

Local Project Administration Manual & Resource Guide

Civil Rights, DBE & ADA



MaineDOT

Integrity - Competence - Service

Chapter 10 - Updated June 2022

Civil Rights, DBE & ADA

Municipalities and other organizations managing federally funded transportation projects (collectively referred to as “local public agencies”) must comply with a variety of federal civil rights laws, rules, regulations and presidential executive orders designed to prevent and eliminate discrimination.

Chapter 10 provides an overview of Title VI of the Civil Rights Act of 1964, the Disadvantaged Business Enterprise Program (DBE), the Americans with Disabilities Act (ADA), and other civil rights and non-discrimination requirements that local public agencies may encounter as they develop federal-aid projects. The topics listed below will be covered.

- Title VI of the Civil Rights Act of 1964 – *revised* (page 10-1);
- Limited English Proficiency – *revised* (page 10-3);
- Disadvantaged Business Enterprise Program (page 10-4);
- Equal Employment Opportunity (page 10-5);
- Americans with Disabilities Act (page 10-5);
- Appendix 10A: ADA Guidance (page 10-7):
 - Minimum ADA Requirements for Pedestrian Facilities (page 10-8); and
 - MaineDOT ADA Compliance Policy (page 10-11).



MaineDOT offers additional Civil Rights guidance online: www.maine.gov/mdot/civilrights/

10.1 Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color or national origin in any program or activity receiving federal funding. The requirements are found in Title 49 of the Code of Federal Regulations (CFR), Part 21.

Local public agencies receiving funding from the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) must have policies and procedures in place to address Title VI requirements, including the designation of a Title VI coordinator responsible for compliance.

Local public agencies also must have on file Title VI Assurances signed by the highest-ranking administrative officer stating that the agency will do the following:

- Include in all solicitations for bids the statement that bidders will receive fair opportunity;
- Add clauses related to non-discrimination in every contract; and
- Provide evidence that the agency is complying with the requirements.

❑ 10.1.1 Title VI Compliance

Municipalities and other local public agencies comply with Title VI by ensuring full and fair participation in the transportation decision-making process by all potentially affected groups. Actions that local public agencies can take to meet Title VI requirements include the following:

- Planning public meetings well in advance of a project and publicizing them in diverse media, flyers and online.
- Ensuring that public notices state that a meeting will use accessible-format materials.
- Determining what non-English languages and other cultural characteristics could inhibit public participation if not accommodated – and offering appropriate accommodations.
- Accepting verbal and written comments in languages other than English.
- Holding meetings and conducting outreach in the affected neighborhoods themselves, using community activity centers as meeting locations and venues for informal outreach.
- Using varied meeting times, sizes and locations to accommodate the schedules, transportation and child-care limitations for community members.
- Holding meetings at convenient times and at locations accessible and welcoming to all, including persons with disabilities.
- Making available alternative methods for two-way flow of information and comments between a local public agency and people unlikely to attend meetings.
- Using various illustration and visualization techniques to convey information, such as charts, graphs, photos, maps and websites.
- Reaching out to others with expertise in contacting and connecting with underserved people in order to obtain advice about best practices and effective techniques.

❑ 10.1.2 Title VI Reviews

Each year, MaineDOT selects three to five local public agencies for Title VI reviews based on its assessment of the risk of non-compliance. Reviews may be held in-person or by teleconference. MaineDOT selects local public agencies for such reviews based one or more of the following:

- MaineDOT is aware of or has received complaints about an agency;
- MaineDOT has identified agencies with Title VI issues or concerns;
- An agency has submitted either problematic responses to a Title VI questionnaire or incomplete Title VI documentation;
- An agency receives a large amount of federal funding, relative to other such agencies;
- An agency is new to the federal-aid process, receives a large amount of funding from MaineDOT, and requires Title VI training.

MaineDOT typically will notify a local public agency of a Title VI review through a letter that has the information and documentation needed for the review.

