

# Development Services

## From Concept to Construction

Phone: 503-823-7300 Email: [bds@portlandoregon.gov](mailto:bds@portlandoregon.gov) 1900 SW 4th Ave, Portland, OR 97201

More Contact Info (<http://www.portlandoregon.gov/bds/article/519984>)



### APPEAL SUMMARY

**Status:** Mixed Decision. Item 1: Hold for Additional Information. Item 2: Decision Rendered - Held over from ID 15747 (8/30/17), items 3 & 4, for additional information

<b>Appeal ID:</b> 15801	<b>Project Address:</b> 1110 SW Clay St
<b>Hearing Date:</b> 9/13/17	<b>Appellant Name:</b> Marc Abadie
<b>Case No.:</b> B-001	<b>Appellant Phone:</b> 503-847-2180
<b>Appeal Type:</b> Building	<b>Plans Examiner/Inspector:</b> Preliminary
<b>Project Type:</b> commercial	<b>Stories:</b> 16 <b>Occupancy:</b> R-2, A-3, B, S-1, S-2 <b>Construction Type:</b> 1-A
<b>Building/Business Name:</b> Clay + Tiffany	<b>Fire Sprinklers:</b> Yes - throughout
<b>Appeal Involves:</b> Erection of a new structure, Reconsideration of appeal	<b>LUR or Permit Application No.:</b> 17-195442-LU & 17-198428-LU
<b>Plan Submitted Option:</b> pdf [File 1] [File 2]	<b>Proposed use:</b> Affordable Student Housing

### APPEAL INFORMATION SHEET

#### Appeal item 1

<b>Code Section</b>	OSSC Table 29-A and Sections 2902.1-2902.3
<b>Requires</b>	<p>Minimum number of plumbing fixtures required: Table 29-A, Minimum Number of Required Plumbing Fixtures: R-2 (apartment house) occupancies are required to have at least one water closet, lavatory and bathtub/shower per dwelling unit.</p> <p>Section 2902.3, Employee and Public Toilet Facilities: Public toilet facilities to be provided for all establishments that are used by the public and for all employees who are involved with the purpose of the establishment.</p> <p>Section 2902.2, Separate Facilities: Separate facilities shall not be required in tenant spaces with a total occupant load, including employees and customers, of less than 15.</p>
<b>Proposed Design</b>	It is assumed the residents of the apartments will use the toilet facilities in their own apartment, therefore accessory residential areas such as the entrance lobby, vestibules that provide stair and elevator access, the mail room, trash room, and tenant storage areas, etc., are not considered separate occupancies which would require public plumbing toilet facilities. Similarly since the Level 11 and 12 terraces and common room is only to be used by the occupants of the private apartment building and their potential guests, this area would not require additional public plumbing facilities.

Only areas provided for use other than for the apartment residents and their guests, require public plumbing facilities. Therefore the leasing office area is the only area of the building that requires public toilet facilities for leasing staff, in which a single unisex facility is being provided currently on Level 1. Additional unisex restrooms are provided on Levels 11 and Level 12 for tenant convenience. Future tenant spaces on Level 1 will build out any respectively required toilet rooms.

RECONSIDERATION TEXT

The project consists of two programmatic areas. There is a small commercial-retail space at the north east corner of level 1, accessed only from the street with no connection to the rest of the building. This space has been provided with dedicated unisex toilet rooms to satisfy its required fixture count.

The balance of the building consists of affordable student housing and its support functions. Once entering beyond the leasing office in the lobby the building is closed to the public, intended for tenants and their guests only. (Exhibit 3.2 Plans)

Each apartment contains a toilet room, therefore each tenant has access to a dedicated toilet. As the Level 2 terrace and common areas and the common study lounges are only to be used by the occupants of the private apartment building and their potential guests, these areas would not require additional public plumbing facilities.

Only areas provided for use other than for the apartment residents and their guests, require public plumbing facilities. Therefore the leasing office area is the only area of the residential portion of the building that requires public toilet facilities for leasing staff, in which a single unisex facility is being provided on Level 1.

Please see granted precedent appeal 14846.

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**Reason for alternative** See attached correspondence (Exhibit 3.1) from Mike Giachetti, PE who is a senior staff engineer with the International Code Council (ICC). This email provides an interpretation of IBC chapter 29; Minimum Number of Required Plumbing Fixture for buildings that have a main occupancy of apartment/residential without areas that are used by the general public. Oregon amendments to Chapter 29 do not alter the base IBC requirements regarding this subject.

