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11/29/89

Mo-

Here are references of the building codes John Yacos talked about for Kansas City.

I'll be in touch next session!

Barbara

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101ST CONGRESS
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SENATE

REPORT
101-116

THE AMERICANS WITH DISABILITIES ACT OF 1989

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, January 3), 1989

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 933]

The Committee on Labor and Human Resources, to which was referred the bill (S. 933) to establish a clear and comprehensive prohibition of discrimination on the basis of disability, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

I. INTRODUCTION

On August 2, 1989, the Committee on Labor and Human Resources, by a vote of 16-0, ordered favorably reported S. 933, the

that perpetuate the discrimination of others who are subject to common administrative control.

Paragraphs (2) and (3) of the legislation are derived from provisions set out in the title I of the ADA, as originally introduced (which has been deleted by the Substitute) and general forms of discrimination set out in regulations implementing section 504 of the Rehabilitation Act of 1973 (see e.g., 45 CFR Part 84). Thus, the Substitute should not be construed as departing in any way from the concepts included in the original "general prohibitions" title of the ADA and these concepts are subsumed within the provision of the subsequent titles of the legislation. Further, this legislation in no way is intended to diminish the continued viability of sheltered workshops and programs implementing the Javits-Wagner O'Day Act.

Subparagraphs (B) and (C) incorporate a disparate impact standard to ensure that the legislative mandate to end discrimination does not ring hollow. This standard is consistent with the interpretation of section 504 by the U.S. Supreme Court in *Alexander* v. *Choate,* 469 U.S. 287 (1985). The Court explained that members of Congress made numerous statements during passage of section 504 regarding eliminating architectural barriers, providing access to transportation, and eliminating discriminatory effects of job qualification procedures. The Court then noted:

> These statements would ring hollow if the resulting legislation could not rectify the harms resulting from action that discriminated by effect as well as by design.

The Court also noted, however, that section 504 was not intended to require that a "Handicapped Impact Statement" be prepared by a covered entity before any action was taken that might conceivably affect people with disabilities. Thus, the Court rejected "the boundless notion that all disparate-impact showings constitute prima facie cases under section 504."

Section 101(b)(4) of the legislation specifies that "discrimination" includes excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association.

Thus, assume for example that an applicant applies for a job and discloses to the employer that his or her spouse has a disability. The employer believes the applicant is the most qualified person for the job. The employer, however, assuming without foundation that the applicant will have to miss work or frequently leave work early or both, in order to care for his or her spouse, declines to hire the individual for such reasons. Such a refusal is prohibited by this subparagraph.

In contrast, assume that the employer hires the applicant. If he or she violates a neutral employer policy concerning the attendance or tardiness, he or she may be dismissed even if the reason for the absence or tardiness is to care for the spouse. The employer need not provide any accommodation to the nondisabled employee.

Section 102(b)(5) of the legislation specifies that discrimination includes the failure by a covered entity to make reasonable accommodations to the known physicial or mental limitations of a qualified individual with a disability who is an applicant or employee, unless such entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

The duty to make reasonable accommodations applies to all employment decisions, not simply to hiring and promotion decisions. This duty has been included as a form of non-discrimination on the basis of disability for almost fifteen years under section 501 and section 504 of the Rehabilitation Act of 1973 and under the nondiscrimination section of the regulations implementing section 503 of that Act.

The term "reasonable accommodation" is defined in section 101(8) of the legislation. The definition includes illustrations of accommodations that may be required in appropriate circumstances. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation. Furthermore, the list is not meant to suggest that employers must follow all of the actions listed in each particular case. Rather, the decision as to what reasonable accommodation is appropriate is one which must be determined based on the particular facts of the individual case. This fact-specific case-by-case approach to providing reasonable accommodations is generally consistent with interpretations of this phrase under sections 501, 503, and 504 of the Rehabilitation Act of 1973.

The first illustration of a reasonable accommodation included in the legislation is making existing facilities used by employees in general, readily accessible to and usable by individuals with disabilities.

The legislation also specifies, as examples of reasonable accommodation, job restructuring, part-time or modified work schedules and reassignment to a vacant position.

Job restructuring means modifying a job so that a person with a disability can perform the essential functions of the position. Barriers to performance may be eliminated by eliminating nonessential elements; redelegating assignments; exchanging assignments with another employee; and redesigning procedures for task accomplishment.

Part-time or modified work schedules can be a no-cost way of accommodation. Some people with disabilities are denied employment opportunities because they cannot work a standard schedule. For example, persons who need medical treatment may benefit from flexible or adjusted work schedules. A person with epilepsy may require constant shifts rather than rotation from day to night shifts. Other persons who may require modified work schedules are persons with mobility impairments who depend on a public transportation system that is not currently fully accessible. Allowing constant shifts or modified work schedules are examples of means to accommodate the individual with a disability to allow him or her to do the same job as a nondisabled person. This legislation does not entitle the individual with a disability to more paid leave time than non-disabled employees.

Reasonable accommodation may also include reassignment to a vacant position. If an employee, because of disability, can no longer perform the essential functions of the job that she or he has held, a transfer to another vacant job for which the person is qualified

and the law firm would be required to provide a reasonable accommodation to the employee's visual impairment, such as a reader, that would enable the employee to perform the essential functions of the job as an attorney unless the necessary accommodation would impose an undue hardship.

