilitate use by “handicapped” persons. It states, “A sidewalk hereafter constructed or reconstructed on public property for public use within the city of Syracuse, or a person, firm, corporation, nonprofit corporation or organization, shall be constructed in a manner that will facilitate use by physically handicapped persons. At points of intersections between pedestrian and motorized lines of travel, and at other points where necessary to avoid abrupt changes in grade, a sidewalk shall slope gradually to street level so as to provide an uninterrupted line of travel. The city engineer shall prescribe standards of slope gradient, width and slip-resistant qualities which will assure that a sidewalk will accommodate a person in a wheelchair or other *handicapped*, persons.”<sup>281</sup> Further, “the city engineer may waive the aforementioned requirements if, in his opinion, good engineering practice requires such work not be performed at an intersection, and if, in his opinion, such construction creates a safety hazard.”<sup>282</sup> Interestingly, this ordinance has been in effect since 1974.

Local policies regarding the maintenance of sidewalks and removal of snow and ice such as Sections 24-4 and 24-30 in City of Syracuse’s Code of Ordinances may have an unintended

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<sup>277</sup> *Id.* at 24-3.

<sup>278</sup> *Id.*

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> *Id.* at 24-39.

<sup>282</sup> *Id.*



impact on individuals with disabilities who are owners, agents, or occupants of the property.<sup>283</sup> An individual with a disability who is unable to maintain the sidewalk or remove snow and debris due to the disability may need a process to request a reasonable modification of a policy, practice, or procedure. The ADA Title II regulations state "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."<sup>284</sup> In the case of snow removal, the City could provide a reasonable modification to the policy by cleaning the sidewalk in front of homes that are occupied by an individual with a disability.

For example, the City of Cambridge, Massachusetts has a Snow Exemption Program. A homeowner who has a disability or is elderly, and on a low income may qualify for the Program. Persons who qualify for the program will have their sidewalks shoveled by the City. In addition, the City's Council on Aging and Office of Workforce Development collaborated to develop a list of professional snow removal companies and students who want to earn money by shoveling. The residents pay the teens directly for their services.<sup>285</sup>

### **c. Planning**

The City of Syracuse is represented for planning purposes by the Syracuse Metropolitan Transportation Council ('SMTC'). It is the state-designated Metropolitan Planning Organization ('MPO'), responsible for administering continuous, cooperative, and comprehensive transportation planning for the Syracuse region. It produces short-term, long-term and annual plans for transportation in the region.<sup>286</sup>

The City of Syracuse has a planning department which addresses all manner of planning in the city.<sup>287</sup> Syracuse last adopted long-range plan in 2013.<sup>288</sup> As part of the plan, the city adopted a Complete Streets approach. The plan states "[t]he City of Syracuse shall provide complete streets that meet the needs of all people regardless of age, income or ability."<sup>289</sup> The plan envisions incorporating design elements and policies to "[d]etermine the best way to maintain year-around

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<sup>283</sup> *Id.* at 24-4, 24-30.

<sup>284</sup> 28 C.F.R. § 35.130(b)(7)(i)

<sup>285</sup> 'Effective Snow Removal for Pathways and Transit Stops' National Aging and Disability Transportation Center (January 2014) [www.nadtc.org/wp-content/uploads/NADTC-Effective-Snow-Removal-for-Pathways-Transit-Stops.pdf](http://www.nadtc.org/wp-content/uploads/NADTC-Effective-Snow-Removal-for-Pathways-Transit-Stops.pdf) (accessed 10 November 2020); 'Snow Center' City of Cambridge [www.cambridgema.gov/snow](http://www.cambridgema.gov/snow) (accessed 10 November 2020).

<sup>286</sup> 'SMTC Planning Process' <https://smtcmopo.org/about-us/planning-process/> (accessed 6 February 2021).

<sup>287</sup> 'Planning in Syracuse' <http://www.syr.gov.net/planning.aspx> (accessed 6 February 2021).

<sup>288</sup> "City of Syracuse Comprehensive Plan 2040"

<http://www.syr.gov.net/uploadedFiles/Comp%20Plan%20amended%202013-08-14.pdf> (accessed 6 February 2021).

<sup>289</sup> *Id.* at 31.

accessible sidewalks free of snow, ice, and plant overgrowth [and] ensure sidewalks are adequately maintained and safe and accessible to all users.”<sup>290</sup>

The City of Syracuse sets forth standards for commercial and residential sidewalk construction in Section 24-39 of Article 2 of the City’s Code of Ordinances.<sup>291</sup> 24-39 (1) provides “Sidewalks in the Central Business District of Syracuse, as herein defined, shall be constructed, reconstructed or repaired with concrete and in accordance with the current city assessment sidewalk specifications on file in the office of the city engineer, unless written authorization is issued by the commissioner of public works, authorizing alternate materials to be used on the sidewalk, in the event the worksite is not suitable for the aforementioned material reconstruction.

The Central Business District is defined as follows: Northern boundary - Erie Boulevard East and West; western boundary - West Street Arterial; southern boundary - Adams Street; and eastern boundary - Almond Street.”<sup>292</sup> 24-39(3) provides “Residential sidewalks and all sidewalk areas not herein specified shall be constructed, reconstructed or surfaced with concrete, street asphalt, fine asphaltic concrete, or such other artificial substance as the department of public works commissioner may direct.”<sup>293</sup>

Notwithstanding those sections, effective September 1, 2003, all residential sidewalks and all sidewalk areas must be constructed with, or if reconstructed use, concrete except as otherwise provided. The ordinance states, “In those areas where there are currently a combination of concrete sidewalks and pavers, any reconstruction shall consist of concrete and pavers, of same kind, like and quality in the same pattern which previously existed. Further provided that in cases of economic hardship, the common council shall be authorized to grant a waiver of these requirements upon application to the common council by the property owner. The finished surface must have a smooth, uniform grade, free from irregularities.”<sup>294</sup>

Unlike many municipalities in Onondaga County, the City of Syracuse does provide for ADA accessibility in its Code of Ordinances. Section 24-39.1 provides “A sidewalk hereafter constructed or reconstructed on public property for public use within the city of Syracuse, or a person, firm, corporation, nonprofit corporation or organization, shall be constructed in a manner that will facilitate use by physically handicapped persons. At points of intersections between pedestrian and motorized lines of travel, and at other points where necessary to avoid abrupt changes in grade, a sidewalk shall slope gradually to street level so as to provide an uninterrupted line of travel. The city engineer shall prescribe standards of slope gradient, width and slip-resistant qualities which will assure that a sidewalk will accommodate a person in a

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<sup>290</sup> *Id.* at 32.

<sup>291</sup> *Supra* note 274.

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

wheelchair or other handicapped, persons.”<sup>295</sup> Further, “the city engineer may waive the aforementioned requirements if, in his opinion, good engineering practice requires such work not be performed at an intersection, and if, in his opinion, such construction creates a safety hazard.”<sup>296</sup>

In 2019, the Syracuse Common Council approved \$1.2 million in funds to reconstruct deteriorated sidewalks and make other rights of way more accessible for people with disabilities through its implementation of the Accessible Sidewalk Program.<sup>297</sup> Sidewalks will be rebuilt at the request of a property owner or if condemned by the city.<sup>298</sup> Once rebuilt, the new sidewalks will have “handicapped” accessible corners and curbs.<sup>299</sup>

#### **d. Civil Society Engagement**

Syracuse has designated an ADA coordinator to whom complaints can be addressed, including by NGOs representing people with disabilities.

#### **e. Noteworthy Issues or Concerns**

Sidewalk conditions in Syracuse have risen to substantial political concern. The state of the sidewalks has led to proposals from SMTC, city council members and the mayor.<sup>300</sup> In 2018, SMTC produced a report following meetings with the then mayor, discussing snow clearance proposals, designating high priority activities and streets, other items such as costs.<sup>301</sup> The report focused on prioritizing plowing sidewalks along routes to allow access to schools and grocery stores and other neighborhood destinations.<sup>302</sup> In the 2017 mayoral campaign, the Mayor Walsh campaigned on fixing the sidewalks.<sup>303</sup>

Syracuse is in a region that receives substantial snowfall, which, if not cleared from sidewalks, can make them inaccessible to people with disabilities. Under Section 24-3 (1) of the city’s Code of Ordinances, the owner, agent, or occupant of any structure or vacant lot fronting upon any

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<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> Casey Darnell, ‘City council approves \$1.2 million to fix Syracuse sidewalks’ (The Daily Orange 2018) <http://dailyorange.com/2019/03/city-council-approves-1-2-million-fix-syracuse-sidewalks/> (accessed 15 October 2020).

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> ‘Councilors: Syracuse should maintain sidewalks for a truly walkable community (Commentary)’ (7 July 2020) <https://www.syracuse.com/opinion/2020/07/councilors-syracuse-should-maintain-sidewalks-for-a-truly-walkable-community-commentary.html> (accessed 10 February 2021).

<sup>301</sup> ‘City Sidewalk Snow Clearing: High Priority Streets – Technical Memorandum’ SMTC (18 September 2018).

<sup>302</sup> *Id.* at 2.

<sup>303</sup> ‘City officials eyeing 3 options to fix and shovel Syracuse’s sidewalks’ Syracuse.com (27 February 2018) [https://www.syracuse.com/news/2018/02/city\\_officials\\_eyeing\\_3\\_options\\_to\\_fix\\_and\\_shovel\\_syracuses\\_sidewalks.html](https://www.syracuse.com/news/2018/02/city_officials_eyeing_3_options_to_fix_and_shovel_syracuses_sidewalks.html) (accessed 12 February 2021).

park, street or alley, shall clear or cause to be cleared, the sidewalk along the said premises from all snow and ice that may fall or accumulate thereon every day by six o'clock in the afternoon of the following day, except as provided by the code.<sup>304</sup>

Further, 24-3 (3) states that if snow freezes to the point where it cannot be removed without damaging the sidewalk, owners and occupants of adjoining property must put salt, sand, or some other material on the snow and clear the snow when it becomes possible to do so.<sup>305</sup> Under Section 24-4, no person shall sweep, throw or deposit or cause to be swept, thrown, or deposited any snow or ice into any street gutter or public square or park, or on any sidewalk within the city, from lands or premises abutting or adjoining any such street gutter, public square, park or sidewalk.<sup>306</sup> Under Section 24-5, people who do not clear snow as required may be fined up to \$100 and the city may seek injunctive relief pursuant to 1-8 of the Revised General Ordinances.<sup>307</sup>

In considering plans to coordinate snow plowing by the city, as opposed to relying on private property owners, "Corey Driscoll Dunham, the city's director of operations, traveled to Rochester ... to meet with officials about their sidewalk program. Rochester plows all 880 miles of its city sidewalks after every new 4 inches of snow.... She said Rochester also works closely with disability groups and advocacy groups to establish best practices."<sup>308</sup> Syracuse had done little to enforce sidewalk snow clearing ordinances and the 2015 law banning plows from blocking sidewalks.<sup>309</sup> Mayor Walsh proposed more enforcement in 2018 of snow removal ordinances.<sup>310</sup> Subsequently, the city began a sidewalk plowing plan, spending \$250,000 to clear priority sidewalks.<sup>311</sup> However, in response budget pressures due to Covid-19, the city has cancelled the sidewalk clearing program.<sup>312</sup> "For now, the city is working on a more holistic sidewalk plan that would include city ownership of sidewalks and responsibility for maintenance and snow removal. That plan would need to pay for itself, possibly with a frontage fee for property

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<sup>304</sup> Supra note 274.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> 'City officials eyeing 3 options to fix and shovel Syracuse's sidewalks' Syracuse.com (27 February 2018) [https://www.syracuse.com/news/2018/02/city\\_officials\\_eyeing\\_3\\_options\\_to\\_fix\\_and\\_shovel\\_syracuses\\_sidewalks.html](https://www.syracuse.com/news/2018/02/city_officials_eyeing_3_options_to_fix_and_shovel_syracuses_sidewalks.html) (accessed 12 February 2021).

<sup>309</sup> 'Syracuse has made little effort to enforce 2015 law banning plows from blocking sidewalks' Syracuse.com (11 January 2018) (accessed 12 February 2021).

<sup>310</sup> 'Mayor Walsh's plan: Tickets, towing, crackdown on snow removal scofflaws' Syracuse.com [https://www.syracuse.com/news/2018/01/walsh\\_sidewalk\\_plan.html](https://www.syracuse.com/news/2018/01/walsh_sidewalk_plan.html) (12 January 2018) (accessed 12 February 2021).

<sup>311</sup> 'Syracuse launches expanded sidewalk snow plowing program' Syracuse.com (12 November 2019) (accessed 12 February 2021).