We are submitting this request for appeal based on the fact that the only use in the building requiring public plumbing facilities is the leasing function at level 1 which has been provided with a unisex facility off of the lobby. All other areas of the building are used exclusively by apartment residents and their guests.

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**Appeal item 2**

**Code Section** 2014 OSSC Referenced Standard ICC A117.1 – 2009, Section 308.3.2

**Requires** 308.3.2 Obstructed High Reach. Where a clear floor space allows a parallel approach to an element and the high side reach is over an obstruction the depth of the obstruction shall be 24 inches (610 mm) maximum.

**Proposed Design** The proposed design provides an industry standard 24 inch deep cabinet with an additional extension of 1-1/2 inches for countertops for a maximum depth of 25-1/2 inches. This is required by the Fair Housing Act Design Manual which is recognized as a federal safe harbor.

RECONSIDERATION TEXT

Please see the attached reference documents:

Exhibit 4.1: List of safe harbors for compliance with the Fair Housing Act

Exhibit 4.2: Section 5.8 of Fair Housing Act Design Manual

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**Reason for alternative** The 2014 OSSC referenced standard is not consistent with the Fair Housing Act list of safe harbors as ICC A117.1-2009 has not been listed as a safe harbor, see Exhibit C. The proposed design provides industry standard depth countertops (25 ½") as accepted by the Fair Housing Act Design Manual, see Exhibit D, which is recognized as a federal safe harbor. A117.1-2009 is not intended to be used as a stand-alone document. The previous ICC standard (A117.1-2003) was required to be utilized in conjunction with the Fair Housing Act Design Manual.

#### RECONSIDERATION TEXT

The 2014 OSSC referenced standard is not consistent with the Fair Housing Act list of safe harbors as ICC A117.1-2009 has not been listed as a safe harbor. The proposed design provides industry standard depth countertops (25 ½") as accepted by the Fair Housing Act Design Manual which is recognized as a federal safe harbor. A117.1-2009 is not intended to be used as a stand-alone document. The previous ICC standard (A117.1-2003) was required to be utilized in conjunction with the Fair Housing Act Design Manual.

Please see granted precedent appeal 14846.

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#### APPEAL DECISION

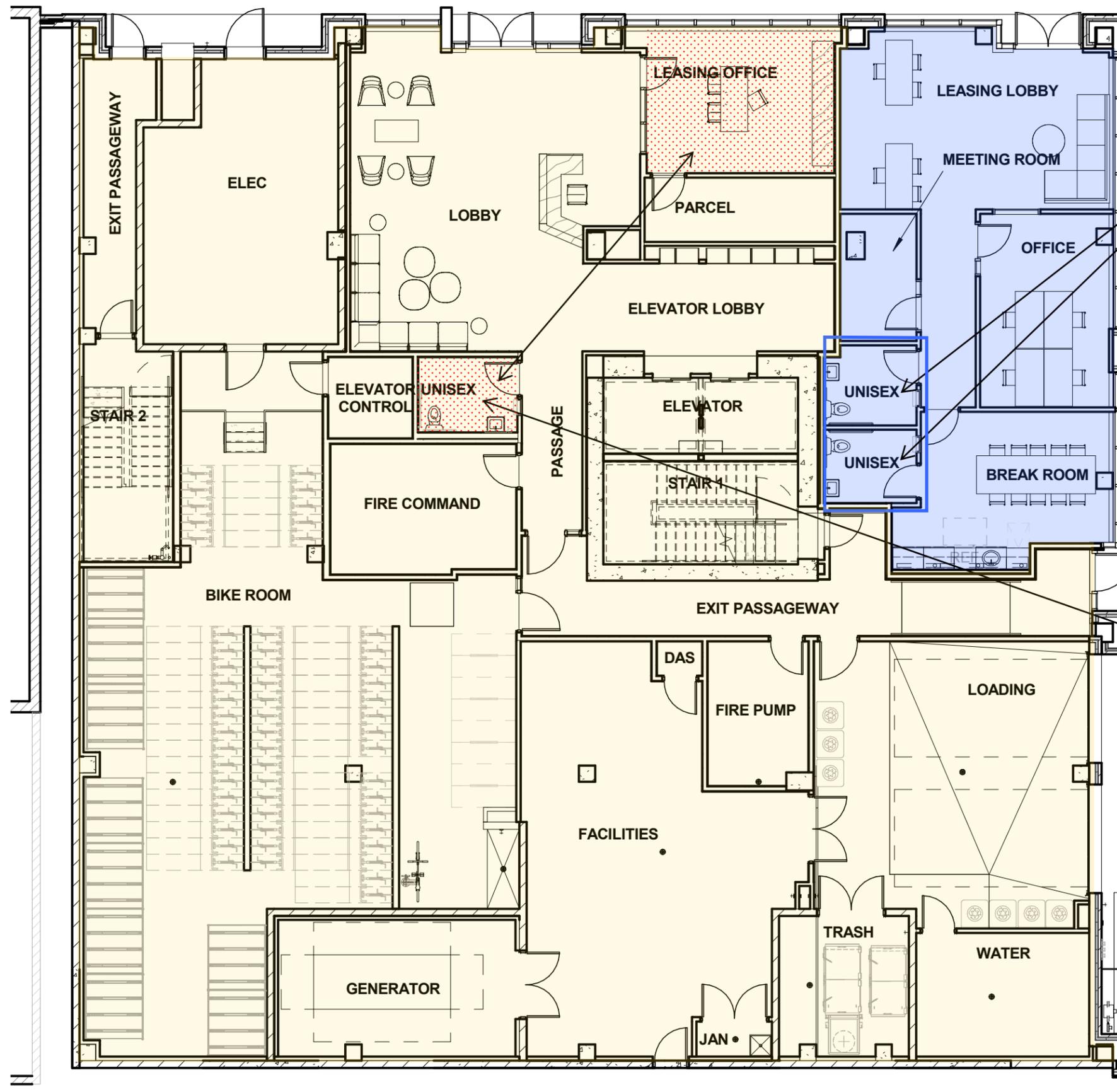
**1. Reduction in minimum number of plumbing fixtures: Hold for additional information.**