If, to continue the example, a part-time reader can be provided as a reasonable accommodation that permits the individual to perform the essential functions of the attorney position without imposing an undue hardship, the person is a "qualified individual with a disability" as defined in section 101(7) of the legislation and it would be unlawful not to hire the individual because of his or her visual impairment.

Third, the legislation clearly states that employers are obligated to make reasonable accommodations only to the "known" physical or mental limitations of a qualified individual with a disability. Thus, the duty to accommodate is generally triggered by a request from an employee or applicant for employment. Of course, if a person with a known disability is having difficulty performing his or her job, it would be permissible for the employer to discuss the possibility of a reasonable accommodation with an employee.

In the absence of a request, it would be inappropriate to provide an accommodation, especially where it could impact adversely on the individual. For example, it would be unlawful to transfer unilaterally a person with HIV infection from a job as a teacher to a job where such person has no contact with people. See, e.g., *Chalk* v. *United States District Court,* 840 F.2nd 701 (9th Cir. 1988).

The Committee believes that the reasonable accommodation requirement is best understood as a process in which barriers to a particular individual's equal employment opportunity are removed. The accommodation process focuses on the needs of a particular individual in relation to problems in performance of a particular job because of a physical or mental impairment. A problem-solving approach should be used to identify the particular tasks or aspects of the work environment that limit performance and to identify possible accommodations that will result in a meaningful equal opportunity for the individual with a disability.

The Committee suggests that, after a request for an accommodation has been made, employers first will consult with and involve the individual with a disability in deciding on the appropriate accommodation. The Committee recognizes that people with disabilities may have a lifetime of experience identifying ways to accomplish tasks differently in many different circumstances. Frequently, therefore, the person with a disability will know exactly what accommodation he or she will need to perform successfully in a particular job. And, just as frequently, the employee or applicant's suggested accommodation is simpler and less expensive than the accommodation the employer might have devised, resulting in the employer and the employee mutually benefiting from the consultation.

The Committee also recognizes that there are times when the appropriate accommodation is not obvious to the employer or applicant because such individual is not familiar in detail with the manner in which the job in question is performed and the employer is not familiar enough with the individual's disability to identify

the appropriate accommodation. In such circumstances, the Committee believes the employer should consider four informal steps to identify and provide an appropriate accommodation.

The first informal step is to identify barriers to equal opportunity. This includes identifying and distinguishing between essential and nonessential job tasks and aspects of the work environment of the relevant position(s). With the cooperation of the person with a disability, the employer must also identify the abilities and limitations of the individual with a disability for whom the accommodation is being provided. The employer then should identify job tasks or work environment that limit the individual's effectiveness or prevent performance.

Having identified the barriers to job performance caused by the disability, the second informal step is to identify possible accommodations. As noted above, the search for possible accommodations must begin with consulting the individual with a disability. Other resources to consult include the appropriate State Vocational Rehabilitation Services agency, the Job Accommodation Network operated by the President's Committee on Employment of People With Disabilities, or other employers.

Having identified one or more possible accommodations, the third informal step is to assess the reasonableness of each in terms of effectiveness and equal opportunity. A reasonable accommodation should be effective for the employee. Factors to be considered include the reliability of the accommodation and whether it can be provided in a timely manner.

The Committee believes strongly that a reasonable accommodation should provide a meaningful equal employment opportunity. Meaningful equal employment opportunity means an opportunity to attain the same level of performance as is available to non-disabled employees having similar skills and abilities.

The final informal step is to implement the accommodation that is most appropriate for the employee and the employer and that does not impose an undue hardship on the employer's operation or to permit the employee to provide his or her own accommodation if it does impose an undue hardship. In situations where there are two effective accommodations, the employer may choose the accommodation that is less expensive or easier for the employer to implement as long as the selected accommodation provides meaningful equal employment opportunity.

The expressed choice of the applicant or employee shall be given primary consideration unless another effective accommodation exists that would provide a meaningful equal employment opportunity or that the accommodation requested would pose an undue hardship.

The Committee wishes to note that many individuals with disabilities do not require any reasonable accommodation whatsoever. The only change that needs to be made for such individuals is a change in attitude regarding employment of people with disabilities.

The term "undue hardship" is defined in section 101(9) to mean an action requiring significant difficulty or expense i.e., an action that is unduly costly, extensive, substantial, disruptive, or that will fundamentally alter the nature of the program. In determining

The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities. Again, consistent with section 504, it is not our intent that persons with disabilities need to exhaust Federal administrative remedies before exercising the private right of action.

Effective date

In accordance with section 206 of the legislation, title II of the bill shall become effective 18 months after the date of enactment except that the provisions of the bill applicable to the purchase of new fixed route vehicles shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 504 of the Rehabilitation Act of 1973 prohibits Federal agencies and recipients of Federal financial assistance from discriminating against persons with disabilities. The purpose of title III of the legislation is to extend these general prohibitions against discrimination to privately operated public accommodations and to bring individuals with disabilities into the economic and social mainstream of American life. Title III fulfills these purposes in a clear, balanced, and reasonable manner.