MaineDOT follows a standard checklist to ensure that all documents are submitted and that a local public agency's responses are given proper consideration. As part of a review, MaineDOT will look at an agency's public participation activities, including its notification and outreach procedures. A reviewer will examine if and how any diverse populations were identified and how these populations were notified.

Based on the information gathered, MaineDOT will prepare a Report of Findings documenting any deficiencies. If there are none, the report may provide recommendations for strengthening an agency's Title VI program.

➡ Additional Title VI information is online: www.maine.gov/mdot/civilrights/title-vi/

10.2 Limited English Proficiency

Organizations administering federally funded projects must take reasonable steps to ensure that people with limited English proficiency (LEP) have meaningful access to the programs, services and information those organizations provide.

People with a primary language other than English and with limited ability to read, speak, write or understand English can be considered LEP. Local public agencies may need to provide materials in other languages or arrange for translation services at meetings to assist LEP individuals.



LEP requirements originate from Presidential Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," which contained two major initiatives:

- The first initiative is designed to improve enforcement and implementation of Title VI, which prohibits discrimination based on national origin by, among other things, failing to provide meaningful access to LEP individuals.
- The second initiative requires the Federal Government and agencies receiving federal funds – including MaineDOT and local projects sponsors – to provide materials in other languages or to translate at meetings when LEP individuals are present.

Local public agencies must provide meeting announcements and outreach materials in languages understood by affected LEP populations, if necessary. If so requested, an agency must provide spoken and sign-language interpreters, as well as alternately formatted materials, at no cost.

A 2020 analysis by MaineDOT identified five primary populations in Maine of LEP persons:

- **French.** There are approximately 7,100 French-speaking LEP persons in Maine, with the largest numbers in greater Portland, the Lewiston/Auburn area, and the St. John Valley region of northern Maine.

- **Spanish or Spanish Creole.** There are an estimated 2,500 Spanish or Spanish Creole LEP persons in Maine, primarily in Cumberland, York and Washington counties – and with a substantial number in Portland.
- **Chinese.** There are approximately 1,500 Chinese-speaking LEP persons in Maine, with the largest numbers in Cumberland, Penobscot and Kennebec counties.
- **Arabic.** There are an estimated 1,200 Arabic LEP persons in Maine, primarily in Cumberland and York counties.
- **African Languages.** There are approximately 1,200 LEP persons in Maine under the classification “Amharic, Somali or other Afro-Asiatic languages.” The re-settlement communities of Lewiston/Auburn and greater Portland have substantial numbers of Somali people who speak African languages, with other African language speakers living throughout Maine.

10.3 Disadvantaged Business Enterprises (DBE)

The federal Disadvantaged Business Enterprise Program (DBE) assists women and minority small-business owners in promoting their services in the contracting community. MaineDOT sets an overall goal for DBE participation in transportation project to be achieved through race/gender neutral means, as follows:

- The annual goal for FHWA funded projects – through Sept. 30, 2024 – is **1.97 percent**.
- The annual goal for FTA funded projects – through Sept. 30, 2022 – is **0.94 percent**.

MaineDOT encourages local public agencies, consultants and contractors on federally funded projects to give certified DBE companies equal opportunity. Although Maine typically doesn’t mandate DBE participation on individual projects, MaineDOT has the option to implement project-specific goals if it becomes apparent that Maine’s overall DBE target won’t be met.

❏ 10.3.1: DBE Use on Federal-aid Contracts

If a federally funded project will require consultant services, the request for proposals (RFP) must state that DBE companies are encouraged to submit proposals. The RFP also must require non-DBE consultants to ensure that DBEs have opportunity to participate in any contract.

On federally funded construction projects, the contract books must list Maine’s DBE goal, based on funding source, and include a statement that non-DBE contractors are encouraged to seek certified DBE companies as subcontractors.