<sup>312</sup> 'Syracuse snow plow jobs spared from massive furloughs so roads can be cleared' Syracuse.com (1 September 2020) (accessed 12 February 2021).

owners.”<sup>313</sup> The SMTC has “agreed to support the City’s investigation into the feasibility of a city-wide sidewalk maintenance program, to be developed and administered by the City of Syracuse.”<sup>314</sup>

## **A6.2 City of Atlanta**

### **a. Equality and Inclusion**

As required by the ADA, the City of Atlanta has drafted and is implementing an ADA Transition Plan. Atlanta’s Plan appoints a City ADA Coordinator (“Coordinator”) who is responsible for coordinating Atlanta’s efforts to comply with Title II of the ADA and applicable regulations. The Plan provides that requests for accommodations and grievances should be addressed to the Coordinator who will respond within fifteen calendar days.<sup>315</sup>

### **b. Transport**

In 2019, Atlanta created a Department of Transportation to “design, operate, manage and maintain the City of Atlanta’s transportation system and transit projects and infrastructure.”<sup>316</sup> This was done to prioritize accessibility and equity in Atlanta.<sup>317</sup>

In 2009, the City of Atlanta’s facilities, programs, services, and activities were audited by the Disability Rights Section of the Department of Justice’s Civil Rights Division. The audit focused on the City’s compliance with several title II requirements.<sup>318</sup>

After the audit, an agreement was reached between the city and the United States. Among other actions, the City agreed to, within three months: (1) implement and report to the Department its written process for soliciting and receiving input from persons with disabilities regarding the accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations; (2) identify and report to the Department all streets, roads, and highways that have been constructed or altered since January 26, 1992. Under the agreement, paving, repaving, or resurfacing a street, road, or highway was considered an alteration and filling a pothole was not considered an alteration; and (3) provide curb ramps or other sloped areas complying with the

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<sup>313</sup> *Id.*

<sup>314</sup> ‘Policy Committee Meeting Minutes’ SMTC (23 September 2020).

<sup>315</sup> ‘COA ADA Compliance’ City of Atlanta, GA [www.atlantaga.gov/government/mayor-s-office/executive-offices/office-of-enterprise-assets-management/ada-compliance](http://www.atlantaga.gov/government/mayor-s-office/executive-offices/office-of-enterprise-assets-management/ada-compliance) (accessed 22 September 2020).

<sup>316</sup> ‘Atlanta Department of Transportation’ Atlanta City Council <https://citycouncil.atlantaga.gov/council-members/department-of-transportation-study> (accessed 22 September 2020).

<sup>317</sup> ‘Create a City of Atlanta Department of Transportation for a cohesive transportation planning and project delivery process that better leverages resources’ Atlanta Bicycle Coalition [www.atlantabike.org/atldot](http://www.atlantabike.org/atldot) (accessed 22 September 2020).

<sup>318</sup> ‘SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ATLANTA, GEORGIA UNDER THE AMERICANS WITH DISABILITIES ACT’ [www.ada.gov/atlanta\\_pca/atlanta\\_sa.htm](http://www.ada.gov/atlanta_pca/atlanta_sa.htm) (accessed 28 September 2020).

Standards or UFAS at all intersections of the streets, roads, and highways identified under this paragraph having curbs or other barriers to entry from a street level pedestrian walkway.<sup>319</sup>

The City agreed, beginning no later than three months after the effective date of the agreement, to: (1) provide curb ramps or other sloped areas complying with the [ADA] Standards or UFAS at any intersection having curbs or other barriers to entry from a street level pedestrian walkway, whenever a new street, road, or highway is constructed or altered; (2) identify all street level pedestrian walkways that have been constructed or altered since January 26, 1992. Paving, repaving, or resurfacing a walkway was considered an alteration for the purposes of the agreement; (3) provide curb ramps or other sloped areas complying with the [ADA] Standards or UFAS at all places where a street level pedestrian walkway identified under this paragraph intersects with a street, road, or highway; and (4) provide curb ramps or other sloped areas complying with the Standards or UFAS at all newly constructed or altered pedestrian walkways where they intersect a street, road, or highway.<sup>320</sup>

### **c. Planning**

Atlanta has raised revenue to improve infrastructure. In 2015, voters supported the \$250 million “Renew Atlanta Bond” to address the backlog of needed infrastructure improvements across the City. In 2016, the City’s Transportation Special Purpose Local Option Sales Tax (“TSPLOST”) generated approximately \$260 million to fund transportation projects across the city.<sup>321</sup>

However, that funding was not enough to address the full scope of the needed projects.<sup>322</sup> As a result, the initial list of projects to be funded had to be reprioritized, reducing planned funding for \$40 million of sidewalk upgrades and \$35 million for installation of curb cuts to \$5 million for curb cuts only.<sup>323</sup> As of September 2020, of the fourteen curb cut projects to be completed with the \$5 million, eleven are unfinished.<sup>324</sup> Of those eleven, three have yet to begin and five are still in the planning and developing stages.<sup>325</sup>

The City, the counties in which it lies, the State of Georgia, and many states across the United States receive funding through the Federal Safe Routes to School Program (“SRTS”).<sup>326</sup> Funds from this program are earmarked for infrastructure improvements and non-infrastructure

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<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> ‘2019 Prioritization & Rebaselining’ Renew Atlanta TSPLOST [www.renewatlantabond.com/prioritization-and-rebaselining](http://www.renewatlantabond.com/prioritization-and-rebaselining) (accessed 22 September 2020).

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

<sup>325</sup> *Id.*

<sup>326</sup> ‘News & Highlights’ SafeRoutes Partnerships <https://saferoutespartnership.org/> (accessed 22 September 2020).

activities that encourage and enable students who live within a 2-mile radius (3.2 km) of their school to walk to school.<sup>327</sup>

Atlanta's Transportation Plan 2018 ("ATP") sets forth goals regarding sidewalk accessibility: (1) developing a citywide sidewalk inventory; (2) creating a dedicated fund for sidewalk repair; (3) and developing and implementing a public campaign to market the message that designing streets for everyone "makes life better."<sup>328</sup>

In its "One Atlanta: Strategic Transportation Plan," the city sets forth its blueprint for creating a safer, more equitable and sustainable transportation system and to meet the goals in the ATP.<sup>329</sup> In particular, the plan's "Vision Zero" addresses needed steps to reduce pedestrian injuries and fatalities on Atlanta's streets.<sup>330</sup>

As part of its Community Works Project, Atlanta initiated a Complete Streets Policy<sup>331</sup> in an effort to ensure that its streets are designed and operated to enable safe access for all users.<sup>332</sup> The City believes its implementation of the Policy has made its streets easy to cross and has made walking to shops and bicycling to work easier for all of its residents.<sup>333</sup> Also, in its Community Works Project workplan for 2017-2021, the City addresses roadways, stating that major roadways leading to employment centers, commercial districts, shopping destinations, transit, government centers, entertainment districts, hospitals, parks and other common use areas will be resurfaced.<sup>334</sup> The City then expands its definition of roadway projects to include curb repairs, ADA ramp construction, sidewalk, and sign repairs.<sup>335</sup>

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<sup>327</sup> 'About Georgia Safe Routes to School' Safe Routes to School [www.saferoutesga.org/content/about-georgia-safe-routes-school](http://www.saferoutesga.org/content/about-georgia-safe-routes-school) (accessed 22 September 2020).

<sup>328</sup> 'Autonomous Vehicles: How U.S. Cities are Preparing'

[https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/25088/JWhitney\\_ExitProj\\_Final.pdf?sequence=1&isAllowed=y](https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/25088/JWhitney_ExitProj_Final.pdf?sequence=1&isAllowed=y) (accessed 22 September 2020).

<sup>329</sup> City of Atlanta 'One Atlanta Strategic Transportation Plan' [www.atlantaga.gov/Home/ShowDocument?id=43742](http://www.atlantaga.gov/Home/ShowDocument?id=43742) (accessed 22 September 2020).

<sup>330</sup> *Id.*

<sup>331</sup> City of Atlanta '2017-2021 Capital Improvements Program & Community Work Program' [www.atlantaga.gov/home/showdocument?id=40523](http://www.atlantaga.gov/home/showdocument?id=40523) (accessed 22 September 2020).

<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> *Id.*

<sup>335</sup> *Id.*

#### **d. Civil Society Engagement**

The Midtown Alliance is a non-profit entity that was the driving force behind the revitalization of Atlanta's Midtown District,<sup>336</sup> which is celebrated as Atlanta's most accessible neighborhood. The Midtown Alliance is a coalition of leading business and community leaders<sup>337</sup> that partners with the Midtown Improvement District, City and State agencies to make physical improvements to ensure a safe, vibrant, accessible, and navigable urban district, including public right-of-way improvements and other special projects.<sup>338</sup>

Since 2001, the Midtown Alliance has dedicated itself to enhancing the pedestrian experience in Midtown, including installing over fifteen miles of new sidewalk, four miles of new bicycle facilities, over 700 street and pedestrian lights, three new public plazas, and 900 new shade trees along the right-of-way.<sup>339</sup> The Alliance also partners with the city, local businesses, and organizations to ensure routine sidewalk and curb ramp maintenance.<sup>340</sup>

Pedestrians Educating Drivers on Safety ("PEDS") is an Atlanta advocacy group founded in 1996 by a woman with disabilities who hoped that educating drivers would make her commute, and that of other Atlantans, safer.<sup>341</sup> PEDS now advocates for pedestrians across the state of Georgia.<sup>342</sup> Some of its main functions are helping people with disabilities document barriers and find representation to ensure the removal of those barriers, adequate compensation for the difficulty suffered by the existence of said barriers, and providing workshops to educate design professionals and the community on pedestrian safety.<sup>343</sup> PEDS also conducts walking audits to document needs and advocates for the City to distribute resources to better serve pedestrians of all abilities.<sup>344</sup> Most notably, PEDS helped to develop the Georgia Pedestrian Safety Action Plan adopted by the GDOT in 2017 and is serving on the Stakeholder Committee developing updates to GDOT's Pedestrian and Streetscape Guideline.<sup>345</sup>

In 2009, the U.S. Department of Justice ("DOJ") audited the City and found that it was ADA non-compliant.<sup>346</sup> PEDS maintains that the City failed to fulfill its responsibilities to install and

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<sup>336</sup> 'Midtown's Driving Force' Midtown Atlanta [www.midtownatl.com/about/midtown-alliance](http://www.midtownatl.com/about/midtown-alliance) (accessed 22 September 2020).

<sup>337</sup> *Id.*

<sup>338</sup> 'What We're Working On' Midtown Atlanta [www.midtownatl.com/projects](http://www.midtownatl.com/projects) (accessed 14 October 2020).

<sup>339</sup> 'We have a 40-year reputation for getting things done in Midtown Atlanta' Midtown Atlanta, [www.midtownatl.com/about/programs-and-projects/capital-improvements](http://www.midtownatl.com/about/programs-and-projects/capital-improvements) (accessed 22 September 2020).

<sup>340</sup> *Id.*

<sup>341</sup> 'Services' PEDS [www.peds.org/about-us/services/](http://www.peds.org/about-us/services/) (accessed 22 September 2020).

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> 'Pedestrian Safety' PEDS [www.peds.org/campaigns/pedestrian-safety/](http://www.peds.org/campaigns/pedestrian-safety/) (accessed 22 September 2020).

<sup>346</sup> 'SETTLEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ATLANTA, GEORGIA UNDER THE AMERICANS WITH DISABILITIES ACT' [www.ada.gov/atlanta\\_pca/atlanta\\_sa.htm](http://www.ada.gov/atlanta_pca/atlanta_sa.htm) (accessed 28 September 2020).



repair curb ramps on streets that had been resurfaced after the implementation of the ADA by the 2012 deadline established through a settlement agreement between the City and DOJ.<sup>347</sup>

Additionally, PEDS states that while Atlanta’s officials have expressed strong support for sidewalk maintenance, they have not allotted funding necessary to address the broken and non-compliant sidewalks in the City.<sup>348</sup>

In keeping with the ADPW’s trend of non-enforcement, PEDS reports that in 2016 the City received 131 permits for sidewalk closure, but only four included comprehensive temporary access plans required by state, county, and city laws and ordinances.<sup>349</sup> Of those, three mentioned providing overhead protection, one confirmed provision of accessible curbs, and none of the plans referred to the provision of protected walkways in the road.<sup>350</sup> PEDS holds that all of the 131 permits were granted despite their lacking maps or sketches depicting temporary traffic control systems and temporary access plans.<sup>351</sup>

In 2016, PEDS volunteers completed six separate audits, all of which found worksites that did not comply with federal, state, county, and city laws and ordinances.<sup>352</sup> Additionally, PEDS documented conversations with developers who said that ADPW had denied their requests to perform work to meet ADA requirements.<sup>353</sup>

PEDS’ concerns are echoed by other people with disabilities, as evidenced by a class action ADA lawsuit against the city. In *Lawson v. The City of Atlanta*, filed in May 2018, the plaintiffs, on behalf of all Atlantans with disabilities, allege that navigating sidewalks and intersections in their present condition is physically painful, dangerous, and that the state of disrepair is the “result of a systemic, knowing failure by the City to maintain its public rights of way, on the whole, in a manner to ensure that they are equally accessible to people with mobility impairments.”<sup>354</sup>

The complaint further alleges that the city “has been aware for many years of defects in a substantial percentage of its public rights of way, and has failed to budget sufficient funds or to commit sufficient resources to address the problem and maintain rights of way in a safe, ADA-

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<sup>347</sup> *Id.*

<sup>348</sup> ‘Pedestrian Safety’ PEDS [www.peds.org/campaigns/pedestrian-safety/](http://www.peds.org/campaigns/pedestrian-safety/) (accessed 22 September 2020).