Title III is not intended to govern any terms or conditions of employment by providers of public accommodations or potential places of employment; employment practices are governed by title I of this legislation.

Title III also prohibits discrimination in public transportation services provided by private entities.

Scope of coverage of public accommodations

Section 301(3) of the legislation sets forth the definition of the term "public accommodation." The following privately operated entities are considered public accommodations for purposes of title III, if the operations of such entities affect commerce:

(1) An inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, or lecture hall;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(7) A terminal used for public transportation;

(8) A museum, library, gallery, and other similar place of public display or collection;

(9) A park or zoo;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(12) A gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The twelve categories of entities included in the definition of the term "public accommodation" are exhaustive. However, within each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase "other similar" entities. The Committee intends that the "other similar" terminology should be construed liberally consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities.

For example, the legislation lists "golf course" as an example under the category of "place of exercise or recreation." This does not mean that only driving ranges constitute "other similar establishments." Tennis courts, basketball courts, dance halls, playgrounds, and aerobics facilities, to name a few other entities are also included in this category. Other entities covered under this category include video arcades, swimming pools, beaches, camping areas, fishing and boating facilities, and amusement parks.

Similarly, although not expressly mentioned, bookstores, video stores, stationary stores, pet stores, computer stores, and other stores that offer merchandise for sale or rent are included as retail sales establishments.

The phrase "privately operated" is included to make it clear that establishments operated by Federal, State, and local governments are not covered by this title. Of course an establishment operated by a private entity which is otherwise covered by this title that also receives Federal, State, or local funds is still covered by this title.

Only nonresidential entities or portions of entities are covered by this title. For example, in a large hotel that has a residential apartment wing, the apartment wing would be covered by the Fair Housing Act, but not this title. The nonresidential accommodations in the rest of the hotel would be covered by this title. Although included in the definition of public accommodations, homeless shelters are subject to the provisions of this title only to the extent that they are not covered by the Fair Housing Act, as amended in 1988.

Private schools, including elementary and secondary schools, are covered by this title. The Committee does not intend, however, that compliance with this legislation requires a private school to provide a free appropriate education or develop an individualized education program in accordance with regulations implementing section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104) and regulations implementing part B of the Education of the Handicapped Act (34

CFR Part 300). Of course, if a private school is under contract with a public entity to provide a free appropriate public education, it must provide such education in accordance with section 504 and part B.

The term "commerce" is defined in section 301(1) of the legislation to mean travel, trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country or any territory or possession and any State or between points in the same state but through another state or foreign country.

Prohibition of discrimination by public accommodations

Section 302(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation. "Full and equal enjoyment" does not encompass the notion that persons with disabilities must achieve the identical result or level of achievement of nondisabled persons, but does mean that persons with disabilities must be afforded equal opportunity to obtain the same result.

Section 302(b)(1) of the legislation specifies general forms of discrimination prohibited by this title. These provisions are consistent with the general prohibitions which were included in title I of S. 933, as originally introduced. As explained previously in the report, the general prohibitions title has been deleted by the Substitute.

Sections 302(b)(1)(A) (i), (ii), and (iii) of the legislation specify that it shall be discriminatory:

> To subject an individual or class of individuals on the basis of disability or disabilities of such individual or class, directly, or through contractural, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or beanefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity;
>
> To afford such an opportunity that is not equal to that afforded other individuals; or
>
> To provide such an opportunity that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with an opportunity that is as effective as that provided to others.

Section 302(b)(1)(B) of the legislation specifies that goods, services, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Section 302(b)(1)(C) of the legislation specifies that notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes above individuals with disabilities. Consistent with these standards,

covered entities are required to make decisions based on facts applicable to individuals and not on the basis of presumptions as to what a class individuals with disabilities can or cannot do.

The Committee wishes to emphasize that these provisions should not be construed to jeopardize in any way the continued viability of separate private schools providing special education for particular categories of children with disabilities, sheltered workshops, special recreational programs, and other similar programs.

At the same time, the Committee wishes to reaffirm that individuals with disabilities cannot be denied the opportunity to participate in programs that are not separate or different. This is an important and over-arching principle of the Committee's bill. Separate, special, or different programs are designed to make participation by persons with disabilities possible. Such programs are not intended to restrict the participation of disabled persons in ways that are appropriate to them.

For example, a blind person may wish to decline participating in a special museum tour that allows persons to touch sculptures in an exhibit and instead tour the exhibit at his own pace with the museum's recorded tour. It is not the intent of this title to require the blind person to avail him or herself of the special tour. The Committee intends that modified participation for persons with disabilities be a choice but not a requirement.

In addition, it would not be a violation of this title for an establishment to offer recreational programs specially designed for children with mobility impairments. However, it would be a violation of this title if the entity then excluded such children from other recreational services made available to nondisabled children, or required children with disabilities to attend only designated programs.

Section 302(b)(1)(D) of the legislation specifies that an individual or entity shall not, directly, or through contractual or other arrangements, utilize standards or criteria or methods of administration that have the effect of discriminating on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control. This provision is identical to section 102(b)(3) of the bill, which was discussed previously in the report.

Section 302(b)(1)(E) of the legislation specifies that it shall be discriminatory to exclude or otherwise deny equal goods, services, privileges, advantages, and accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. This provisions is comparable to section 102(b)(4) of the legislation, which was discussed previously in the report.