The prime consultant and contractor on a federal project must fill out a DBE Utilization Form. Completed forms must be kept in the project files, along with subcontracts with DBE firms, for review during site visits by state and federal personnel. Utilization forms are found on MaineDOT’s website: <https://www.maine.gov/mdot/civilrights/dbe/>

DBE is governed by the regulations found in Title 49 of the Code of Federal Regulations, Part 26: <https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

10.4 Equal Employment Opportunity (EEO)

Equal Employment Opportunity (EEO) works to ensure that sub-recipients of federal funds, contractors and sub-contractors comply with federal laws and regulations that prohibit government contractors from discriminating in employment. EEO also requires that the recipients of federal funds and their contracted agents understand their contractual obligations and undertake affirmative action to ensure equal employment opportunity in their workforces.

Local public agencies are required to include EEO provisions in their federal-aid construction contracts. These provisions are contained in Form FHWA-1273, “Required Contract Provisions for Federal-aid Construction Contracts,” which must be incorporated into the contract book for every federal-aid project. (*For more information, see Chapter 7, “Final PS&E Package.”*)

Form FHWA-1273 can be found at the link below under “Bid Package Documents”:
www.maine.gov/mdot/lpa/lpadocuments/

10.5 Americans with Disabilities Act (ADA)

Title II of the Americans with Disabilities Act (ADA) requires state and local government entities to provide accessible services to persons with disabilities. (Refer to 28 CFR part 35, “Nondiscrimination on the basis of disability in state and local government services.”)

In transportation, the law serves to ensure that pedestrians with disabilities have an equal opportunity to use the public right-of-way. Examples of accessible services include the use of curb ramps, rest stops for wheelchairs, accessible building facilities, and devices such as readers that help people with visual impairments to access public information.

Under the ADA, transportation improvements covering new, reconstructed or otherwise “altered” facilities must address ADA deficiencies to the *maximum extent feasible*, regardless of cost or type of funding. An alteration is defined as a change to a public right-of-way that affects – or could affect – access, circulation or use.

These definitions may change how local public agencies upgrade accessibility to pedestrian facilities. They apply to ALL government agencies regardless of funding. Any of the following scopes of work could be defined as an alternation:

- New construction;
- Road rehabilitation;
- Road reconstruction;
- Mill-and-fill / mill and overlay;
- Addition of new layer of asphalt (light capital paving);
- Cape seals
- Hot-in-place recycling; and
- Microsurfacing / thin-lift overlay.

Under the ADA, a variety of roadway alterations must address public access to existing pedestrian facilities to the **maximum extent feasible**. Where sidewalks or other pedestrian facilities are present, a local public agency must accommodate ADA compliance for curb ramp width, slope and detectable warnings when undertaking the treatments listed above; this may also require pedestrian signal upgrades.

For guidance and additional information, refer to the following federal and MaineDOT resources:

- ADA Resources for Engineers, Inspectors and Contractors:
<https://www.maine.gov/mdot/civilrights/ada/resources-engineers/>
- Americans with Disabilities Act Title II Regulations:
https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm
- [42 USC §12101 et. seq.](#), “Americans with Disabilities Act of 1990”;
- [49 CFR Part 27](#), “Nondiscrimination on the Basis of Disability in Programs of Activities Receiving Federal Financial Assistance”;
- [49 CFR Part 37](#), “Transportation Services for Individuals with Disabilities”;
- [49 CFR Part 38](#), “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Services”;
- [Section 504 of the Rehabilitation Act of 1973](#) (42 USC §126), which prohibits discrimination on the basis of disability in federally assisted programs; and
- Older Americans Act of 1965, as amended, prohibiting discrimination on the basis of age in programs and activities receiving federal financial assistance.

➡ ADA guidance for local public agencies also is available from MaineDOT’s Civil Rights Office:
<https://www.maine.gov/mdot/civilrights/ada/local-agency/>

Appendix 10A:

ADA Guidance

ADA resources for local public agencies are found on MaineDOT's Civil Rights Office website:
www.maine.gov/mdot/civilrights/ada/resources-engineers/



Maine Department of Transportation

Highway Program

Design Guidance

Title: Minimum ADA Requirements for Pedestrian Facilities

Issue Date: November 1, 2017

Discipline: General Engineering

Revised Date: August 2, 2021

Originator: Highway Program

Approved By: Bradford Foley, P.E.