**Appellant may contact John Butler (503-823-7339) with questions.**

**2. Accessibility for high reach obstruction to use Fair Housing Act standards: Granted as proposed.**

The Administrative Appeal Board finds that the information submitted by the appellant demonstrates that the approved modifications or alternate methods are consistent with the intent of the code; do not lessen health, safety, accessibility, life, fire safety or structural requirements; and that special conditions unique to this project make strict application of those code sections impractical.

Pursuant to City Code Chapter 24.10, you may appeal this decision to the Building Code Board of Appeal within 180 calendar days of the date this decision is published. For information on the appeals process and costs, including forms, appeal fee, payment methods and fee waivers, go to [www.portlandoregon.gov/bds/appealsinfo](http://www.portlandoregon.gov/bds/appealsinfo), call (503) 823-7300 or come in to the Development Services Center.



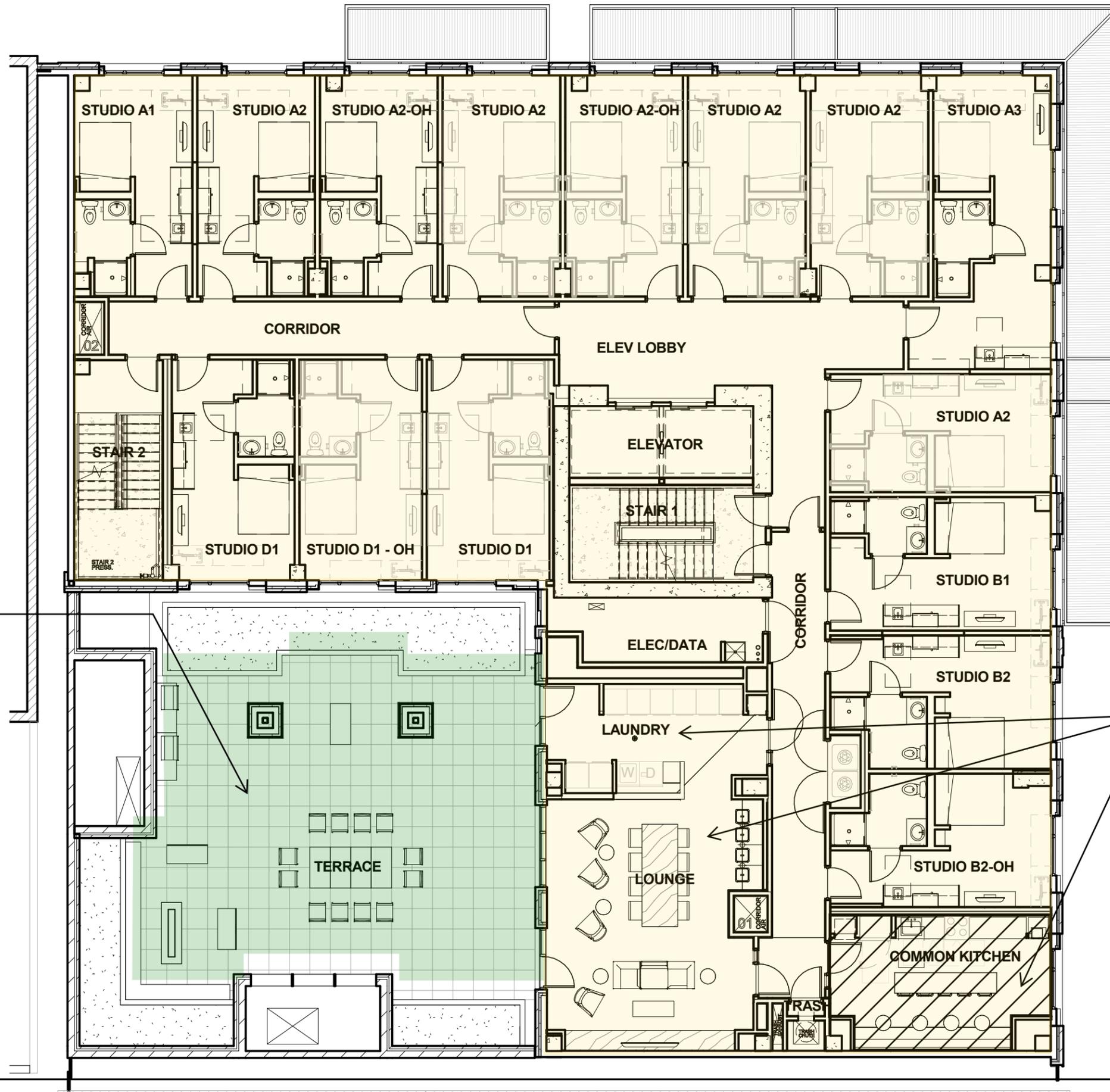
- COMMERCIAL/RETAIL SPACE. NO ACCESS TO RESIDENTIAL PORTION OF BUILDING.
- R-2 OCCUPANCY WITH SUPPORTING R-2 ACCESSORY, S-1, & S-2 OCCUPANCIES.
- B OCCUPANCY WITHIN RESIDENTIAL PROGRAM THAT WILL REQUIRE (1) DEDICATED TOILET ROOM

TOILET ROOMS DEDICATED TO COMMERCIAL/RETAIL SPACE.

TOILET ROOM DEDICATED TO LEASING FUNCTION (B OCCUPANCY)

1 PLAN - LEVEL 01

0' 4' 12' 20'



-  TENANT COMMON AREAS
-  R-2 OCCUPANCY WITH SUPPORTING R-2 ACCESSORY, S-1, & S-2 OCCUPANCIES.