Section 302(b)(2) of the legislation includes specific applications of the general prohibition against discrimination in section 302(a) and the general prohibitions set out in section 302(b)(1) of the legislation. The Committee wishes to emphasize that the specific provisions contained in title III, including the exceptions and terms of limitation, control over the more general provisions in section 302(a) and section 302(b)(1) to the extent there is any apparent conflict.

Section 302(b)(2)(A)(i) of the legislation specifies that the term "discrimination" includes the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, and accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered.

As explained above, it is a violation of this title to exclude persons with disabilities. For example, it would be a violation for a grocery store to impose a rule that no blind persons would be allowed in the store, or for a drugstore to refuse to serve deaf people. It also would be a violation for such an establishment to invade such people's privacy by trying to identify unnecessarily the existence of a disability, as, for example, if the credit application of a department store were to inquire whether an individual has epilepsy, has ever had been hospitalized for mental illness, or has other disability.

Similarly, it can constitute a violation to impose criteria that limit the participation of people with disabilities, as for example, by requiring that individuals with Down syndrome can only be seated at the counter, but not the table-seating section of a diner.

And it would be a violation to adopt policies which impose additional requirements or burdens upon people with disabilities not applied to other persons. Thus, it would be a violation for a theater or restaurant to adopt a policy specifying that individuals who use wheelchairs must be chaperoned by an attendant.

In addition, this subsection prohibits the imposition of criteria that "tend to" screen out an individual with a disability. This concept, drawn from current regulations under Section 504 (See, e.g. 45 C.F.R. 84.13), makes it discriminatory to impose policies or criteria that, while not creating a direct bar to individuals with disabilities, diminish such individuals' chances of participation.

Such diminution of opportunity to participate can take a number of different forms. If, for example, a drugstore refuses to accept checks to pay for prescription drugs unless an individual presents a driver's license, and no other form of identification is acceptable the store is not imposing a criterion that identifies or mentions disability. But for many individuals with visual impairments, and various other disabilities, this policy will operate to deny them access to the service available to other customers; people with disabilities will be disproportionately screened out.

Section 302(b)(2)(A)(ii) of the legislation specifies that discrimination includes a failure to make reasonable modifications in policies, practices, and procedures when such modifications may be necessary to afford such goods, services, facilities, privileges, advantages, and accommodations unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, and accommodations.

For example, a physician who specializes is treating burn victims could not refuse to treat the burns of a deaf person because of his or her deafness. However, such a physician need not treat the deaf individual if he or she does not have burns nor need the physician

provide other types of medical treatment to individuals with disabilities unless he or she provides other types of medical treatment to nondisabled invididuals.

Thus, nothing in this legislation is intended to prohibit a physician from providing the most appropriate medical treatment in the physician's judgment or from referring an individual with a disability to another physician when the physician would make such a referral of an individual who does not have a disability.

Similarly, a drug rehabilitation clinic could refuse to treat a person who was not a drug addict but could not refuse to treat a person who was a drug addict simply because the patient tests positive for HIV.

A public accommodation which does not allow dogs must modify that rule for a blind person with a seeing-eye dog, a deaf person with a hearing ear dog, or a person with some other disability who uses a service dog.

Section 302(b)(2)(A)(iii) of the legislation specifies that discrimination includes a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, advantages, and accommodations being offered or would result in an undue burden.

The phrase "undue burden" is the limit applied under the ADA upon the duty of places of public accommodation to provide auxiliary aids and services. It is analogous to the phrase "undue hardship" used in the employment title of ADA (see previous discussion in the report) and is derived from section 504 and regulations thereunder. The determination of whether the provision of an auxiliary aid or service imposes an undue burden on a business will be made on a case-by-case basis, taking into account the same factors used for purposes of determinng "undue hardship."

The fact that the provision of any particular auxiliary aid would result in a undue burden does not relieve the business from the duty to furnish an alternative auxiliary aid, if available, that would not result in such a burden.

The term "auxiliary aids and services" is defined in section 3(1) of the legislation. The definition includes illustrations of aids and services that may be provided. The list is not meant to be exhaustive; rather, it is intended to provide general guidance about the nature of the obligation.

The Committee expects that the covered entity will consult with the individual with a disability before providing a particular auxiliary aid or service. Frequently, an individual with a disability requires a simple adjustment or aid rather than an expensive or elaborate modification often envisioned by a covered entity.

For example, auxiliary aids and services for blind persons include both readers and the provision of brailled documents (see below). A restaurant would not be required to provide menus in braille if it provided a waiter or other person who was willing to read the menu. Similarly, a bookstore need not braille its price tags, stock brailled books, or lower all its shelves so that a person

who uses a wheelchair can reach all the books. Rather, a salesperson can tell the blind person how much an item costs, make a special order of brailled books, and reach the books that are out of the reach of the person who uses a wheelchair.

The legislation specifies that auxiliary aids and services includes qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments. Other effective methods may include: telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for the deaf, closed captions, and decoders.

For example, it would be appropriate for regulations issued by the Attorney General to require hotels of a certain size to have decoders for closed captions available or, where televisions are centrally controlled by the hotel, to have a master decoder.