Background:

The MaineDOT updated ADA Title II Transition Plan specifies what ADA standards MaineDOT has adopted. The MaineDOT ADA Compliance Policy specifies what improvements will be required, based on project scope. This document is intended to provide guidance on what makes each individual element of a pedestrian facility ADA compliant. It should be the basis for determining if an existing pedestrian facility is ADA compliant and for designing and constructing new or improved pedestrian facilities.

Guidance:

Existing Pedestrian Facilities

If an existing pedestrian facility meets the requirements listed in Table 1 it is considered an ADA compliant facility. Such facilities do not need to be improved if it is beyond the planned scope of work to do so. Consideration should be given to the overall system of pedestrian facilities on the project to make sure there are no non-ADA safety issues that need to be addressed. Examples of such non-ADA safety issues include cross walk locations, refuge areas, and visibility.

New or Reconstructed Pedestrian Facilities

New pedestrian facilities, or existing facilities that must be reconstructed, shall be designed and built to meet the minimum requirements listed in Table 1.

More detailed guidance for the design of pedestrian curb ramps can be found in the [Standard Details](#).

Exceptions

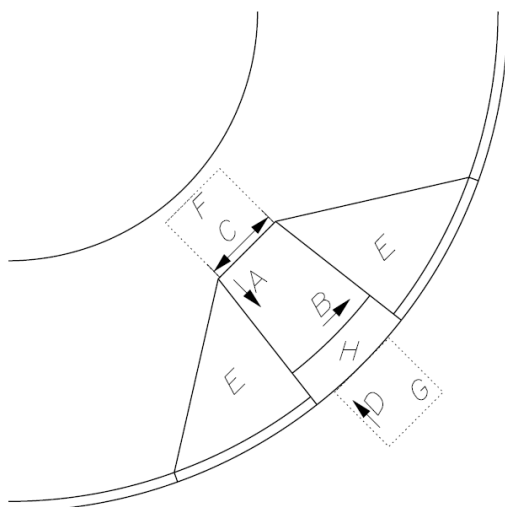
The ADA Compliance Policy allows exceptions to be made when it is “technically infeasible” or “physically impractical” to meet all current ADA requirements. In some cases, there may be physical constraints that are beyond project scope to modify or remove that make it infeasible to meet ADA requirements. Examples of these constraints include, but are not limited to, underground and overhead utility structures, bridge structures, building entrances at back of sidewalk, retaining walls, and established landscaping such as large trees. In such cases, the facility must be upgraded to the maximum extent possible. Technical infeasibility or physical impracticality may not be determined solely based on cost.

The ADA Compliance Policy requires that locations where full compliance with current ADA standards is not feasible be documented according to the following established procedure:

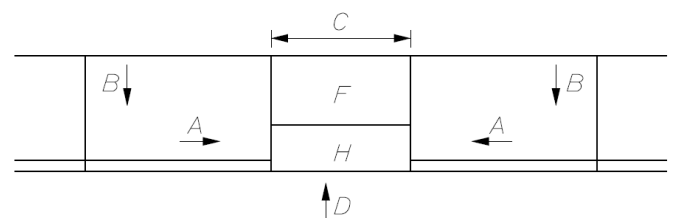
- If an element does not meet the minimum requirements for pedestrian facilities listed in Table 1, include discussion in the ADA compliance section of the Preliminary Design Report and submit an [ADA Technical Infeasibility Form](#) for review to the appropriate Program Manager or Region Manager and the Title II ADA Coordinator. Approval may be granted at the Program or Region level or forwarded to the Engineering Council for further review.