<sup>349</sup> *Id.*

<sup>350</sup> *Id.*

<sup>351</sup> *Id.*

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

compliant condition.”<sup>355</sup> The case is currently pending; however the plaintiffs’ attorneys state that they are optimistic that a settlement will resolve many of the infrastructure problems.<sup>356</sup>

### **e. Noteworthy Issues and Concerns**

There are no laws in the State of Georgia, City of Atlanta, Dekalb or Fulton Counties providing pedestrians with a private right to of action to sue over the failure to provide or ensure accessible sidewalks or rights of way under Georgia law. Similarly, none of the entities discussed above provide laws or administrative procedures with which pedestrians, or an entity on behalf of a pedestrian, could enforce their rights as a pedestrian (apart from a complaint to an ADA coordinator). As a result, and as evidenced by the aforementioned class action suit against the City of Atlanta, pedestrians with disabilities are left to sue under the ADA in an effort to preserve their rights. Non-disabled pedestrians in Georgia would be left to bring general civil suits against the entity in violation of its duties of maintenance and provision of pedestrian accommodations.

## **A7 County-Level Strategy, Law, and Policy**

This section reports on county-level laws and ordinances in the counties of Onondaga, New York, and Fulton and DeKalb, Georgia, regarding equality and inclusion, transport, planning, civil society engagement, and commentary on noteworthy accessibility issues and concerns.

### **A7.1 Onondaga County Equality and Inclusion**

#### **a. Equality and Inclusion**

Onondaga County maintains a policy of non-discrimination on the basis of disability.<sup>357</sup> It also has designated an ADA coordinator to whom complaints can be addressed.<sup>358</sup> The Onondaga County/Syracuse Commission on Human Rights focuses on addressing prejudice and discrimination on the basis of color, creed, sex, age, religion, nationality/national origin, language used for communication, disability, marital status, and sexual orientation. The Human Rights Commission was founded in 1963 as an entity of the City of Syracuse. It later became a joint City of Syracuse - Onondaga County entity. In 1997 the Onondaga County/Syracuse

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<sup>355</sup> *Id.*

<sup>356</sup> ‘City of Atlanta Faces Class-Action Lawsuit’ PEDS [www.peds.org/class-action-lawsuit/](http://www.peds.org/class-action-lawsuit/) (accessed 22 September 2020).

<sup>357</sup> ‘County Executive Order No. 4-2016’ (accessed 7 February 2021).

<http://www.ongov.net/humanrights/documents/TitleVI.ADA.LEP.Plan.docx>.

<sup>358</sup> ‘Onondaga County Title VI/ADA/LEP Complaint Procedure’ Onondaga County <http://www.ongov.net/humanrights/TitleVI.html> (accessed 12 February 2021).

Human Rights Commission became an entity that was housed in and supported by Onondaga County. The City retained the ability to appoint 6 members of the Commission.<sup>359</sup>

The Human Rights Commission Director serves as the County's coordinator for its non-discrimination policies under Title VI of the federal Civil Rights Act and the Americans with Disabilities Act.<sup>360</sup> In January 2020, Onondaga County also established the Office of Diversity and Inclusion.<sup>361</sup>

## **b. Transport**

Article XX, Section 20.02 (h) and (i) of the Onondaga County Code provides that “except as may otherwise be provided in the Chart of this Code, the Commissioner of Transportation shall: provide, within the capabilities of the office, such services as may be required for the construction, repair, alteration, and demolition of all County highways, bridges, parking fields, drives, buildings, parks, and recreational facilities, preserves, erosion, projects, walks, and other facilities in the nature of public works within County jurisdiction or where contractually or otherwise appropriate or lawful and where not otherwise specifically assigned in the chart of this code; provide, within the capabilities of the office, such services as may be required for the maintenance, supervision, repair, and custodial care of all highways, bridges, parking fields, drives, walks and related facilities within County jurisdiction or where contractually or otherwise appropriate and lawful and where not otherwise specifically assigned in the Charter of this code.”<sup>362</sup>

Section 20.04 (a), states “there shall be Division of Highways under the direction of a Deputy Commissioner of Transportation-Highways within the Department of Transportation. The Deputy Commissioner shall be appointed in the manner, subject to the conditions and for the term prescribed by the Code. The powers and duties of the [Deputy Commissioner] shall be to be responsible, except where otherwise specifically assigned in the Charter or this Code, for the construction, maintenance, supervision, repair, alteration, demolition, custodial care of, and snow removal from, all County highways, bridges, parking fields, drives, walks and related facilities within County jurisdiction or where contractually or otherwise appropriate and lawful.”<sup>363</sup>

In Onondaga County, thirty-six out of forty-two municipal areas have an ordinance pertaining to sidewalk maintenance.<sup>364</sup> Five towns and the Onondaga Native American Nation do not have any

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<sup>359</sup> ‘About Us’ Onondaga County Human Rights Commission <http://www.ongov.net/humanrights/about.html> (accessed 7 February 2021).

<sup>360</sup> *Id.*

<sup>361</sup> Local Law No. 7-2019 [ongov.net/legislature/minutes/meetmins/documents/LLNo.7-2019-OCR.pdf](http://ongov.net/legislature/minutes/meetmins/documents/LLNo.7-2019-OCR.pdf) (accessed 22 September 2020).

<sup>362</sup> Onondaga County Code 20.02.

<sup>363</sup> *Id.* at 20.04.

<sup>364</sup> *Id.*

codes or ordinances relevant to sidewalks.<sup>365</sup> New York State Property Maintenance Code Sec. 302 requires maintenance of the exterior of a property, including sidewalks.<sup>366</sup> About half of the municipal areas in Onondaga County either reiterate or enlarge this obligation.<sup>367</sup>

Onondaga County municipalities require upkeep of sidewalks and clearing snow and ice to ensure accessibility.<sup>368</sup> The ordinances typically require adjacent property owners to maintain sidewalks.<sup>369</sup> If a property owner is found non-compliant, half of the municipalities institute some type of penalty,<sup>370</sup> with the majority of those imposing a fine or requiring the owner to reimburse the municipality for the cost of repairing the sidewalk. Municipalities allow for this fee to be included in subsequent property tax assessments and/or specify that it may be paid over-time,<sup>371</sup> with some specifying a rate of interest to be such costs.<sup>372</sup> Other municipalities retain the right to levy a fine for noncompliance without additional specificity.<sup>373</sup>

Bus service in Onondaga County is provided by three independent carriers and Centro, which is operated by the Central New York Regional Transportation Authority.<sup>374</sup> Call-A-Bus is a public paratransit service of the Central New York Regional Transportation Authority for people with disabilities who are not able to access other public transportation.<sup>375</sup> Call-A-Bus provides door-to-door trips beginning and ending within corridors within  $\frac{3}{4}$  mile on either side of an existing Centro bus route.<sup>376</sup>

### **c. Planning**

Municipalities in Onondaga County have regulations that specify when sidewalks are necessary or when they can be required by local authorities.<sup>377</sup> The typical trigger for considering the creation of a sidewalk is the presence of an adjacent arterial street.<sup>378</sup> About half of the municipalities included language in the ordinance substantially similar to “sidewalks shall be

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<sup>365</sup> *Id.*

<sup>366</sup> NYS Property Maintenance Code 302.

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

<sup>374</sup> ‘Transportation’ Onondaga County, New York [www.ongov.net/about/transportation.html](http://www.ongov.net/about/transportation.html) (accessed 22 September 2020).

<sup>375</sup> ‘Transportation’ PEACE Inc. [www.peace-caa.org/programs-services/seniors-services/transportation/](http://www.peace-caa.org/programs-services/seniors-services/transportation/) (accessed 20 September 2020).

<sup>376</sup> *Id.*

<sup>377</sup> Onondaga County Code; NYS Property Maintenance Code.

<sup>378</sup> ‘Municipal Codes’ [http://walkbikecny.org/wp-content/uploads/2014/06/SSM\\_ch3\\_Municipal\\_Codes.pdf](http://walkbikecny.org/wp-content/uploads/2014/06/SSM_ch3_Municipal_Codes.pdf) (accessed 12 February 2021).

installed on one or both sides of a street or road as the board may require depending on local conditions or public safety.”<sup>379</sup> Typically, final decisions on whether the construction of a new sidewalk will take place is left to each municipality’s Planning Board or a similar body.<sup>380</sup>

Municipal ordinances have sidewalk specifications including width and required construction materials.<sup>381</sup> The most common material specified by the ordinances is concrete, with some Villages and Towns requiring a certain type (e.g., the Village of Elbridge requires Class C Concrete and the Village of Liverpool requires Portland Cement Concrete). Some ordinances permit a variation from the stated material upon approval.<sup>382</sup> For example, the Village of Elbridge states that gravel, crushed, stone, brick, and other materials may be permitted.<sup>383</sup> With regard to width, most ordinances list the required width of the sidewalk as four feet (1.22 meters).<sup>384</sup> The range of accepted widths found within ordinances ranges from two feet (0.61 meters) to five feet (1.52 meters).<sup>385</sup>

Ordinances may include more than just material and width specifications. Some municipal ordinances state that the sidewalk specifications only apply to certain locales. For example, the Towns of Pompey and Cicero state that their sidewalk specifications apply along arterial streets while the Towns of LaFayette and West Monroe have requirements that apply to residential or commercial areas.<sup>386</sup> Some municipalities require sidewalks to have a minimum strength, such as the Village of Elbridge who requires sidewalks to have a minimum strength of 4,500 pounds (2041 kilograms) and the Village of Jordan who requires sidewalks to have a minimum strength of 3,000 pounds (1361 kilograms).<sup>387</sup>

#### **d. Civil Society Engagement**

Civil society organizations can bring complaints to the county ADA coordinator or human rights council described above, amongst other issues.

#### **e. Noteworthy Issues or Concerns**

Only three Onondaga municipalities—the City of Syracuse, the Town of Dewitt, and the Town of Marcellus—have ordinances explicitly requiring ADA compliance or accessibility.<sup>388</sup> However, as of 2019, the Town of Dewitt has yet to implement snow removal plans to meet

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<sup>379</sup> *Id.*

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

accessibility requirements<sup>389</sup> and its ordinances state that the Town may place snow on sidewalks without any obligation to go back and clear it.<sup>390</sup>

## **A7.2 Fulton and DeKalb Counties**

The majority of the City of Atlanta lies within the boundaries of Fulton County, while roughly ten percent of the city lies within DeKalb County.<sup>391</sup> Both Fulton and DeKalb are bound by all Georgia state laws discussed previously.<sup>392</sup> DeKalb and Fulton are two of the three Georgia counties that provide information and campaigns targeting pedestrian safety.<sup>393</sup>

### **a. Equality and Inclusion**

In 2011, Fulton County began conducting a multi-phase Self Evaluation and Transition Plan in an effort to comply with the 2010 revised requirements to the ADA and the ADA Standards for Accessible Design.<sup>394</sup> The latest plan, published in January 2019, provides that the county may not deny individuals with disabilities equal opportunity to participate as members of advisory boards or commissions, deny individuals with disabilities equal opportunity to participate in services, programs or activities, nor make selections that have the effect of excluding or discriminating against individuals with disabilities in determining the location of facilities.<sup>395</sup> It documents short to long range plans to bring components into compliance.