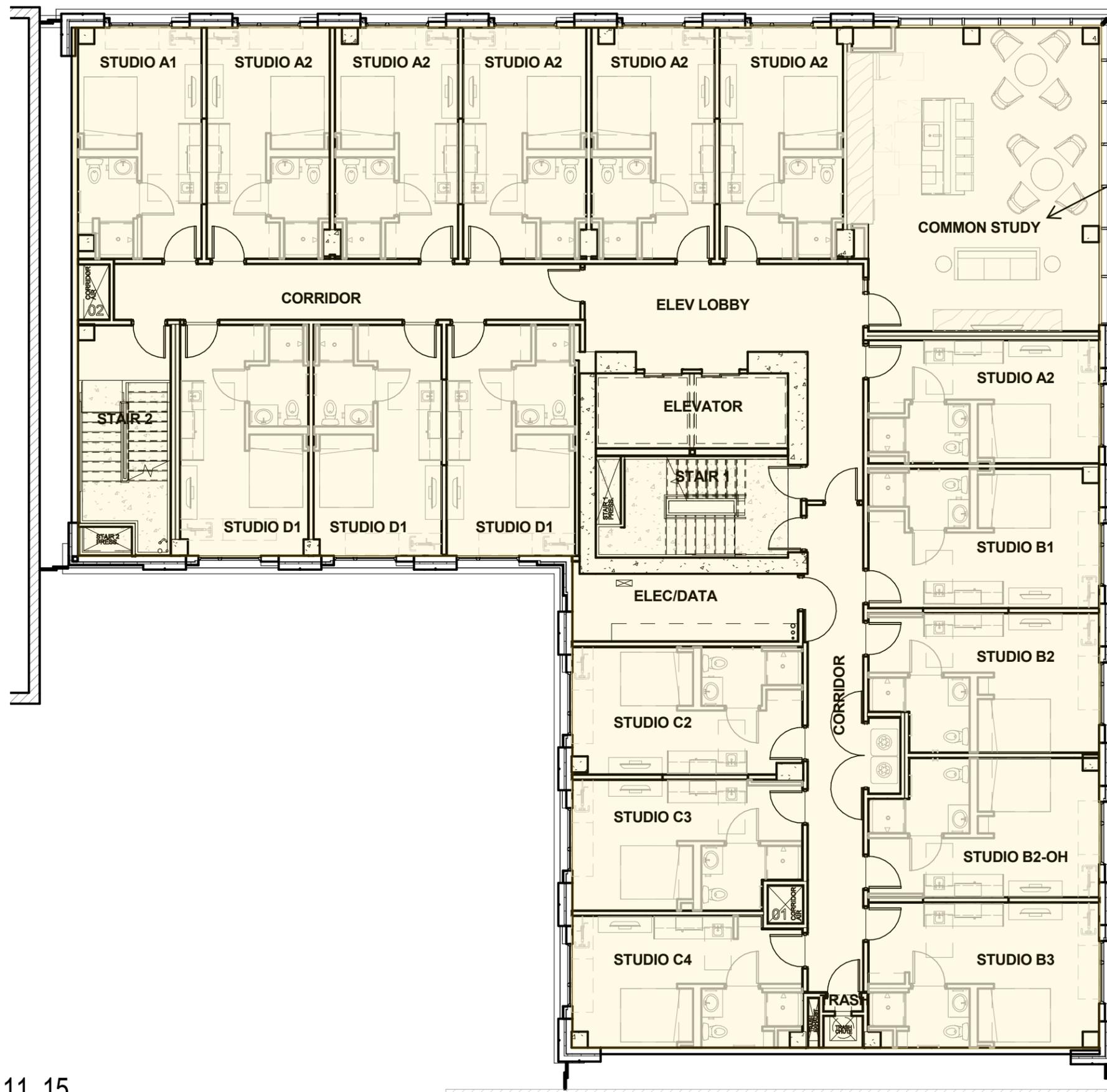
COMMON AREA GREATER THAN 750SF AND GREATER THAN 50 OCCUPANTS THEREFORE A-3. TO BE USED BY TENANTS AND THEIR GUESTS ONLY.

COMMON AREA LESS THAN 750SF THEREFORE R-2

PLAN - LEVEL 02

1





-  TENANT COMMON AREAS
-  R-2 OCCUPANCY WITH SUPPORTING R-2 ACCESSORY, S-1, & S-2 OCCUPANCIES.
- COMMON AREA LESS THAN 750SF THEREFORE R-2

1 PLAN - LEVEL 03, 07, 11, 15

1



**EXHIBIT - FHA SAFE HARBOR LIST**Code section being appealed: 2014 OSSC Referenced Standard ICC  
A117.1 – 2009, Section 308.3.2**EXHIBIT 4.1***"Your FIRST Stop on the Learning Curve."*

Supported by the U.S. Department of Housing and Urban Development



## ■ FREQUENTLY ASKED QUESTIONS (FAQ) ■

Please select a topic below:

### SAFE HARBORS

**What are the ten "safe harbors" for compliance with the Fair Housing Act and where can I find them?**

HUD recognizes ten safe harbors for compliance with the Fair Housing Act's design and construction requirements. They are:

1. [HUD Fair Housing Accessibility Guidelines](#) published on March 6, 1991 and the [Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines](#), published on June 28, 1994.
2. [HUD Fair Housing Act Design Manual](#) ← **SAFE HARBOR APPROACH**
3. [ANSI A117.1 \(1986\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
4. [CABO/ANSI A117.1 \(1992\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
5. [ICC/ANSI A117.1 \(1998\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
6. [Code Requirements for Housing Accessibility 2000 \(CRHA\)](#).
7. [International Building Code 2000](#) as amended by the 2001 Supplement to the International Codes.
8. [International Building Code 2003](#), with one condition\*.
9. [ICC/ANSI A117.1 \(2003\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
10. [2006 International Building Code® \(loose leaf\)](#)

\* Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."