		Minimum Requirements for Pedestrian Facilities
		SIDEWALKS
Cross Slope		Max. 2% (1:50)
Clear Width		5 feet, excluding curb (standard) 4 feet, excluding curb (minimum) <i>3 feet, excluding curb, may be acceptable if waived by the Chief Engineer. Widths less than 5 feet require a 5 foot by 5 foot passing space every 200 feet.</i>
		CURB RAMPS
Running Slope	A	Max. 8.33% (1:12)
Cross Slope	B	Max. 2% (1:50) <i>Ramp cross slope at street crossings without stop or signal control may match roadway profile.</i>
Clear Width	C	Min. 4' – 8" <i>Provide 5'-8" clear width when feasible. Existing ramp width may remain 4 feet.</i>
Counter Slope	D	Max. 5% (1:20) <i>Adjacent surface must be flush with the ramp.</i>
Flared Sides	E	Max. 10% (1:10)
Turning Space	F	4 feet by 4 feet <i>Maximum slope of 2% in any direction. May include Detectable Warnings.</i>
Clear Space	G	4 feet by 4 feet <i>Located at the bottom of the ramp outside active travel lanes.</i>
Detectable Warnings	H	<i>Required at traffic-controlled intersections and mid-block crossings. Extend the full width of curb opening except for a 4" maximum border.</i>

Table 1. Minimum Requirements for Pedestrian Facilities



Perpendicular Ramp



Parallel Ramp

MaineDOT ADA Compliance Policy for Construction and Maintenance

- Revised August 11, 2016 -

❑ Overview

MaineDOT is responsible for implementing the requirements of Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA), and all applicable enforcement regulations, on its transportation facilities. This policy identifies actions necessary to comply with ADA requirements as work is performed on the highway and bridge system.

***NOTE:** This policy applies to locally administered projects with federal or state funding. MaineDOT will expect municipalities and their design consultants to abide by the requirements.*

❑ General

Newly constructed, reconstructed, or rehabilitated pedestrian facilities will fully meet current ADA accessibility standards. MaineDOT will maintain its design guides and Standard Details to ensure that all elements of current ADA compliance are incorporated into roadway improvements as required by this policy.

❑ Alterations and Maintenance

When walkways or other right-of-way elements intended to assist pedestrians are altered as part of a roadway improvement, those walkways and elements must be upgraded to meet current ADA standards. While many maintenance activities are not considered alterations and do not trigger requirements to perform ADA upgrades, most other work, including surface paving treatments and traffic signal replacements, do cause ADA improvements to be made. Table 1 below provides the minimum ADA upgrades required for a variety of work scopes.

❑ Consideration beyond minimum requirements

In determining the extent to which ADA improvements must be performed within the limits of work, designers should consider the accessibility of existing pedestrian facilities in context with local pedestrian use and needs.

- Areas of heavy pedestrian use or the presence of hospitals, retirement centers, veterans facilities, schools, libraries and government buildings would give compelling reason to consider more extensive upgrades, particularly if there are barriers along the adjacent sidewalk. In these areas, municipalities and other local agencies should seek guidance about the extent of ADA improvements from MaineDOT project managers, in consultation with the Multimodal Program Manager and Office of Civil Rights.
- If multiple ADA modifications are being made to meet the minimum requirements, designers should consider upgrading all pedestrian facilities within the project limits rather than leaving a patchwork of compliant and non-compliant ADA elements.
- The extent of work for traditional improvement scopes should not be altered solely to avoid the requirements of this policy.

❑ Crosswalks and curb ramps

Any paving work affecting an existing crosswalk is considered an alteration that requires accessibility review and upgrades.

- When a crosswalk is altered, curb ramps must be installed or brought to current ADA standards where the crosswalk connects to a sidewalk or other pedestrian walkway.
- When a crosswalk is altered at an intersection, upgrades will be made at all corners, even if outside the project limits.
- Curb ramp upgrades will be made as required at driveway/crosswalk crossings when paving activities impact crossings.
- Current standards will be met for all required and applicable curb ramp elements including slopes, width, cross slope, landing area and detectable warnings.