It is also the Committee's expectation that regulations issued by the Attorney General will include guidelines as to when public accommodations are required to make available portable telecommunication devices for the deaf. In this regard, it is the Committee's intent that hotels and other similar establishments that offer nondisabled individuals the opportunity to make outgoing calls, on more than an incidental convenience basis, to provide a similar opportunity for hearing impaired customers and customers with communication disorders to make such outgoing calls by making available a portable telecommunication device for the deaf.

It is not the Committee's intent that individual retail stores, doctors' offices, restaurants or similar establishments must have telecommunications devices for the deaf since people with hearing impairments will be able to make inquiries, appointments, or reservations with such establishments through the relay system established pursuant to title IV of the legislation, and the presence of a public telephone in these types of establishments for outgoing calls is incidental.

Open-captioning, for example, of feature films playing in movie theaters, is not required by this legislation. Filmmakers are, however, encouraged to produce and distribute open-captioned versions of films and theaters are encouraged to have at least some preannounced screenings of a captioned version of feature films.

Places of public accommodations that provide film and slide shows to impart information are required to make such information accessible to people with disabilities.

The legislation also specifies that auxiliary aids and services includes qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments. Additional examples of effective methods of making visually delivered materials available include: audio recordings and the provision of brailled and large print materials.

The legislation specifies that auxiliary aids and services includes the acquisition or modification of equipment or devices. For example, a museum that provides audio cassettes and cassette players for an audio-guided tour of the museum may need to add brailled adhesive labels to the buttons on a select number of the tape-players so that they can be operated by a blind person.

The Committee wishes to make it clear that technological advances can be expected to further enhance options for making

meaningful and effective opportunities available to individuals with disabilities. Such advances may enable covered entities to provide auxiliary aids and services which today might be considered to impose undue burdens on such entities.

Section 302(b)(2)(A)(iv) of the legislation specifies that discrimination includes a failure to remove architectural barriers and communication barriers that are structural in nature in existing facilities, and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles by the installation of a hydraulic or other lift), where such removal is readily achievable.

The Committee was faced with a choice in how to address the question of what actions, if any, a public accommodation should be required to take in order to remove structural barriers in existing facilities and vehicles. On the one hand, the Committee could have required retrofitting of all existing facilities and vehicles to make them fully accessible. On the other hand, the Committee could have required that no actions be taken to remove barriers in existing facilities and vehicles.

The Committee rejected both of these alternatives and instead decided to adopt a modest requirement that covered entities make structural changes or adopt alternative methods that are "readily achievable."

The phrase "readily achievable" is defined in section 301(5) to mean easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

(1) The overall size of the covered entity with respect to number of employees, number and type of facilities, and the size of the budget;

(2) The type of operation of the covered entity, including the composition and structure of the entity; and

(3) The nature and cost of the action needed.

It is important to note that readily achievable is a significantly lesser or lower standard than the "undue burden" standard used in this title and the "undue hardship" standard used in title I of this legislation. Any changes that are not easily accomplishable and are not able to be carried out without much difficulty or expense when the preceding factors are weighed are not required under the readily achievable standard, even if they do not impose an undue burden.

The concept of readily achievable should not be confused with the phraseology of "readily accessible" used in regard to accessibility requirements for alterations (section 302(b)(2)(A)(vi)) and new construction (section 303). While the word "readily" appears in both phrases and has roughly the same meaning in each context—easily, without much difficulty—the concepts of "readily achievable" and "readily accessible" are sharply distinguishable and represent almost polar opposites in focus.

The phrase "readily accessible to and usable by individuals with disabilities" focuses on the person with a disability and addresses the degree of ease with which an individual with a disability can

enter and use a facility; it is access and usability which must be "ready."

"Readily achievable," on the other hand, focuses on the business operator and addresses the degree of ease or difficulty of the business operator in removing a barrier; if barrier removal cannot be accomplished readily, then it is not required.

What the "readily achievable" standard will mean in any particular public accommodation will depend on the circumstances, considering the factors listed previously, but the kind of barrier-removal which is envisioned includes the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and braille markings on elevator control buttons, the addition of flashing alarm lights, and similar modest adjustments.

This section may require the removal of physical barriers, including those created by the arrangement or location of such temporary or movable structures as furniture, equipment, and display racks. For example, a restaurant may need to rearrange tables and chairs, or a department store may need to adjust its layout of display racks and shelves, in order to permit access to individuals who use wheelchairs, where these actions can be carried out without much difficulty or expense.

2. A public accommodation would not be required to provide physical access if there is a flight of steps which would require extensive ramping or an elevator. The readily achievable standard only requires physical access that can be achieved without extensive restructuring or burdensome expense.

In small facilities like single-entrance stores or restaurants, "readily achievable" changes could involve small ramps, the installation of grab bars in restrooms in various sections and other such minor adjustments and additions.

The readily achievable standard allows for minimal investment with a potential return of profit from use by disabled patrons, often more than justifying the small expense.

Section 302(b)(2)(A)(v) of the legislation specifies that where an entity can demonstrate that removal of a barrier is not readily achievable, discrimination includes a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable.

With respect to the adoption of alternative methods, examples of "readily achievable" include: coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater.