Fulton County houses its ADA compliance and complaint process in the Office of Diversity & Civil Rights Compliance (“DCRC”). It posts an ADA/504 compliance statement and accepts access and other complaints.<sup>396</sup>

### **b. Transport**

According to Fulton and DeKalb Counties, public transit is mostly accessible to individuals with disabilities through the Metropolitan Atlanta Rapid Transit Authority (“MARTA”),<sup>397</sup> but up to 40% of residents may need specialized transportation.<sup>398</sup>

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<sup>389</sup> *Id.*

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> *Id.*

<sup>393</sup> *Id.*

<sup>394</sup> ‘News & Updates’ Fulton County, <https://www.fultoncountyga.gov/-/media/Forms/DCRC-Forms/Diversity-and-Civil-Rights-Compliance-ADA/FinalTransitionPlanOka20181228docx.ashx> (accessed 6 June 2021).

<sup>395</sup> *Id.*

<sup>396</sup> ‘Equal Opportunity and Nondiscrimination’ Fulton County, GA <https://www.fultoncountyga.gov/services/other-government/equal-opportunity-and-nondiscrimination>. (accessed 6 June 2021).

<sup>397</sup> *Id.*

<sup>398</sup> *Id.*

County residents have access to Empowerline, which provides round-trip transportation for seniors and individuals with disabilities through shuttles on regular routes and group trips for social activities by vans, rideshares, and other services.<sup>399</sup> The services are free or low cost and can be on-demand or scheduled, but there are service limits and riders must be registered for the service in their community.<sup>400</sup> The counties also offer programs run by local organizations, such as Lifespan, ICARE, and the American Cancer Society Road to Recovery, where volunteers drive people to medical appointments or errands.<sup>401</sup>

### **c. Planning**

DeKalb County has adopted a Complete Streets Policy as discussed above. Georgia's Pedestrian Safety Action Plan ("PSAP") for 2018-2022 reports that eighty percent of pedestrian-vehicle collisions in the state of Georgia result in an injury.<sup>402</sup> Fulton County's injury rate exceeds the state average, reporting an eighty-seven percent injury rate while DeKalb County came in just under the state average, at seventy-nine percent.<sup>403</sup> Between 2011 and 2015, Fulton County reported 119 fatalities and 2,637 injuries resulting from such crashes.<sup>404</sup> DeKalb reported 96 fatalities and 1,955 injuries.<sup>405</sup> Both counties report a fatality rate of four percent.<sup>406</sup> The most recent PSAP identifies a number of "focus corridors," the top locations in Georgia with clear patterns of pedestrian crashes resulting in serious or fatal injuries.<sup>407</sup> Together, the two counties share one such corridor, while Fulton County houses seven of its own and DeKalb houses three.<sup>408</sup>

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<sup>399</sup> 'Transportation for Seniors and Individuals with Disabilities' Empowerline, [www.empowerline.org/services/transportation-options](http://www.empowerline.org/services/transportation-options) (accessed 22 September 2020); 'Promote an Accessible and Equitable Transportation System' The Atlanta Region's Plan, [www.atlantaregionsplan.org/promote-accessible-and-equitable-transportation/](http://www.atlantaregionsplan.org/promote-accessible-and-equitable-transportation/) (accessed 22 September 2020).

<sup>400</sup> *Id.*

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*

<sup>405</sup> *Id.*

<sup>406</sup> *Id.*

<sup>407</sup> *Id.*

<sup>408</sup> *Id.*

## **B Laws that can be used only by or on behalf of pedestrians with specific characteristics**

### **B1.1 Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973**

#### **a. Description and Examples**

Under the Title II of the ADA, public entities must ensure that no qualified individual with a disability, on the basis of disability, is excluded from participation in, or denied the equal benefits of, the services, programs, and activities of a public entity, or face discrimination by any such an entity.<sup>409</sup>

Title II does not simply prohibit outright denial of services; it also prohibits unequal participation in such services. As defined by title II's implementing regulation, a public entity may not deny a qualified individual with a disability, "an opportunity to participate that is not equal to that afforded others," nor may it, "otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity" enjoyed by others receiving the services.<sup>410</sup> If a requested modification is needed to ensure full and equal enjoyment by a person with a disability, then the modification is necessary to prevent discrimination on the basis of disability.<sup>411</sup>

Section 504, like Title II, prohibits disability-based discrimination.<sup>412</sup> ("No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . ."). In all ways relevant to this discussion, Title II and Section 504 are generally construed to impose similar requirements.<sup>413</sup>

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<sup>409</sup> 42 U.S.C. § 12132. *The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.* 42 U.S.C. § 12131..

<sup>410</sup> 28 C.F.R. § 35.130(b)(1)(iii), (vii).

<sup>411</sup> 42 U.S.C. § 35.130(b)(7).

<sup>412</sup> 29 U.S.C. § 794(a).

<sup>413</sup> See, e.g., *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1261 n.2 (D.C. Cir. 2008); *Harrison v. Rubin*, 174 F.3d 249, 253 (D.C. Cir. 1999). This principle follows from the similar language employed in the two acts. It also derives from the Congressional directive that implementation and interpretation of the two acts, "be coordinated to prevent[ ] imposition of inconsistent or conflicting standards for the same requirements under the two statutes."



To state a claim under Title II of the ADA, a plaintiff must prove three elements: (1) that she is a qualified individual with a disability, (2) that she was discriminated against by being excluded from or denied the benefits of a public entity's services, and (3) that she was discriminated against because of her disability.<sup>414</sup>

In 2008, Congress passed the Americans with Disabilities Act Amendments Act ("ADAAA"), and it became effective on January 1, 2009.<sup>415</sup> The law made several changes to the definition of "disability" under the ADA. It directed the U.S. Equal Employment Opportunity Commission ("EEOC") to amend its ADA regulations to reflect the changes made by the ADAAA. The EEOC issued a Notice of Proposed Rulemaking (NPRM) on September 23, 2009. The final regulations were approved by a bipartisan vote and were published in the Federal Register on March 25, 2011.<sup>416</sup>

Congress passed the ADAAA to overturn several restrictive Supreme Court rulings, and the ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals.<sup>417</sup> Following the ADAAA, the regulations keep the ADA's definition of the term "disability" as a physical or mental impairment that substantially limits one or more major life activities; a record (or past history) of such an impairment; or being regarded as having a disability. But the regulations implement the significant changes that Congress made regarding how those terms should be interpreted.

The ADAAA regulations include the following:

- **The term "substantially limits" requires a lower degree of functional limitation than the standard previously applied by the courts.** An impairment does not need to prevent or severely or significantly restrict a major life activity to be considered "substantially limiting." Nonetheless, not every impairment will constitute a disability.
- **The term "substantially limits" is to be construed broadly** in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA.

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*Baird ex rel. Baird v. Rose*, 192 F.3d 462, 468-69 (4th Cir. 1999) (citing 42 U.S.C. § 12117(b)) (alteration in original) (internal quotation marks omitted).

<sup>414</sup> *Am. Council of the Blind v. Paulson*, 525 F.3d 1256, 1266 (D.C. Cir. 2008) (setting forth these elements in the analogous Section 504 context); *Equal Rights Ctr. v. District of Columbia*, 741 F. Supp. 2d 273, 283 (D.D.C. 2010); see also *Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2012).

<sup>415</sup> ADAAA, 42 U.S.C.A. § 12101.

<sup>416</sup> See Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended. 76 F.R. 16977 (amending 29 CFR 1630) (EEOC ADAAG Regulations). Available at:

<https://federalregister.gov/a/2011-6056>.

<sup>417</sup> See EEOC ADAAA Fact Sheet. Available at: [http://www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm).

- The determination of whether an impairment substantially limits a major life activity **requires an individualized assessment**, as was true prior to the ADAAA.
- With one exception (“ordinary eyeglasses or contact lenses”), the determination of whether an impairment substantially limits a major life activity shall be made **without regard to the ameliorative effects of mitigating measures**, such as medication or hearing aids.
- **An impairment that is episodic or in remission is a disability** if it would substantially limit a major life activity when active.
- In keeping with Congress’s direction that the primary focus of the ADA is on whether discrimination occurred, **the determination of disability should not require extensive analysis.**<sup>418</sup>

Failure to follow the ADAAG regulations issued under the ADA discussed above in Section A4.1.2 are frequently the basis for a finding of violation of the ADA and Section 504.

The ADA requires that state and local governments facilities built or altered after January 26, 1992 be accessible to individuals with disabilities.<sup>419</sup> For new construction, the ADA regulations require that: “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.”<sup>420</sup> For renovations, it requires that 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.”<sup>421</sup>

Because the ADA and the regulations are less explicit on sidewalks themselves as opposed to only curb ramps at intersections, further litigation around the country has occurred. The case of *Barden v. Sacramento*<sup>422</sup> “set a nationwide precedent requiring cities and other public entities to make all public sidewalks accessible to people with mobility and vision disabilities.”<sup>423</sup> The court held that the provision of public sidewalks is a “service” within the meaning of Title II and that “Title II’s prohibition of discrimination in the provision of public services applies to the

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<sup>418</sup> *Id.*

<sup>419</sup> *Id.*

<sup>420</sup> 28 C.F.R. § 35.151.

<sup>421</sup> *Id.*

<sup>422</sup> *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002) ), cert. denied, 539 U.S. 958 (2003).

<sup>423</sup> ‘Barden v. Sacramento’, Disability Rights Advocates <https://dralegal.org/case/barden-v-sacramento/> (accessed 2 November 2020).

maintenance of public sidewalks, which is a normal function of a municipal entity.”<sup>424</sup> Following the court victory, the parties reached a settlement addressing all sidewalk barrier issues city-wide.

This same approach was applied by the Fifth Circuit Court of Appeals in *Frame v. City of Arlington*.<sup>425</sup> Applying a more stringent evaluation than the court in *Barden*, the Fifth Circuit sitting *en banc* determined that the provision of sidewalks constituted a service within the meaning of the ADA and Section 504 and that as such the city needed to improve them to avoid prohibited discrimination. Similarly, in *Hamer v. City of Trinidad*, the Ninth Circuit applied the approach that provision of sidewalks constitutes a “service” and that the city violated the ADA and Section 504 each day that the sidewalk is non-compliant.<sup>426</sup>

Recently, in *American Council of the Blind of New York, Inc. v. City of New York et. al.*, the United States District Court for the Southern District of New York granted partial summary judgment in a case where two legally blind plaintiffs and a not-for-profit corporation brought claims against New York City for violations of Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, and the New York City Human Rights Law.<sup>427</sup> The plaintiffs alleged: (1) the absence of non-visual crossing information at the vast majority of New York City’s signalized intersections denied blind and low-vision pedestrians meaningful access to those intersections and the pedestrian grid, in violation of the ADA, the Rehabilitation Act, and the New York City Human Rights Law; and (2) the City’s failure to add non-visual crossing information on occasions when it has performed construction at, or upgraded aspects of, the same intersections was also unlawful.<sup>428</sup>

The court found that the absence of non-visual crossing information (such as devices that communicated “walk” and “don’t walk” signals to pedestrians via audible tones, speech messages, and/or vibrating surfaces) at more than 95 percent of the City’s signalized intersections denied such persons “meaningful access” to these intersections, in violation of Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, and the New York City Human

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<sup>424</sup> *Barden v. City of Sacramento*, 292 F.3d at 1077 (9th Cir. 2002).

<sup>425</sup> *Frame v. City of Arlington*, 657 F.3d 215 (5th Cir. 2011) (*en banc*), cert. denied, 2/21/2012 (holding that provision of sidewalks constitutes a “service” within the meaning of the ADA and

<sup>426</sup> *Hamer v. City of Trinidad*, 924 F.3d 1093, 1097 (9th Cir. 2019), cert. denied, 140 S.Ct. 644 (2019). The fact that the court determined that the inaccessible sidewalks constituted a repeated violation allows the plaintiff to avoid a procedural issue in U.S. law called the statute of limitations that would prevent the plaintiff from being able to bring an action against the city for older sidewalks.

<sup>427</sup> *American Council of the Blind of New York, Inc. v. City of New York et. al.*, 18 Civ. 5792 (PAE) (S.D.N.Y. 2020).

<sup>428</sup> *Id.*

Rights Law.<sup>429</sup> The court also granted plaintiffs’ motion as to liability on their claim that the City’s failure to add non-visual street-crossing information at particular intersections at which it installed new traffic signals after June 27, 2015, violated the ADA and Rehabilitation Act.<sup>430</sup>

In doing so, the court noted in part the City’s proactive initiatives such as the Accessible Pedestrian Signals (“APS”) installation schedule and its “Safe Streets Legislation,” which mandated master plans for city streets, sidewalks, and pedestrian spaces.<sup>431</sup> However, the court also noted under the ADA and Rehabilitation Act, the City was required to ensure that it operated its signalized intersections and the pedestrian grid in a manner that, “when viewed in [their] entirety, [are] readily accessible to and usable by individuals with disabilities.”<sup>432</sup> The court further noted the City failed to show an undue financial or administrative burden for its failure to comply with the laws.<sup>433</sup>

## **b. Remedies and Other Outcomes**

The typical remedy in an ADA/Section 504 action is injunctive relief. This will take the form of a plan to remedy the defects over a set period and may include monitoring mechanisms to include an appointed monitor and/or involvement of the plaintiffs’ attorneys during the remediation phase. Monetary damages are only available where intentional discrimination has been established. Attorney’s fees for prevailing plaintiffs are available.