❑ Pedestrian signal systems

When the accessibility of an existing pedestrian signal system is impacted by an alteration, such as improper button height or slopes at pedestrian poles, the pedestrian signal system must be upgraded to meet current ADA standards. The replacement of traffic signals and the relocation of pedestrian poles are also actions that require upgrade of the entire pedestrian signal system.

❑ Exceptions

Technically infeasible situations

If it is technically infeasible or physically impractical to meet all current ADA standards, the standards will be met to the maximum extent possible. Locations where full compliance is not feasible must be documented. If the non-compliant element cannot be improved enough to remove barriers, the municipality managing a locally administered project must consult with the MaineDOT Multimodal Program, which may contact the MaineDOT Civil Rights Office to determine the appropriate course of action.

Federal “Safe Harbor” provision

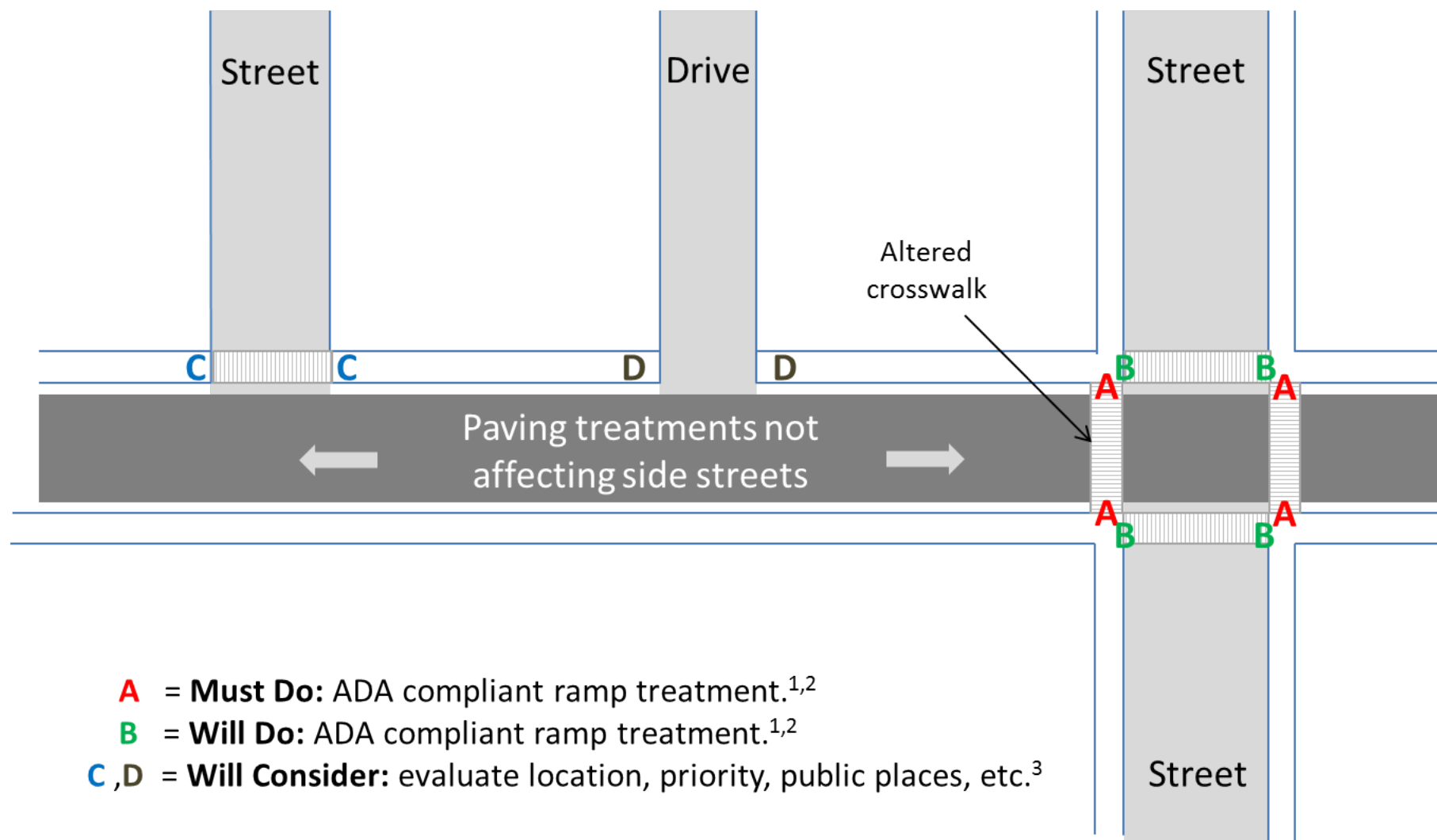
By federal regulation, existing accessibility elements constructed or altered before March 15, 2012 that comply with 1991 ADA Accessibility Guidelines do not have to be modified to comply with the 2010 standards. If this exception is utilized and detectable warnings are not present, detectable warnings will be added at locations determined appropriate as described in the Alterations and Maintenance section above.