Section 302(b)(2)(A)(vi) of the legislation specifies that discrimination includes, with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

Where the entity is undertaking major structural alterations that affect or could affect the usability of the existing facility, the entity must also make the alterations in such manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities. 2.

The phrase "major structural alterations" will be defined by the Attorney General. The Committee intends that the term "structural" means elements that are a permanent or fixed part of the building, such as walls, suspended ceilings, floors, or doorways.

The term "major structural alterations" refers to structural alterations or additions that affect the primary functional areas of a building, e.g., the entrance, a passageway to an area in the building housing a primary function, or the areas of primary functions themselves. For example, structural alteration to a utility room in an office building would not be considered "major." On the other hand, structural alteration to the customer service lobby of a bank would be considered major because it houses a major or primary function of the bank building.

The legislation includes an exception regarding the installation of elevators, which specifies that the obligation to make a facility readily accessible to and usable by individuals with disabilities shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

The Committee wishes to make it clear that the exception regarding elevators does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator. And, in the event a facility which meets the criteria for the exception nonetheless has an elevator installed, then such elevator shall be required to meet accessibility standards.

The Committee intends that the term "facility" means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property or interest in such property, including the site where the building, property, structure or equipment is located. This definition is consistent with the definitions used under current Federal regulations and standards and thus includes both indoor areas and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

The phrase "readily accessible to and usable by individuals with disabilities" is a term of art which is explained in the section of the report concerning new construction.

The phrase "to the maximum extent feasible" has been included to allow for the occasional case in which the nature of an existing facility is such as to make it virtually impossible to renovate the building in a manner that results in its being entirely accessible to and usable by individuals with disabilities. In all such cases, however, the alteration should provide the maximum amount of physical accessibility feasible.

Thus, for example the term "to the maximum extent feasible" should be construed as not requiring entities to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member unless the load-bearing structural member is otherwise being removed or altered as part of the alteration.

Section 302(b)(2)(B) of the legislation includes policies applicable to fixed route vehicles used by entities that are not in the principal business of transporting people. First, it is considered discrimination for an entity to purchase or lease a bus or a vehicle that is capable of carrying in excess of 16 passengers, for which solicitations are made later than 30 days after the effective date of this Act that are not readily accessible to and usable by individuals with disabilities except that over-the-road buses shall be subject to section 304(b)(4) (which delays the effective date for 6 years for small operators and 5 years for other operators) and section 305 (which provides for a study of how to make the impact of making such buses accessible).

If an entity not in the principal business of transporting people purchases or leases a vehicle carrying 16 or fewer passengers after the effective date of title III that is not readily accessible to or usable by individuals with disabilities, it is discriminatory for such an entity to fail to operate a system that, when viewed in its entirety, ensures a level of service to individuals with disabilities equivalent to the level of service provided to the general public.

Section 302(b)(2)(C) includes provisions applicable to vehicles used in demand-responsive systems by entities that are not in the principal business of transporting people. The provisions applicable to such vehicles are the same as those applicable to fixed route vehicles except that the entity need not ensure that all new vehicles carrying more than 16 passengers are accessible if it can demonstrate that the system, when viewed in its entirety, already provides a level of service to individuals with disabilities equivalent to that provided to the general public.

For example, where a hotel at an airport provides free shuttle service, the hotel need not purchase new vehicles that are accessible so long as it makes alternative equivalent arrangements for transporting people with disabilities who cannot ride the inaccessible vehicles. This might be accomplished through the use of a portable lift or by making arrangements with another entity that has an accessible vehicle that can be made available to provide equivalent shuttle service.

New construction

Section 303 of the legislation sets forth obligations with respect to the construction of new facilities. This section is applicable to public accommodations and potential places of employment.

The term "potential places of employment" is defined in section 301(2) to mean facilities that are intended for nonresidential use and whose operations affect commerce. The Committee expects that implementing regulations concerning "potential places of employment" will cover the same areas in a facility as existing design standards. Thus, unusual spaces that are not duty stations, such as catwalks and fan rooms, would continue to lie outside the scope of design standards.

The term does not include facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968.

Specifically, section 303(a) of the legislation specifies that it is unlawful discrimination for a public accommodation or potential place of employment to fail to design and construct facilities for first occupancy later than 30 months after the date of enactment of this Act that are readily accessible to and usable by individuals with disabilities, except where an entity can demonstrate that it is structurally impacticable to do so, in accordance with standards set forth or incorporated by reference in regulations issued under title III.

Section 303(b) of the legislation exempts entities from installing elevators under the same circumstances applicable to alterations (see section 302(b)(2)(A)(vi) and the accompanying clarifications in the report).

The phrase "readily accessible to or usable by" is a term of art which, in slightly varied formulations, has been applied in the Architectural Barriers Act of 1968 ("ready access to, and use of"), the Fair Housing Act of 1968, as amended ("readily accessible to and usable by"), and the regulations implementing section 504 of the Rehabilitation Act of 1973 ("readily accessible to and usable by") and is included in standards used by Federal agencies and private industry e.g., the Uniform Federal Accessibility Standards (UFAS) ("ready access to and use of") and the American National Standard for Buildings and Facilities—Providing Accessibility and Usability for Physically Handicapped People (ANSI A117.1) (readily accessible to, and usable by).