### Questions?

Call our toll-free Design and Construction Resource Center: (888) 341-7781 (V/TTY)



**EXHIBIT - FHA SAFE HARBOR LIST**

Code section being appealed: 2014 OSSC Referenced Standard IIC

A117.1 – 2009, Section 308.3.2

Information about these safe harbors as well as HUD's policy with respect to their use may be found in [Report of HUD Review of the Fair Housing Accessibility Requirements in the 2006 International Building Code](#).

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**Where can I find the accessibility standards for dwelling units required to be accessible under the Fair Housing Act's design and construction requirements?**

The Fair Housing Act requires seven basic requirements that must be met to comply with the access requirements of the Act. Those Requirements are:

- Requirement 1. An accessible building entrance on an accessible route.
- Requirement 2. Accessible common and public use areas.
- Requirement 3. Usable doors (usable by a person in a wheelchair).
- Requirement 4. Accessible route into and through the dwelling unit.
- Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Requirement 6. Reinforced walls in bathrooms for later installation of grab bars.
- Requirement 7. Usable kitchens and bathrooms.

These requirements are stated in the [Fair Housing Act, as amended, 42 U.S.C. 3604\(f\)\(3\)\(C\)](#). To describe these requirements in more detail, HUD published [Fair Housing Accessibility Guidelines \(the Guidelines\)](#) on March 6, 1991, and supplemented those Guidelines with a [Supplemental Notice: Questions and Answers About the Guidelines](#) published on June 28, 1994. The Guidelines are one of eight safe harbors for compliance that HUD has identified.

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**Why isn't there one uniform accessibility standard for compliance with the Fair Housing Act's design and construction requirements?**

Congress did not provide statutory authority for one national uniform set of accessibility standards. Although one uniform accessibility standard is desirable, there are many ways for buildings to be built to be accessible. HUD has noted that the ANSI (American National Standards Institute) standard was the design basis for the Fair Housing Accessibility Guidelines, and that it is also the underlying standard for the Uniform Federal Accessibility Standards (UFAS) and many state and local codes. [Preamble to the Guidelines, 56 FR 9472, 9478-79, March 6, 1991](#).

HUD recognizes ten safe harbors for compliance with the design and construction requirements of the Fair Housing Act. They are:

1. [HUD Fair Housing Accessibility Guidelines](#) published on March 6, 1991 and the [Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines](#), published on June 28, 1994.
2. [HUD Fair Housing Act Design Manual](#)
3. [ANSI A117.1 \(1986\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
4. [CABO/ANSI A117.1 \(1992\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
5. [ICC/ANSI A117.1 \(1998\)](#), used with the [Fair Housing Act](#), HUD's regulations, and [the Guidelines](#).
6. [Code Requirements for Housing Accessibility 2000 \(CRHA\)](#).
7. [International Building Code 2000](#) as amended by the 2001 Supplement to the International Codes.

**EXHIBIT - FHA SAFE HARBOR LIST**

Code section being appealed: 2014 OSSC Referenced Standard IIC

A117.1 – 2009, Section 308.3.2

8. [International Building Code 2003](#), with one condition\*.
9. [ICC/ANSI A117.1 - 2003 \(Accessible and Usable Buildings and Facilities\)](#)
10. [2006 International Building Code® \(loose leaf\)](#)

\* Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchasers of the 2003 IBC stating, "ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7."

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**If a property is built to some standard other than one of the safe harbors, can it still comply with the Fair Housing Act's access requirements?**

Yes. HUD said in the Introduction to the Accessibility Guidelines, "builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act." The standard employed must meet all of the design and construction requirements specified in the Fair Housing Act and HUD's Fair Housing Act regulations, and provide the same or a stricter degree of accessibility than the recognized safe harbors. [Fair Housing Act Design Manual, page 13. Preamble to the Guidelines, 56 FR 9478-79, March 6, 1991](#). The purpose of the Fair Housing Act Guidelines is "to describe the minimum standards of compliance with the specific accessibility requirements of the Act." Preamble to the Guidelines, 56 FR 9472, 9476, March 6, 1991.