❑ Responsibilities

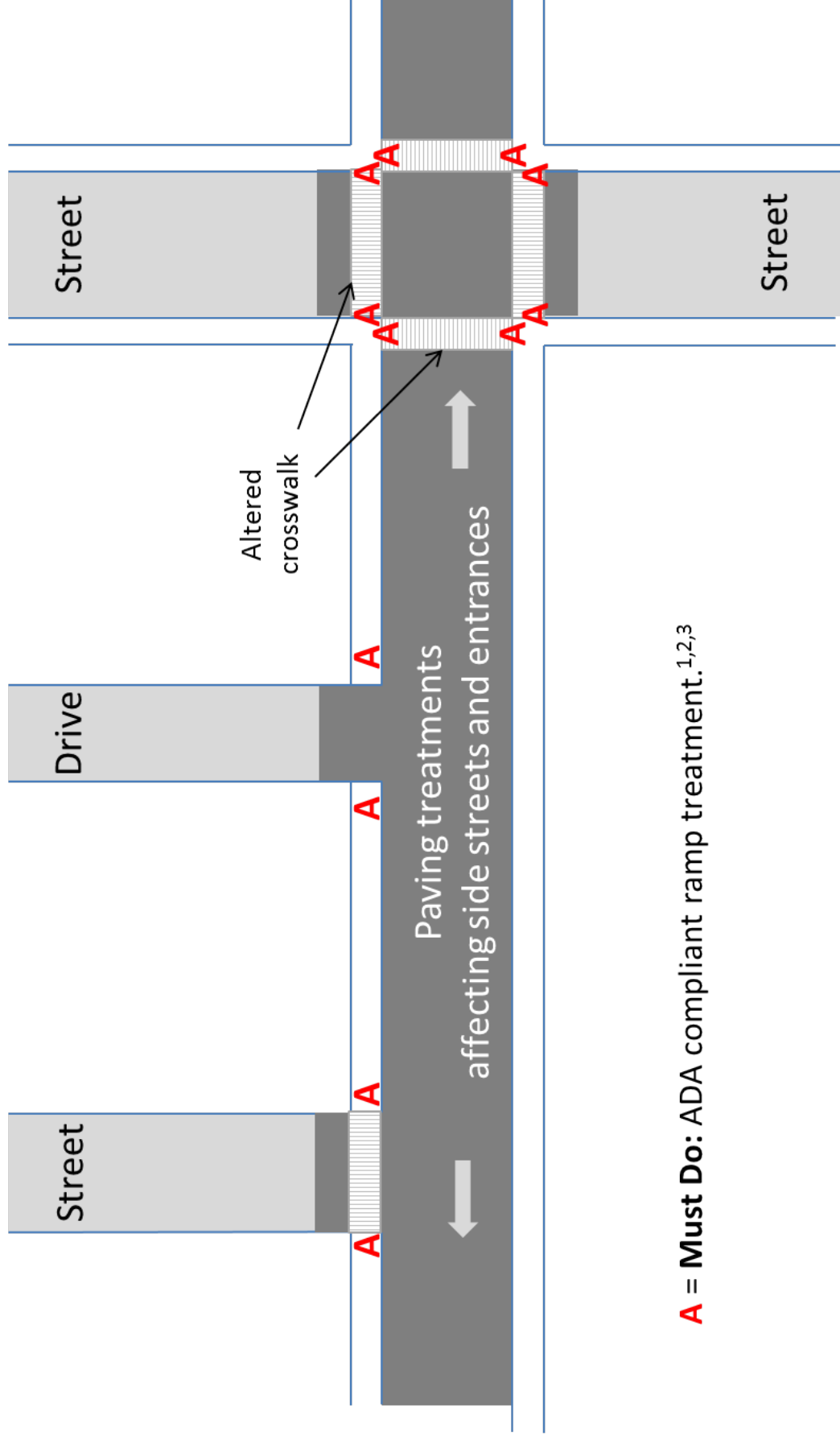
For locally administered capital improvements, the municipality managing a project, in consultation with its contracted design consultant if applicable, is responsible for reviewing existing pedestrian and accessibility elements within the limits of a project and determining what ADA improvements must be made in accordance with this policy.