## **c. Enforcement**

Eight U.S. agencies have responsibility for ADA enforcement in different areas of public life including against public entities whether or not funded by the federal government. For purposes of this report, most relevant, the Department of Transportation, and the Department of Justice.<sup>434</sup> Funding agencies have responsibility for enforcement of Section 504 of the Rehabilitation Act of 1973. Agencies investigate compliance on their own and must accept ADA Title II complaints from the public.<sup>435</sup>

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<sup>429</sup> *Id.*

<sup>430</sup> *Id.*

<sup>431</sup> *Id. at 41.* (The court held “all alleged violations occurring before June 27, 2015—three years before [the case] was filed—are untimely [due to the statute of limitations]”).

<sup>432</sup> *Id.*

<sup>433</sup> *Id.*

<sup>434</sup> 28 C.F.R. § 35.190 (“Designated agencies”).

<sup>435</sup> 28 CFR § 35.172. See generally 28 C.F.R. pt. 35, App. A (“Section by Section Analysis, Subpart F”). See also Blanck, Peter. *DISABILITY LAW AND POLICY (Concepts and Insights)* (p. 35-36); Laura Rothstein, ‘Disability Discrimination Statutes or Tort Law: Which Provides the Best Means to Ensure an Accessible Environment?’ (2014) 75 Ohio St. L.J. 1263, 1300; See ‘ADA Technical Assistance Materials’ ADA.GOV, [www.ada.gov/ta-pubs-pg2.htm](http://www.ada.gov/ta-pubs-pg2.htm) (accessed 11 September 2020); see also ‘Promises To Keep: A Decade of Federal Enforcement of The Americans with Disabilities Act’ National Council on Disability (2000)

Section 504 and ADA complaints may be addressed administratively or through litigation in the courts. Administrative complaints must be filed within 180 days of the incident.<sup>436</sup> The designated agency will then attempt an informal resolution of the matter being investigated. “If resolution is not achieved and a violation is found, a Letter of Findings is issued to the public entity” and complainant.<sup>437</sup> After the letter is issued, the agency must notify the DOJ and attempt to negotiate a written, enforceable compliance agreement with the public entity. If a voluntary compliance agreement is not reached, the agency must refer the matter to the DOJ for its consideration of enforcement.<sup>438</sup> Title II of the Civil Rights Act of 1964. Title III gives the DOJ authority to investigate complaints and to conduct periodic compliance reviews in the absence of complaints. If the DOJ believes an entity has engaged in a pattern or practice of discrimination, or a violation raises an issue of public importance, the DOJ may file a civil action in federal court.<sup>439</sup>

The DOJ has for years supported an initiative known as Project Civic Access, which the DOJ describes as a coordinated program to ensure that cities “comply with the ADA by eliminating physical and communication barriers that prevent people with disabilities from participating fully in community life.”<sup>440</sup> Under the program, the DOJ has brought legal actions and negotiated scores of judicially enforced settlements (often called consent decrees) with localities. These resolutions cover a range of issues and frequently involve most programs and departments of the municipality at issue. Some of these have addressed sidewalk access.<sup>441</sup> For example, in an action against the Town of Poestenkill, New York, the DOJ and town entered into a settlement agreement which required the town to survey all sidewalks that bordered roads which had been newly constructed or altered since passage of the ADA and to install compliant curb ramps where necessary at all intersection where missing.<sup>442</sup> It also required the town to create mechanisms for “soliciting and receiving input from persons with disabilities regarding the

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<https://ncd.gov/publications/2000/June272000> (accessed 22 September 2020) “The NCD 2000 Report is a 520-page document that includes criticisms of the DOJ for its slow response to enforcing Title III and makes several specific recommendations for improvements within the DOJ.” See *Id.* at 8-9, 12. “The report is an extensive review of the DOJ’s work on ADA compliance at that point, including both Title II and Title III.” See *Id.* at 3-4, 8-9.

<sup>436</sup> 28 CFR § 35.170.

<sup>437</sup> Blanck, Peter. *DISABILITY LAW AND POLICY (Concepts and Insights)* (p. 35-36).

<sup>438</sup> 28 CFR § 35.174.

<sup>439</sup> Blanck, Peter. *DISABILITY LAW AND POLICY (Concepts and Insights)* (p. 36).

<sup>440</sup> ‘Project Civic Access’ United States Department of Justice <http://www.ada.gov/civac.htm> (accessed 7 February 2021).

<sup>441</sup> ‘Settlement Agreement’ *United States v. Poestenkill, New York*, DJ 204-50-247 (24 June 2013)

<https://www.ada.gov/poestenkill-pca/poestenkill-sa.htm>, ‘Settlement Agreement’ *United States v. Hudson, New York* (23 October 2019) [https://www.ada.gov/city\\_hudson\\_ny\\_sa.html](https://www.ada.gov/city_hudson_ny_sa.html) (accessed 7 February 2021).

<sup>442</sup> *Id.*

accessibility of its sidewalks, including, for example, requests to add curb cuts at particular locations.”<sup>443</sup>

The ADA regulations require public entities to designate at least one responsible employee (frequently termed an ADA coordinator) to coordinate its ADA compliance and establish its own processes to accept and process complaints administratively.<sup>444</sup> Public entities are required to adopt and publish procedures for resolving grievances arising under Title II of the ADA<sup>445</sup>. The public entity is required to determine the best methods for distributing this information and provide it on an ongoing basis.<sup>446</sup>

Each of the localities addressed in this report maintains an office to which complaints can be addressed under the ADA/Section 504. (See notes in respective Equality and Inclusion sections above.) None of the localities publish data on the number or types of complaints received, or their dispositions. As such, it is impossible to assess whether any would be an effective point of contact for substantial change to public rights of way. The rules of each office vary somewhat, but generally require investigation within a given period of time and a written response with findings of fact and conclusions. This can assist a complainant in future enforcement efforts at the least.

At any time, a complainant may file a private lawsuit under section 203 of the ADA, 42 U.S.C. 12133, whether or not the designated agency finds a violation.<sup>447</sup> In light of the complexity of systemic challenges to inaccessible sidewalks, plaintiffs are frequently represented by NGO’s in these types of actions. Successful plaintiffs can recover attorneys’ fees from defendants.<sup>448</sup> Prevailing defendants are only entitled to fees and costs for a case brought in bad faith.<sup>449</sup>

The Protection and Advocacy (“P&A”) System and Client Assistance Program (“CAP”) is a nationwide network of legally based independent disability rights agencies mandated by federal law to protect and advocate for individuals with disabilities. P&A agencies have the authority to investigate abuse and neglect of people with disabilities, provide legal representation to people

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<sup>443</sup> *Id.*

<sup>444</sup> 28 CFR § 35.107.

<sup>445</sup> 28 C.F.R. § 35.107(b).

<sup>446</sup> See “ADA Best Practices Tool Kit for State and Local Governments, ADA Coordinator, Notice & Grievance Procedure: Administrative Requirements Under Title II of the ADA.”

<https://www.ada.gov/pcatoolkit/chap2toolkit.htm#Anchor-58521> (accessed 3 April 2021).

<sup>447</sup> 28 CFR § 35.172.

<sup>448</sup> See 29 U.S.C. § 794a (2006). *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001)) (holding that plaintiffs may seek compensatory, but not punitive, damages under Section 504 and Title II of the ADA). The attorney's fee provision of the ADA allows the court to award a prevailing private party "a reasonable attorney's fee, including litigation expenses, and costs ." 42 U.S.C. 12205.

<sup>449</sup> See *Brown v. Lucky Stores, Inc.*, 246 F.3d 1182, 1188 (9th Cir. 2001) Brown follows Supreme Court precedent interpreting an analogous civil rights statute in *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421, 54 L. Ed. 2d 648, 98 S. Ct. 694 (1978)).

with disabilities and engage in other advocacy to advance the rights of individuals with disabilities.<sup>450</sup> The P&A can bring action on behalf of individual complainants or with associational standing under the ADA or Section 504.

## **B1.2 New York State Human Rights Law**

### **a. Description and Examples**

Section 291 of New York State Human Rights Law recognizes and protects civil rights of citizens including “The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability[as defined] is hereby recognized as and declared to be a civil right.”<sup>451</sup> Section 296 of the NYSHRL prohibits certain as discrimination. Applicable to this report on public rights of way, Section 296.2 bars discrimination in places of public accommodation including by public entities on account of disability.<sup>452</sup> It tracks the ADA in requiring reasonable modifications in policies, practices, or procedures, and, for public entities, requires removal of architectural barriers unless doing so would constitute an undue burden. It explicitly bars discrimination in employment and housing on account of age, but despite the statement in Section 291 which accords the use of places of public accommodation without discrimination because of age as civil right, does not prohibit as discrimination on account of age in public accommodations in a manner than tracks the prohibition on account of other characteristics such as race or disability.

Under the NYSHRL, disability is defined as:

(a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of

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<sup>450</sup> ‘Our History’ Disability Rights New York <https://www.drny.org/page/our-history-8.html> (accessed 5 February 2021).

<sup>451</sup> N.Y. Exec. Law Art. 15 Human Rights § 291 (Equality of opportunity a civil right). ‘New York State Human Rights Law’ New York State <https://dhr.ny.gov/law#HRL291> (accessed 6 June 2021).

<sup>452</sup> N.Y. Exec. Law Art. 15 Human Rights § 296.2 (Unlawful discriminatory practices). ‘New York State Human Rights Law’ New York State <https://dhr.ny.gov/law#HRL296> (accessed 6 June 2021).

reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.<sup>453</sup>

Age is not defined in the NYSHRL.

### **b. Remedies and Other Outcomes**

The NYSHRL allows for administrative hearings and action in state court. On a finding of discrimination by the division, it may seek to eliminate the discrimination by “conference, conciliation and persuasion” and seek a conciliation agreement, and by agreement, a consent decree filed with the state court.<sup>454</sup> If no agreement is reached, a hearing will be held, and the commissioner will issue an order. The order may include injunctive relief, compensatory damages, and civil fines paid to the state of up to \$50,000 (or \$100,000 for intentional discrimination).<sup>455</sup> Courts can impose similar remedies including injunctive relief and compensatory damages (punitive damages are only available in employment and housing cases).

### **c. Enforcement**

A complainant can file a complaint with the Division of Human Rights for investigation and administrative determinations. The Attorney General and the NYS Human Rights Commission can initiate cases on their own initiative. Parties can also bring actions to enforce the NYSHRL in court, which can impose similar remedies.

The availability of the state administrative complaint route can lower the threshold for complainants. While complaints can be brought to DOT under the ADA, the availability of bringing complaints to the NYS HRC adds enforcement resources.

## **B1.3 Georgia - Nondiscrimination Law and Policy**

As noted, Georgia has no state law analog to the ADA.

## **C Laws that can be used by pedestrians generally or by NGOs on behalf of pedestrians generally**

This section provides an overview of state-level laws in New York and Georgia that protect pedestrians from potential hazards and concern accessibility issues in public spaces.

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<sup>453</sup> N.Y. Exec. Law Art. 15 Human Rights § 292.21 (definition of disability) <https://dhr.ny.gov/law#disability> (accessed 6 June 2021).

<sup>454</sup> N.Y. Exec. Law Art. 15 Human Rights § 297 (Procedure) <https://dhr.ny.gov/law#disability> (accessed 6 June 2021).