The term is intended to enable people with disabilities (including mobility, sensory, and cognitive impairments) to get to, enter, and use a facility. While the term does not necessarily require the accessibility of every part of every area of a facility, the term contemplates a high degree of convenient accessibility, entailing accessibility of parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, accessibility of public and common use areas, and access to the goods, services, programs, facilities, and accommodations offered at the facility.

The term is not intended to require that all parking spaces, bathrooms, stalls within bathrooms, etc. are accessible; only a reasonable number must be accessible, depending on such factors as their location and number.

Accessibility elements for each particular type of facility should assure both ready access to the facility and usability of its features and equipment and of the goods, services, and programs available therein.

For example, for a hotel "readily accessible to and usable by" includes, but is not limited to, providing full access to the public use and common use portions of the hotel; requiring all doors and doorways designed to allow passage into and within all hotel rooms and bathrooms to be sufficiently wide to allow passage by individuals who use wheelchairs; making a percentage of each class of hotel rooms fully accessible (e.g., including grab bars in bath and at the toilet, accessible counters in bathrooms); audio loops in meeting areas; signage, emergency flashing lights or alarms; braille or raised letter words and numbers on elevators; and handrails on stairs and ramps.

Of course, if a person with a disability needing a fully accessible room makes an advance registration without informing the hotel of the need for such a room arrives on the date of the reservation and no fully accessible room is available, the hote has not violated the Act. Moreover, a hotel is not required to forego renting fully accessible rooms to nondisabled persons if to do so would cause the hotel to lose a rental.

In a physician's office, "readily accessible to and usable by" would include ready access to the waiting areas, a bathroom, and a percentage of the examining rooms.

Historically, particularized guidance and specifications regarding the meaning of the phrase "readily accessible to and usable by" for various type of facilities have been provided by MGRAD, UFAS, and the ANSI standards. Under this legislation, such specificity will be provided by the expanded MGRAD standards to be issued by the Architectural and Transportation Barriers Compliance Board and by the regulations issued by the Attorney General, both of which are discussed subsequently in this report.

It is the expectation of the Committee that the regulations issued by the executive branch could utilize appropriate portions of MGRAD.

It is also the Committee's intent that the regulations will include language providing that departures from particular technical and scoping requirements, as revised, will be permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the facility. Allowing these departures will provide covered entities with necessary flexibility to design for special circumstances and will facilitate the application of new technologies.

The phrase "structurally impracticable" is a narrow exception that will apply only in rare and unusual circumstances where unique characteristics of terrain make accessibility unusually difficult. Such limitations for topographical problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act of 1988. In the House Committee Report accompanying the Act, the House Committee on the Judiciary noted:

> certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing traditionally may be built on stilts. The Committee does not intend to require that the accessibility requirements of this Act override the need to protect the physical integrity of multifamily housing that may be built on such sites.

By incorporating the phrase "structurally impracticable," the ADA explicitly recognizes an exception analogous to the "physical integrity" exception for peculiarities of terrain recognized implicitly in statutory language and expressly in the House Committee Report accompanying the Fair Housing Amendments Act. As under the Fair Housing Amendments Act, this is intended to be a narrow exception to the requirement of accessibility. It means that only where unique characteristics of terrain prevent the incorporation of accessibility features and would destroy the physical integrity of a facility is it acceptable to deviate from accessibility requirements. Buildings that must be built on stilts because of their location in marshlands or over water are one of the few situations in which the structurally impracticable exception would apply.

Neither under the ADA nor the Fair Housing Amendments Act should an exception to accessibility requirements be applied to situations in which a facility is located in "hilly" terrain or on a plot of land upon which there are steep grades; in such circumstances, accessibility can be achieved without destroying the physical integrity of a structure, and ought to be required in the construction of new facilities.

In those are circumstances in which it is structurally impracticable to achieve full compliance with accessibility requirements under the ADA, public accommodations should still be designed and constructed to incorporate accessibility features to the extent that they are structurally practicable. The accessibility requirements should not be viewed as an all-or-nothing proposition in such circumstances.

If it is structurally impracticable for a facility in its entirety to be readily accessible to and usable by people with disabilities, then those portions which can be made accessible should be. If a building cannot comply with the full range of accessibility requirements because of structural impracticability, then it should still be required to incorporate those features which are structurally practicable. And if it is structurally impracticable to make a particular facility accessible to persons who have particular types of disabilities, it is still appropriate to require it to be made accessible to persons with other types of disabilities.

If, for example, a facility which is of necessity built on stilts cannot be made accessible to persons who use wheelchairs because it is structurally impracticable to do so, this is no reason not to still require it to be accessible for individuals with vision or hearing impairments or other kinds of disabilities.

The new construction provision includes establishments that "are potential places of employment" as well as public accommodations. The Committee decided to include this provision to ensure that unnecessary barriers to employment are not built into facilities that are constructed in the future. Since it is easy and inexpensive to incorporate accessibility features in new construction, the Committee concluded that there is no rational justification for employers to continue to construct inaccessible facilities that will bar

include standards applicable to facilities and vehicles covered under section 302.

Standards included in regulations issued under subsections (a) and (b) shall be consistent with the minimum guidelines and requirements issued by the Architectural and Transportation Barriers Compliance Board in accordance with section 504.