TABLE 1: REQUIRED ADA ELEMENTS BY SCOPE OF WORK

TYPE OF WORK	ADA IMPROVEMENTS NEEDED?	MINIMUM IMPROVEMENTS
<ul style="list-style-type: none"> ▪ New Construction ▪ Reconstruction ▪ Rehabilitation 	YES	Pedestrian facilities must be constructed or upgraded to meet current ADA requirements within the project limits.
Paving Treatments: <ul style="list-style-type: none"> ▪ Mill and fill / Overlay ▪ Micro-surfacing ▪ Hot or Cold In-Place Recycling ▪ PMRAP ▪ Ultra-Thin Bonded Wearing Course ▪ Light Capital Paving 	YES	<ul style="list-style-type: none"> - Upgrade curb ramps where treatment crosses or impacts existing pedestrian elements or routes within project limits. - If a crosswalk is altered at an intersection, all corners must be upgraded even if outside project limits. - Upgrade pedestrian signals to current ADA standard if the improvement affects the accessibility of the system.
Signal: New location that warrants pedestrian facilities	YES	Install or upgrade intersection pedestrian facilities to meet current ADA standards, including curb ramps and pedestrian signal systems.
Signal Replace in Kind	YES	Upgrade intersection pedestrian facilities to meet current ADA standards, including curb ramps and pedestrian signal systems.
Signal: Modification involving excavation or right-of-way that warrants pedestrian facilities.	YES	Upgrade intersection pedestrian facilities to meet current ADA standards, including curb ramps and pedestrian signal systems.
Lighting	NO	
Striping	NO	
Maintenance Activities: Chip Seals, Crack Filling and Sealing, Dowel Bar Retrofit, Fog Seals, Joint Crack Seals, Joint Repair, Pavement Patching, Scrub Sealing, Slurry Seals, Spot High-Friction Treatments, Surface Sealing.	NO	Note: Some combinations of these may require ADA upgrades.



1. Current ADA standards must be met unless existing ramps meet 1991 ADA Standards or 1991 UFAS.
2. Truncated domes will be installed at all modified ramps at roadway intersections, but not at drive crossings.
3. Consideration should be given to remove all physical barriers within the project limits along the roadway being improved and the adjacent sidewalks. Project guidance is available through the Highway Program Manager and the Director of the Civil Rights Office.



A = Must Do: ADA compliant ramp treatment.^{1,2,3}

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2. Truncated domes will be installed at all modified ramps at roadway intersections, but not at drive crossings.
3. Consideration should be given to remove all physical barriers within the project limits along the roadway being improved and the adjacent sidewalks. Project guidance available through the Highway Program Manager or the Director of the Civil Rights Office.

END OF CHAPTER 10