<sup>455</sup> *Id.*



## **C1 Failing to safeguard pedestrians from holes, roadworks, traffic flow and other hazards**

### **C1.1 Statutory and common law negligence - New York**

New York law provides tort liability in negligence. In order to prevail on a negligence claim, “a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom”.<sup>456</sup> To set forth a claim in negligence, a plaintiff must prove a duty on the part of the defendant to protect the plaintiff from injury, a breach of that duty by the defendant, and that the plaintiff’s injuries were actually and proximately caused by the defendant’s breach of the duty. For injuries that occur on the property of another. A person or entity “in control” of property has a duty, under New York law: “to use reasonable care to keep the premises in a reasonably safe condition for the protection of all persons whose presence is reasonably foreseeable.”<sup>457</sup>

The State or a municipality has a “duty to design, construct and maintain its highways in a reasonably safe condition ... [which] is not confined to vehicular traffic alone. The State or municipality must provide pedestrians with a reasonably safe place to travel and the failure to correct a defective condition along its highway, after constructive notice, establishes negligence.”<sup>458</sup>

Most New York municipalities have a statute (i.e., local law) requiring prior written notice of the alleged defect, in order to be sued, except where the municipality can be shown to have created the “defective condition.” Written notice laws apply to “actual physical defects in the surface” of a street, highway, bridge culvert, sidewalk or crosswalk and represent “an effort to exempt ... [municipalities] from liability for holes and breaks of a kind which do not immediately come to the attention of the [municipality’s] officers unless they are given actual [written] notice thereof.”<sup>459</sup>

Section 50-E of New York General Municipal Law requires “In any case founded upon tort where a notice of claim is precedent to the commencement of an action or special proceeding against a public corporation, as defined in the general construction law, or any officer, appointee or employee thereof, the notice of claim shall comply with and be served in accordance with the provisions of this section within ninety days after the claim arises; except that in wrongful death

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<sup>456</sup> *Solomon v. City of New York*, 66 N.Y.2d 1026, 1027, 499 N.Y.S.2d 392, 489 N.E.2d 1294 (1985).

<sup>457</sup> New York Pattern Jury Instruction 2:90.

<sup>458</sup> *Sanford v. New York*, 94 A.D.2d 857, 859 (N.Y. App. Div. 1983) (citations omitted).

<sup>459</sup> James L. Gelormini, Esq., ‘Identifying and Reducing Legal Liability: A Guide for Highway and Public Works Departments’ Cornell Local Roads Program (citing *Doremus v. Incorporated Vil. of Lynbrook*, 18 N.Y.2d 362, 366, (1966); *San Marco v. Vil./Town of Mount Kisco*, 16 N.Y.3d 111, 117 (2010); *Hughes v. Jahoda*, 75 NY2d 881, 882 (1990); *Alexander v. Eldred*, 63 NY2d 460, 467 (1999)).

actions, the ninety days shall run from the appointment of a representative of the decedent's estate.”<sup>460</sup> Damages from a lawsuit may include economic damages in the form of lost wages and medical payments, and non-economic damages in the form of monetary compensation for pain and suffering and mental anguish.

“Generally, liability for injuries sustained as a result of negligent maintenance of or the existence of dangerous and defective conditions to public sidewalks is placed on the municipality and not the abutting landowner”.<sup>461</sup> With respect to public sidewalks (adjacent to the street), a municipality is also responsible for removing snow and ice. However, most municipalities have enacted ordinances that require the adjoining landowner to remove snow and ice from the sidewalk. To enable liability to be imposed, the ordinance must specifically provide that tort liability will be imposed on the adjoining owner for its failure to maintain the sidewalk.<sup>462</sup>

### **C1.2 Statutory and common law negligence - Georgia**

A negligence claim in Georgia requires a plaintiff show (1) the existence of a duty on the part of the defendant, (2) a breach of that duty, (3) causation of the alleged injury, and (4) damages resulting from the alleged breach of the duty.<sup>463</sup>

Georgia has passed a limited waiver of sovereign immunity “for the torts of state officers and employees while acting within the scope of their official duties or employment and shall be liable for such torts in the same manner as a private individual or entity would be liable under like circumstances; provided, however, that the state's sovereign immunity is waived subject to all exceptions and limitations set forth in this article.”<sup>464</sup> This waiver extends to inspection of government property (which may form part of the basis for an a negligence action based on inadequate maintenance of roadways and sidewalks).<sup>465</sup> Municipalities have no liability “when it has not been negligent in constructing or maintaining the same or when it has no actual notice thereof or when such defect has not existed for a sufficient length of time for notice thereof to be inferred.”<sup>466</sup>

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<sup>460</sup> ‘Section 50-E Notice of claim’ The New York Senate [www.nysenate.gov/legislation/laws/GMU/50-E](http://www.nysenate.gov/legislation/laws/GMU/50-E) (accessed 13 September 2020).

<sup>461</sup> *Hausser v. Giunta*, 88 N.Y.2d 449, 452–453 (1996).

<sup>462</sup> *Smalley v. Bembien*, 12 N.Y.2d 751 (2009).

<sup>463</sup> *Rasnick v. Krishna Hospitality*, 713 S.E.2d 835 (2011).

<sup>464</sup> O.C.G.A. § 50-21-23 (2019) - Limited waiver of sovereign immunity.

<sup>465</sup> O.C.G.A. § 50-21-24 (2019) - Exceptions to state liability.

<sup>466</sup> O.C.G.A. § 32-4-93 (2010) - Liability of municipalities for defects in public roads.

## **C2 Inaccessible or unsafe design of streets or street features**

### **C2.1 Statutory and common law negligence - New York**

As discussed above in Section C1.1, New York law provides tort liability in negligence in certain circumstances. A governmental body may be liable for a traffic planning decision only when its study is “plainly inadequate or there is no reasonable basis for its [ ] plan”.<sup>467</sup> “While this duty is nondelegable, it is measured by the courts with consideration given to the proper limits on intrusion into the municipality's planning and decision-making functions. Thus, in the field of traffic design engineering, the [governmental body] is accorded a qualified immunity from liability arising out of a highway planning decision.”<sup>468</sup> Something more than a choice between conflicting opinions of experts is required before a governmental body may be held liable for negligently performing its traffic planning function. However, once the government is made aware of a dangerous traffic condition it must undertake reasonable study thereof with an eye toward alleviating the danger.<sup>469</sup>

### **C2.2 Statutory and common law negligence - Georgia**

The waiver of sovereign immunity also applies to a plan or design for construction of or improvement to highways, roads, streets, bridges, or other public works, but only to the extent that such plan or design is *not* prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation of the plan or design.<sup>470</sup>

Thus, sovereign immunity does not exempt the State from liability when a plaintiff can show that the State failed to comply with the applicable standard of care. To do this, a plaintiff must present “expert testimony or other competent evidence ... to show that the plan or design was not prepared in substantial compliance with generally accepted engineering or design standards at the time such plan was prepared.”<sup>471</sup>

To the extent that roads and sidewalks are not constructed and maintained in compliance with the accessibility and other safety features outlined above in the GDOT Design Policy Manual, a negligence action would be informed by these statutes.

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<sup>467</sup> *Friedman v. State of New York*, 67 N.Y.2d 271, 284 (1986); see also, *Weiss v. Fote*, 7 N.Y.2d 579 (1960).

<sup>468</sup> *Friedman v. State of New York*, 67 N.Y.2d 271, 283 (1986).

<sup>469</sup> See *Heffler v State of New York*, 96 AD2d 926, 927 (N.Y. App. Div. 1983); *Sanford v State of New York*, 94 AD2d 857, 859 (N.Y. App. Div. 1983); *Atkinson v City of Oneida*, 77 AD2d 257 (N.Y. App. Div. 1980).

<sup>470</sup> *Id.*

<sup>471</sup> *Sadler v. Dept. of Transp.*, 716 S.E.2d 639, 641 (Ga. Ct. App. 2011).

## **C3 Obstructing of roads or pavements/ sidewalks**

### **C3.1 Statutory and common law negligence and nuisance - New York**

“The primary purpose of streets is use by the public for travel and transportation, and the general rule is that any obstruction of a street or encroachment thereon which interferes with such use is a public nuisance.”<sup>472</sup> In *O’Neill*, the Court of Appeals (the highest New York appellate court) held that where a landowner blocked sidewalk for long period of time during construction of building, a question of fact for the jury existed as to “whether the city and [landowner] were negligent in maintaining and in failing to remove unlawful and illegal obstructions” and “unreasonably and unlawfully used the sidewalk for the storing of materials to the exclusion of the public, the city had knowledge of it, and was required to act.”<sup>473</sup> It appears that the court in *O’Neill* treated the plaintiff’s claim against the city as one in negligence (for failing to remove the public nuisance).

In New York a plaintiff may bring an action against a public nuisance such as obstructing a sidewalk where the plaintiff suffers special damage different from the public generally.<sup>474</sup>

The Syracuse Code of Ordinances prohibits various acts of obstruction of sidewalks. The violation of these may inform a claim in negligence.<sup>475</sup>

### **C3.2 Statutory and common law negligence - Georgia**

Georgia state law makes failing to remove an obstruction of the road or sidewalk after reasonable notice by a peace officer a misdemeanor.<sup>476</sup> Local codes specify rules regarding obstructing sidewalks, including requiring permits, closing only the minimum sidewalk required, and constructing temporary facilities, including ADA compliant facilities, when necessary.<sup>477</sup>

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<sup>472</sup> *O’Neill v. City of Port Jervis, et al.*, 253 N.Y. 423 (1930) (in action where pedestrian had to walk into street around obstruction, and plaintiff’s daughter was struck and killed by vehicle).

<sup>473</sup> *Id.* at 253 N.Y. at 431.

<sup>474</sup> *Graceland Corp. v. Consol. Laundries*, 7 A.D.2d 89, 180 N.Y.S.2d 644 (N.Y. App. Div. 1958) (neighboring property owner to laundry, whose trucks regularly blocked sidewalk, could bring action in nuisance where this obstruction might have lowered rental values).

<sup>475</sup> Syracuse, NY Code of Ordinances, Ch. 24 – Streets and Sidewalks

[https://library.municode.com/ny/syracuse/codes/code\\_of\\_ordinances?nodeId=REGEOR\\_CH24STSI](https://library.municode.com/ny/syracuse/codes/code_of_ordinances?nodeId=REGEOR_CH24STSI) (accessed 10 June 2021).

<sup>476</sup> O.C.G.A. 16-11-43 (2010) <https://law.justia.com/codes/georgia/2010/title-16/chapter-11/article-2/16-11-43/> (accessed 10 June 2021).

<sup>477</sup> See Atlanta Code of Ordinances, § 138-67 – Streets, Sidewalks and Other Public Places - Pedestrian Access [https://library.municode.com/ga/atlanta/codes/code\\_of\\_ordinances?nodeId=PTIICOORENOR\\_CH138STSIOTPUP\\_L\\_ARTIICOEXRI-W\\_S138-67PEAC](https://library.municode.com/ga/atlanta/codes/code_of_ordinances?nodeId=PTIICOORENOR_CH138STSIOTPUP_L_ARTIICOEXRI-W_S138-67PEAC) (accessed 10 June 2021).

As discussed above in Section C1.2, the GDOT rules regulate temporary obstructions of pedestrian facilities. Where injuries occur, these would inform a case in negligence on duty of care.

## **C4 Driving, cycling and other travelling on roads which might endanger pedestrians**

### **C4.1 Statutory and common law negligence - New York**

New York Vehicle and Traffic Law Section 1146 states “every driver of a vehicle shall exercise due care to avoid colliding with any bicyclist, pedestrian or domestic animal upon any roadway and shall give warning by sounding the horn when necessary.”<sup>478</sup> Negligence in use or operation of vehicle attributable to the vehicle owner.<sup>479</sup>

New York Vehicle and Traffic law (“VTL”) defines a pedestrian as “any person afoot or in a wheelchair.”<sup>480</sup>

Accordingly, if pedestrians are injured by a driver who did not exercise “due care,” they may file common law causes of action, such as negligence. Statutes, like VTL, may regulate certain activities or identify certain conduct as criminal or wrongful, but they may also serve as the basis for a civil negligence action.<sup>481</sup> For example, courts have held that violation of an ordinance of local government is evidence of negligence where the injury is a consequence against which the ordinance was intended to protect.<sup>482</sup>

New York Vehicle and Traffic Law Section 1231 makes bicyclists, skaters, and those gliding on in-line skates subject to the same duties of care applicable to a driver of a vehicle.<sup>483</sup> Therefore,

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<sup>478</sup> Section 1146, Bicycle and Pedestrian Laws, New York Department of Transportation, [www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1231](http://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1231) (accessed 23 September 2020).

<sup>479</sup> NY VTL Law § 388.

<sup>480</sup> Section 130, Bicycle and Pedestrian Laws, New York Department of Transportation, [www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1231](http://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1231) (accessed 23 September 2020).

<sup>481</sup> See *Herdzik v. Chojnacki*, 2009 N.Y. App. Div. LEXIS 9547, \*6 (4th Dep’t Dec. 30, 2009); *Koziol v. Wright*, 26 A.D.3d 793, 809 N.Y.S.2d 350, 352 (4th Dep’t 2006) (although a violation of the Vehicle and Traffic Law (VTL) is negligence per se, negligence and proximate cause are separate elements of liability and the trial court correctly refused to charge the jury that if it found defendant violated the VTL that this violation was necessarily the proximate cause of an accident).