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**91. In a building that consists of multistory townhouses with covered multistory dwelling units that contain private internal elevators, what design specifications should apply to the private elevator?**

Some of the HUD-approved safe harbors do not contain technical specifications for private residential elevators located on the interior of individual dwelling units. However, ICC/ANSI A117.1 (2003) may be consulted for specifications for such elevators. These specifications are found in ICC/ANSI A117.1 (2003) Chapter 10, Type B Dwelling Unit Section 1004.7, which in turn references Chapter 4, Accessible Routes Sections 407, 408, and 409. If using the 1986 ANSI A117.1, Section 4.10 applies. Some of the main accessible features required by ICC/ANSI A117.1-2003 are:

- The elevator operation must be automatic. ICC/ANSI A117.1 (2003), Section 407.1, 408.1 and 409.1.
- The elevator car must contain a 30-inch by 48-inch minimum clear floor space. ICC/ANSI A117.1 (2003), Section 407.4, 408.4, and 409.4.
- Elevator call and control buttons must be within ANSI reach ranges. ICC/ANSI A117.1 (2003), Section 407.2.1.1, 408.2.1, and 409.2.
- Elevators must contain emergency communication devices. ICC/ANSI A117.1 (2003), Section 407.4.6.4, 408.4.8, and 409.4.7.

For the complete technical specifications for residential elevators, consult ICC/ANSI A117.1 (2003).

## EXHIBIT - FHA SAFE HARBOR LIST

Code section being appealed: 2014 OSSC Referenced Standard IIC

A117.1 – 2009, Section 308.3.2



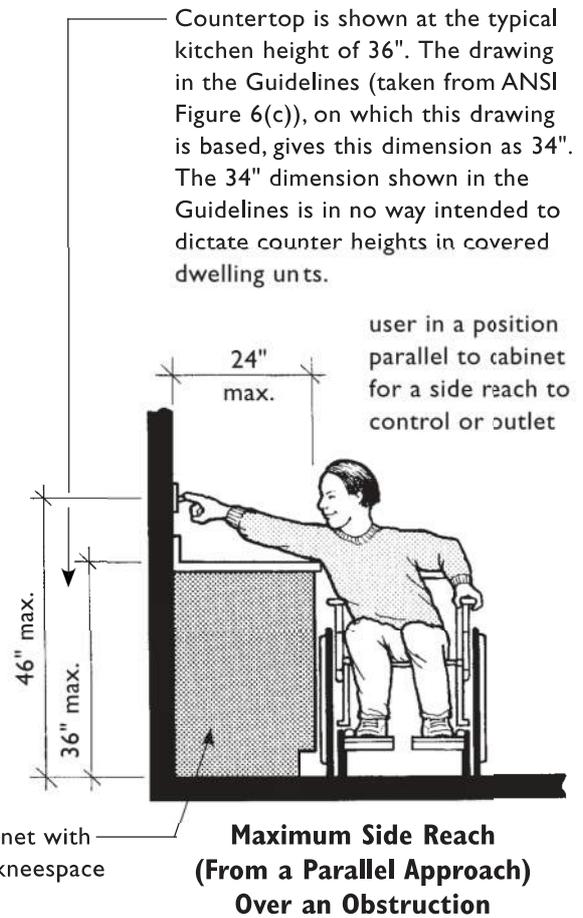
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**SIDE REACH  
OVER AN OBSTRUCTION**

To reach controls and outlets mounted over base cabinets which lack knee space, a person using a wheelchair must be able to approach the cabinet from a position parallel to the cabinet and execute a side reach. This parallel position is made up of a 30-inch x 48-inch clear floor space adjoining a 36-inch wide minimum accessible route. When executing a side reach over a cabinet, the upper limit of the range is reduced to 46 inches.

Cabinet depth is limited to 24 inches.

HUD permits use of a standard 24-inch deep cabinet with an additional extension of 1 to 1-1/2 inches for countertops for a maximum depth of 25-1/2 inches. If a built-in shelf, cabinet, or other obstruction must be deeper than 25-1/2 inches, then any switches, outlets, and controls that must be in accessible locations are not permitted to be installed over such deep surfaces.



**MOUNTING LOCATIONS FOR OUTLETS**

For accessible controls and outlets, all operable parts must be within the ranges specified above. When electrical outlets are installed horizontally or vertically, duplex outlets must have both receptacles within the reach range. Measurements are made as illustrated below.