<sup>482</sup> See *Long v. Forest-Fehlhaber*, 55 N.Y.2d 154, 160, 448 N.Y.S.2d 132, 433 N.E.2d 115, re-argument denied, 56 N.Y.2d 805, 452 N.Y.S.2d 1026, 437 N.E.2d 1161 (1983).

<sup>483</sup> Section 1231, Bicycle and Pedestrian Laws, New York Department of Transportation [www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1231](http://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1231) (accessed 23 September 2020).

people who are injured by bikers or skaters may file civil negligence actions with the vehicle subject to the traffic law's obligations.

Finally, VTL §1234(c) states: "Any person operating a bicycle or skating or gliding on in-line skates who is entering the roadway from a private road, driveway, alley or over a curb shall come to a full stop before entering the roadway."

#### **C4.2 Statutory and common law negligence - Georgia**

The OCGA requires every driver of a vehicle to exercise due care to avoid colliding with a pedestrian upon any highway.<sup>484</sup> The right of way is given to pedestrians if they have already entered the roadway and when they cross the road within a marked crosswalk or within an unmarked crosswalk at an intersection.

### **C5 Driving, cycling, scootering and other travelling on sidewalks which might endanger pedestrians**

#### **C5.1 Statutory and common law negligence - New York**

People injured while on the sidewalk should also consult the local laws of the city, town, or village to determine if that locality prohibits biking or skating on the sidewalk, which could give rise to an additional or separate civil action. As noted above, New York recently authorized the use of e-bikes and e-scooters on certain streets, but they remain prohibited on sidewalks.<sup>485</sup>

Under VTL §1151, when traffic-control signals, such as crosswalks, are not in place, the driver must yield to the pedestrian, except where there is a tunnel or overpass specified for a pedestrian to cross.<sup>486</sup> §1151(a) notes that pedestrians have the right of way when crossing across a sidewalk that extends across an alleyway, building entrance, road, or driveway.<sup>487</sup> As such, pedestrians generally have the right of way when properly utilizing sidewalks.

#### **C5.2 Statutory and common law negligence - Georgia**

Georgia Traffic Law will inform negligence actions. For example, section 40-6-144 states that "No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or

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<sup>484</sup> O.C.G.A. § 40-6-93.

<sup>485</sup> 'Electric scooters and bicycles and other unregistered vehicles' New York State Department of Motor Vehicles. <https://dmv.ny.gov/registration/electric-scooters-and-bicycles-and-other-unregistered-vehicles> (accessed 6 May 2021).

<sup>486</sup> Section 1151, Vehicle and Traffic Laws, New York Department of Transportation, [www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1151](http://www.dot.ny.gov/divisions/operating/opdm/local-programs-bureau/repository/pedestrian/resources/laws.html#s1151) (accessed 14 October 2020).

<sup>487</sup> *Id.*

duly authorized driveway”.<sup>488</sup> As the Georgia Code considers a bicycle to be a vehicle, this law applies to cyclists as well. The Georgia Codes specifies that electric assisted bicycles may be operated on bike paths, but does not further specify instructions as to how to interpret other vehicles such as e-scooters. Georgia Traffic Law §40-6-144 further states that when a vehicle emerges from an “alley, building, private road, or driveway within a business or residential district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across” and must always yield to pedestrians.<sup>489</sup> Finally, Georgia law notes that riders on shared use paths, such as trails, must follow the same laws as those on the road.<sup>490</sup>

## **D Laws that can be used by public bodies to challenge problems for pedestrians generally**

This section summarizes the laws and ordinances in New York and Georgia that may be used by public bodies, such as local government or law enforcement, to challenge problems for pedestrians in public spaces.

### **D1 Failing to safeguard pedestrians from holes, roadworks, traffic flow and other hazards**

#### **D1.1 New York maintenance ordinances**

As discussed above, various local ordinances require property owners to address sidewalk maintenance. By ordinance, the City of Syracuse requires property owners with a sidewalk parallel to any public street to keep that sidewalk clear and clear any snow or ice which has accumulated on the surface by 6:00 p.m. in the evening following snow.<sup>491</sup> Article 2, Sections 24-4 and 24-5 of the City of Syracuse’s Code of Ordinances contain the enforcement mechanisms for the ordinance. They state, “No person shall sweep, throw or deposit or cause to be swept, thrown or deposited any snow or ice into any street gutter or public square or park, or on any sidewalk within the city, from lands or premises abutting or adjoining any such street gutter, public square, park or sidewalk.”<sup>492</sup> All commercial snow removal services must comply with chapter 9, article 14 of the Revised General Ordinances entitled "Snow Removal

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<sup>488</sup> Section 40-6-144, Georgia Code, Georgia Governor’s Office of Highway Safety <https://gahighwaysafety.org/campaigns/pedestrian-safety/pedestrian-safety/what-the-ga-codes-says-about-pedestrians/> (accessed 4 October 2020).

<sup>489</sup> *Id.*

<sup>490</sup> ‘Georgia Bicycle Traffic Law’ Bicycle Georgia [www.bicyclegeorgia.com/galaw.html](http://www.bicyclegeorgia.com/galaw.html) (accessed 4 October 2020).

<sup>491</sup> ‘Sidewalk Snow Removal’ City of Syracuse [www.syracuse.ny.us/sidewalks-in-winter.html](http://www.syracuse.ny.us/sidewalks-in-winter.html) (accessed 24 September 2020).

<sup>492</sup> *Id.* at 24-4, 24-5.

Contractors" and "any person found guilty of violating this article by a court of competent jurisdiction shall be subject to a fine not to exceed one hundred dollars (\$100.00); or to a penalty not to exceed one hundred dollars (\$100.00) per violation to be recovered by the corporation counsel in a civil action, provided however, that snow removal contractors as defined in chapter 9, article 14 are still subject to the one hundred fifty dollars (\$150.00) fine in accordance with chapter 9, article 14, section 9-162 of the Revised General Ordinances of the city of Syracuse. Furthermore, the city may seek injunctive relief pursuant to section 1-8 of the Revised General Ordinances."<sup>493</sup>

As described, other Onondaga County municipalities have similar laws and ordinances.

## **D1.2 Georgia maintenance ordinances**

PEDS states that Atlanta's law requiring individual property owners to repair sidewalks is nearly impossible to enforce because the Atlanta Department of Public Works ("ADPW") is reluctant to seek fines for non-compliance,<sup>494</sup> especially after the Atlanta City Council passed legislation authorizing it to perform sidewalk repair when funding is available rather than billing property owners.<sup>495</sup> PEDS points out that the estimated cost of repairing broken sidewalks and curb ramps in Atlanta alone is over one billion dollars, and the city budgeted only \$500,000 for sidewalk repairs. Therefore, if ADPW enforced the fine provision on property owners, those funds could pay for sidewalk improvement throughout the City.<sup>496</sup>

## **D2 Inaccessible or unsafe design of streets or street features**

### **D2.1 ADA / Section 504**

As discussed above, the ADA and Section 504 require various accessibility features. Actions can be brought by the federal government via DOT/FHWA administrative actions, DOJ action in court, and by state attorneys general.

For federally funded projects, municipalities or other local sponsors may need to repay monies for failure to comply with federal law, including the ADA and Section 504.<sup>497</sup>

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<sup>493</sup> *Id.* at 9-14.

<sup>494</sup> 'Closed Sidewalks' PEDS, [www.peds.org/campaigns/sidewalk-maintenance/closed-sidewalks-in-construction-zones-2/](http://www.peds.org/campaigns/sidewalk-maintenance/closed-sidewalks-in-construction-zones-2/) (accessed 22 September 2020).

<sup>495</sup> *Id.*

<sup>496</sup> *Id.*

<sup>497</sup> See 'Local Projects Manual' NYS DOT Ch. 17, p. 6.

[https://www.dot.ny.gov/portal/pls/portal/MEXIS\\_APP.PA\\_PLAFAP\\_ADMIN.show\\_file?id=3425](https://www.dot.ny.gov/portal/pls/portal/MEXIS_APP.PA_PLAFAP_ADMIN.show_file?id=3425) (accessed 15 June 2021).



## **D2.1 Design codes - New York**

As discussed above, various state DOT codes define required design features. These appear to primarily be enforceable under contractual law. When a locality enters into a plan with the NYS DOT, “The State-Local Agreement (SLA) contractually obligates the Sponsor to ensure that all federal civil rights laws, rules, regulations, and presidential executive orders are adhered to in all of their policies, procedures, programs, and activities.”<sup>498</sup>

## **D3.2 Design codes - Georgia**

Compliance with the GDOT is discussed in section A5.2.b above. As noted, “[a]ny decision to not comply with ADA requirements shall require a comprehensive study and the prior approval of a Design Variance from the GDOT Chief Engineer.”<sup>499</sup>

## **D3 Obstructing of roads or pavements/ sidewalks**

### **D3.1 Public Nuisance- New York**

As discussed in C3.1, public nuisance is a common law offence in New York.

### **D3.2 Public Nuisance- Georgia**

A nuisance is any act or condition that causes hurt, inconvenience, or damage to another even when the act or condition may otherwise be lawful.<sup>500</sup> OCGA § 41–1–1 provides, “[a] nuisance is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect an ordinary, reasonable man.” Lawful acts become nuisances when they are conducted in a manner causing hurt, inconvenience, or damage to another.

### **D3.3 Criminal Obstruction**

As noted in C.2.2, failing to remove an obstruction after notice by a peace officer is a misdemeanor in Georgia.

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<sup>498</sup> ‘Local Projects Manual’ NYS DOT Ch. 13, p. 5.

[https://www.dot.ny.gov/portal/pls/portal/MEXIS\\_APP.PA\\_PLAFAP\\_ADMIN.show\\_file?id=4290](https://www.dot.ny.gov/portal/pls/portal/MEXIS_APP.PA_PLAFAP_ADMIN.show_file?id=4290) (accessed 15 June 2021).

<sup>499</sup> ‘Design Policy Manual’ Georgia Department of Transportation (24 August 2020)

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<sup>500</sup> O.C.G.A. § 41-1-1.

## **D4 Driving, cycling and other travelling on roads which might endanger pedestrians**

### **D4.1 New York Vehicle and Traffic Law**

Violations of city, village, and town codes regulating sidewalks and streets can also result in fines and penalties.<sup>501</sup> For example, failure to follow New York Vehicle and Traffic Law Section 1151, which sets pedestrians' right of way in crosswalks, could result in a citation.<sup>502</sup>

### **D4.2 Georgia Motor Vehicle and Traffic Law**

Georgia Traffic Law is Georgia's counterpart to New York's Vehicle and Traffic Law, and may be enforced by state and local police.<sup>503</sup> The OCGA defines a pedestrian as "any person afoot and shall include, without limitation, persons standing, walking, jogging, running, or otherwise on foot."<sup>504</sup> The OCGA requires every driver of a vehicle to exercise due care to avoid colliding with a pedestrian upon any highway.<sup>505</sup> Generally, the OCGA grants the right of way to vehicles upon the roadway. However, the right of way is given to pedestrians if they have already entered the roadway and when they cross the road within a marked crosswalk or within an unmarked crosswalk at an intersection. The OCGA also creates a special right of way for blind pedestrians, stating that the driver of every vehicle is required to yield the right of way to any pedestrian accompanied by a guide dog or carrying a walking cane that is white or white with a red tip.<sup>506</sup>

## **D5 Driving, cycling, scootering and other travelling on sidewalks which might endanger pedestrians**

### **D5.1 New York Vehicle and Traffic Law**

Bicycles on sidewalks are subject to local regulation.

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<sup>501</sup> See generally, 'Sidewalk Ordinances for Towns and Villages in the Metropolitan Planning Area' Onondaga Sustainable Streets Initiative [http://walkbikecny.org/wp-content/uploads/2014/06/20140617\\_Final\\_Reference\\_Manual\\_a\\_B.pdf](http://walkbikecny.org/wp-content/uploads/2014/06/20140617_Final_Reference_Manual_a_B.pdf) (accessed 24 September 2020).

<sup>502</sup> Section 1151, Pedestrians' right of way in crosswalks, The New York Senate [www.nysenate.gov/legislation/laws/VAT/1151](http://www.nysenate.gov/legislation/laws/VAT/1151) (accessed 23 September 2020).

<sup>503</sup> See generally Georgia Code Title 40, Motor Vehicles and Traffic <https://codes.findlaw.com/ga/title-40-motor-vehicles-and-traffic/> (accessed 13 June 2021).

<sup>504</sup> O.C.G.A. § 40-6-96.

<sup>505</sup> O.C.G.A. § 40-6-93.

<sup>506</sup> O.C.G.A. § 40-6-96.

## D5.2 Georgia Motor Vehicle and Traffic Law

According to Georgia Traffic Law §40-6-144, “No person shall drive any vehicle upon a sidewalk or sidewalk area except upon a permanent or duly authorized driveway”.<sup>507</sup> As the Georgia Code considers a bicycle to be a vehicle, this law applies to cyclists as well. The Georgia Codes specify that electric assisted bicycles may be operated on bike paths, but does not further specify instructions as to how to interpret other vehicles such as e-scooters. Georgia Traffic Law §40-6-144 states that when a vehicle emerges from an “alley, building, private road, or driveway within a business or residential district shall stop such vehicle immediately prior to driving onto a sidewalk or onto the sidewalk area extending across” and must always yield to pedestrians.<sup>508</sup> Finally, Georgia law notes that riders on shared use paths, such as trails, must follow the same laws as those on the road.<sup>509</sup>

## E Cross-cutting issues

This section contains a discussion of the key topical issues, strengths and good practices, and recommendations based on the report.

### E1.1 Key Topical Issues

In the United States, we believe the ADA and its regulations are the best avenue for challenging inaccessible pedestrian facilities. Getting the PROWAG adopted would go a long way to clarifying many of the required technical features of accessible sidewalks.<sup>510</sup> Both New York and Georgia have adopted the PROWAG. However, the ADA and its guidelines are not self-enforcing. In the absence of dedication to following the requirements, localities have failed to always follow requirements, redress inaccessible sidewalks, and aggressively adopt and follow transition plans over the years. Additional enforcement dedication at the Federal, state, and local level are needed. The statutes and regulations have formed the basis for successful litigation as

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<sup>507</sup> Section 40-6-144, Georgia Code, Georgia Governor’s Office of Highway Safety  
<https://gahighwaysafety.org/campaigns/pedestrian-safety/pedestrian-safety/what-the-ga-codes-says-about-pedestrians/> (accessed 4 October 2020).

<sup>508</sup> *Id.*

<sup>509</sup> ‘Georgia Bicycle Traffic Law’ Bicycle Georgia [www.bicyclegeorgia.com/galaw.html](http://www.bicyclegeorgia.com/galaw.html) (accessed 4 October 2020).

<sup>510</sup> H.R.1697, the ‘Disability Access to Transportation Act’ has been introduced in the U. S. House of Representatives, which would require final adoption of the Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way within 180 days from passage. <https://www.congress.gov/bill/117th-congress/house-bill/1697/text> (accessed 15 June 2021). Its prospects are uncertain. In addition, the Access Board has restated its intent to implement Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way with final action projected in April 2022, though these dates are often aspirational. See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=3014-AA26> (accessed 15 June 2021).

discussed, but the resources to bring such cases, especially in smaller communities without existing dedicated disability civil rights organizations or pro bono bar efforts are limited.

No Federal plans currently address e-bikes and e-scooters. Whether they can safely be used on sidewalks would require study but seems dubious. Federal regulations require localities to maintain accessible features, including sidewalks, but there is no guidance specifying anything about dockless scooters blocking sidewalks. The DOJ sometimes publishes letters to localities, and this might be an area that could be addressed with such a notice.

In *Montoya v. City of San Diego*,<sup>511</sup> the court refused plaintiffs' motion for a preliminary injunction removing dockless scooters from San Diego during litigation. Plaintiffs instituted the case in the presence of dockless scooters parked randomly on sidewalks blocking access to people with disabilities from use of sidewalks and challenged San Diego's enforcement efforts as inadequate under the ADA. The court relied significantly on a balancing of the equities and determined that where plaintiffs had not sought an injunction for nearly two years, their argument of injury was undermined. It is unclear whether other cases might be more effective under the ADA, or whether other strategies are needed.

In the state of Georgia, city of Atlanta, and DeKalb and Fulton Counties, there are no state laws or procedures that allow a pedestrian to enforce their rights to accessible sidewalks and rights-of-way. Therefore, people with disabilities have no choice but to file lawsuits under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act to protect and preserve their rights. People without disabilities may only file general civil suits against property owners or contractors. In other words, while pedestrians may sue a driver who hits and harms them pursuant to Georgia law, they have no state or local right to sue public entities that harm them by failing to provide accessible and useable sidewalks. Accordingly, their only recourse is through federal law and courts. This differs from the situation in New York where affected citizens could bring a complaint about a locality to the New York State Division of Human Rights.

In Onondaga County, New York, as noted above, only three municipalities require ADA compliance and, of those, the Town of Dewitt has yet to implement snow removal plans in order to become ADA compliant. As a result, people with disabilities must rely on New York State or federal law if they wish to enforce their rights when municipalities fail to provide accessible sidewalks and rights of way.

## **E1.2 Strengths and Good Practices**

While this report has generally focused on concerning issues or failures to ensure accessible sidewalks and rights of way, each of the jurisdictions reviewed has taken some positive steps to

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<sup>511</sup> *Montoya v. City of San Diego*, Case No.: 19cv0054 JM(BGS) (S.D. Cal. Mar. 19, 2021) <https://casetext.com/case/montoya-v-city-of-san-diego-2> (accessed 6 June 2012)..

address accessibility and access to their programs and services. In particular, the jurisdictions made positive and often successful efforts at Civil Society Engagement.

For example, in Georgia, GAMPO provides a forum to exchange ideas, concerns, and practices as well as to disseminate information. Similarly, PEDS advocates for increased safety and accessibility for people and pedestrians with disabilities through education and advocacy. As shown, NGOs like GAMPO and PEDS are also leaders and advocates for necessary and positive change.

New York State and its counties and cities, such as the City of Syracuse and Onondaga County, have taken steps toward ensuring public ways of travel are inclusive to all. These include incorporating the larger federal framework of disability law with state law such as the New York Human Rights Law, and local level nondiscrimination laws and policies.

### **E1.3 Recommendations**

As noted in section B1.1, the ADA and Section 504 impart similar requirements on federally funded public entities like states and municipalities. Federal actors and people with disabilities can take various actions to seek their enforcement including litigation. In addition, under Section 504, the funding agency, here the federal Department of Transportation, Federal Highway Administration can threaten to or actually cut off funding for public entities that fail to adhere to the Section 504 non-discrimination mandate. This threat to loss of federal funding can be a strong incentive and should be utilized more aggressively. It is difficult to assess from the outside how effectively this approach has been used. It was the subject of internal criticism by the federal National Council on Disability which produced a report entitled ‘Rehabilitating Section 504’ in 2003 recommending greater reliance on this approach.<sup>512</sup> Renewed efforts to utilize this authority might be more efficient than relying primarily on the DOJ to enforce the ADA and 504 in more typical litigation.

The movement discussed in Syracuse to centralize maintenance as a city responsibility has substantial possibility of success but would potentially be politically challenging to accomplish with the required taxation to implement. Onondaga County should pass a similar law to Syracuse Law Section 24-5 which provides recourse against those who do not properly comply with snow and ice removal regulations.

Overall, every location analyzed has its own problems. While problems certainly arise, the key is fixing them. This should be accomplished by large-spread enforcement of laws in place,

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<sup>512</sup> ‘Rehabilitating Section 504’ National Council on Disability (NCD) 12 February 2003 <https://ncd.gov/publications/2003/Feb122003#ChapterIII> (accessed 10 June 2021).

including penalties for non-enforcement. Further, if the minor penalties do not work, more should be done.

While most ordinances simply impose a fine or repair – typically \$250 in Onondaga – some municipalities impose a jail sentence for the violation. The most common sentence Onondaga County is 15 days and is within the discretion of the Judge to impose it. Giving the Judge broad discretion is certainly normal, but without imposition of a fine or penalty, effective enforcement is not possible. As such, punitive measures outside of a Judge's discretion may need to be codified.

Finally, each location should impose laws that mandate ADA compliance. While the work of PEDS in Atlanta and other non-profits is important and admirable, they should not be left without recourse. The Legislatures must step in to ensure that their cities are ADA compliant, such as Georgia adopting a counterpart to New York's Human Rights Law, and each state dedicating funds to create a pathway to retrofitting non-compliant areas in a timelier manner. Great efforts have been done to revitalize a the areas but without access for all, the efforts will be for naught.

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## **Databases and Search Engines Used**

Google

Lexis Nexis Advanced

Westlaw Next

# Annex 1: Glossary of Key Terms

Select a letter to view words starting with the letter:

[A](#) | [B](#) | [C](#) | [D](#) | [E](#) | [F](#) | [N](#) | [P](#) | [S](#) | [T](#)

**Accommodation:** Any facility, design feature, operational change or maintenance activity that provides or improves either non-motorizes and/or transit travel. Common accommodations include: Sidewalks, Curb Ramps, Pedestrian Crossings, Shared-Use Paths Pedestrian Activated Signals, Mid-block Treatments, Crosswalks, Median Islands, Signs, Lighting, and Accessibility Features.

**Alteration:** A change to an existing transportation facility that affects or could affect pedestrian access, circulation or use which includes: reconstruction, rehabilitation, widening, resurfacing or projects of similar scale and effect.

**Bevel:** The angle or inclination of a line or surface that meets another at any angle but 90.

**Blended Transition:** Raised pedestrian street crossing, depressed corner or similar connection between the sidewalk and street level.

**Broom Finish:** finish achieved by running a stiff broom over freshly poured concrete in order to make the concrete a rough surface.

**Catchment:** Radial distance from a transit facility per FTA guidelines, including crossing and intersecting streets.

**Channelization Devices:** Cones, tubular markers, vertical panels, drums, barricades and temporary raised island which provide for smooth and gradual vehicular traffic flow from one lane to another onto a bypass or detour or into a narrower travelled way.

**Curb Cut/Curb Ramp:** A ramp that provides access between the sidewalk and the street for people who use wheelchairs which leads smoothly down from a sidewalk to a street, rather than abruptly ending with a curb and dropping roughly four inches (10.16 centimeters) to six inches (15.24 centimeters).

**Curb Ramps:** Ramps that are cut through or built up to the curb that can be perpendicular, parallel or a combination of the two.

**Detectable Warning Surface:** Standardized surface feature built into or applied to walking surfaces which indicate a boundary where a pedestrian accommodation and a roadway meet in and serve to warn visually impaired pedestrians of potential hazards.

**Excessively Disproportionate:** Exceeding 20 of the total project cost.

**Flangeway Gap:** The gap in road surfaces that allows the wheel flange of a rail vehicle to pass.

**New Construction:** Construction of a roadway where an existing roadway does not currently exist.

**Parallel Curb Ramps:** Ramps that have a running slope that is in-line with the direction of sidewalk travel and provide turning space at the bottom of the ramp.

**Pedestrian:** “Any person who is afoot”; By state definition, roller skaters, in-line skaters, skateboarders, and wheelchair users are also considered pedestrians.

**Pedestrian Buffer Area:** Area often referred to as a “buffer” or “landscaping” strip which separates the sidewalk and the vehicle traveled way as the physical area between the back of curb and the roadside edge of the sidewalk and allows room to place utilities, bus stops, landscaping, street furniture, signs and mailboxes without obstructing the pedestrian travel while providing as well comfort and safety benefits for pedestrians.

**Pedestrian Refuge:** Also referred to as a refuge island/area or pedestrian island, is a section of pavement or sidewalk where pedestrians can stop before finishing crossing a road.

**Perpendicular Curb Ramps:** Ramps aligned perpendicular to the traffic they are crossing and guide pedestrians directly into the crosswalk that include turning space for wheelchairs at the top of the ramp.

**Shared-Use Path:** A combined bikeway and pedestrian facility located within an independent right-of-way, or located within the roadway right-of-way, and physically separated from motor vehicle traffic by an open space or barrier.

**Sidewalk:** The portion of a street between the curb lines, or the lateral lines of a railway, and the adjacent property lines, intended for use by pedestrians.

**Structurally Impractical:** A designation limited to new construction given to rare situations when the unique characteristics of terrain make it physically impossible to construct facilities that are fully compliant with the Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (“PROWAG”).

**Technically Infeasible:** Designation applicable to alterations and elements added to new facilities which indicates that something has little likelihood of being accomplished because existing structural conditions require removing or altering a load-bearing member that is an essential part of the structural frame or because other existing physical and site constraints prohibit modification of elements, spaces, or features to fully comply with the requirements of Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way (“PROWAG”).

**Total Project Cost:** Cost of construction, required right of way, environmental impacts and, in some cases, operation and maintenance. Benefits of addressing crash history must be considered where accommodations provide safety benefits to address pedestrian crash history.

**Transit Facility:** bus stops, bus stations, and/or park and ride lots.