Exemptions for private clubs and religious organizations

Section 307 of the legislation specifies that the provisions of title III do not apply to private clubs or establishments exempted from coverage under title II of the Civil Rights Act of 1964 or to religious organizations or to entities controlled by religious organizations. Places of worship and schools controlled by religious organizations are among those organizations and entities which fall within this exemption.

The reference to "entities controlled by a religious organization" is modeled after the provisions in title IX of the Education Amendments of 1972. Thus, it is the Committee's intent that the term "controlled by a religious organization" be interpreted consistently with the Attachment which accompanied the Assurance of Compliance with title IX required by the U.S. Department of Education. Of course, the Committee recognizes that unlike the title IX exemption, this provision applies to entities that are not educational institutions. The term "religious organization" has the same meaning as the term "religious organization" in the phrase "entitles controlled by a religious organization."

Activities conducted by a religious organization or an entity controlled by a religious organization on its own property which are open to nonmembers of that organization or entity are included in this exemption.

Enforcement

Section 308 of the legislation sets forth the scheme for enforcing the rights provided for in title III. Section 308(a)(1) provides a private right of action for any individual who is being or is about to be subjected to discrimination on the basis of disability in violation of title III. This subsection makes available to such an individual the remedies and procedures set forth in section 204a-3(a) of the Civil Rights Act of 1964 (preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order).

Section 308(a)(2) of the legislation makes it clear that in the case of violations of section 302(b)(2)(A)(iv) pertaining to removing barriers in existing facilities, section 302(b)(2)(A)(vi) pertaining to alterations of existing facilities, and section 303(a) pertaining to new construction, injunctive relief shall include an order to alter facilities to make such facilities readily accessible to and usable by individuals with disabilities as required by title III.

Where appropriate, injunctive relief shall also include requiring the provision of an auxiliary aid or service, modification of a policy, or provision of alternative methods, to the extent required by this title.

Section 308(b) of the legislation specifies the enforcement scheme for the Attorney General. First, the Attorney General shall investi-

gate alleged violations of title III, which shall include undertaking periodic reviews of compliance of covered entities.

If the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by title III or that any person or group of persons has been denied any of the rights granted by title III and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate United States District Court.

In a civil action brought by the Attorney General, the court may grant any equitable relief it considers to be appropriate, including granting temporary, preliminary, or permanent relief, providing an auxiliary aid or service, modification of policy or alternative method, or making facilities readily accessible to and usable by individuals with disabilities, to the extent required by title III.

In addition, a court may award such other relief as the court considers to be appropriate, including monetary damages to persons aggrieved, when requested by the Attorney General. Thus, it is the Committee's intent that the Attorney General shall have discretion regarding the damages he or she seeks on behalf of persons aggrieved. It is not the Committee's intent that this authority include the authority to award punitive damages.

Furthermore, the court may vindicate the public interest by assessing a civil penalty against the covered entity in an amount not exceeding $50,000 for a first violation and not exceeding $100,000 for any subsequent violation.

Effective date

In accordance with section 309 of the legislation, title III of the legislation shall become effective 18 months after the date of enactment of this legislation.

b.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Title IV of the legislation, as reported, will help to further the statutory goals of universal service as mandated in the Communications Act of 1934. It will provide to hearing- and speech-impaired individuals telephone services that are functionally equivalent to those provided to hearing individuals.

Background

There are over 24 million hearing-impaired and 2.8 million speech-impaired individuals in the United States, yet inadequate attention has been paid to their special needs with respect to accessing the Nation's telephone system. Given the pervasiveness of the telephone for both commercial and personal matters, the inability to utilize the telephone system fully has enormous impact on an individual's ability to integrate effectively in today's society.

The Communications Act of 1934 mandates that communications services be "[made] available, so far as possbile, to *all* the people of the United States. * * *". (Section 1, emphasis added). This goal of universal service has governed the development of the Nation's telephone system for over fifty years. The inability of over 26 million Americans to access fully the Nation's telephone system poses

KANSAS CITY, MISSOURI

ORDINANCE 61386
ADOPTING THE MODEL CODES

Code of General Ordinance
Chapter 9

ARTICLE I - ADMINISTRATIVE

Section 9.1.101. Title.

Chapter 9, Code of General Ordinances, shall also be known as the Building Code. Unless otherwise indicated by its use and context the term "this Code" shall refer to Chapter 9, Code of General Ordinances.

The Building Code is composed of ten articles. These articles are: (1) Administrative; (2) Building (including adoption of the Model Energy Code and the One and Two Family Dwelling Code and ANSI 117.1-1986, Standard for Buildings and Facilities - providing Accessibility and Usability for Physically Handicapped People); (3) Mechanical; (4) Plumbing; (5) Elevators, Escalators, Walks, Lifts, and Hoists; (6) Electrical; (7) Signs; (8) Underground Space; (9) Registration; and (10) Licensing. The term "this Article" shall refer to the article in which the term is used.

Articles II through VI shall also be referred to as the "Technical Articles".

The building official shall be known as the "Director of Codes Administration" and shall include his authorized representatives. Further, whenever the term or title "administrative authority", "code enforcement officer", "responsible official", or other similar designation is used herein or in any of the Technical Articles, it shall be construed to mean the Director of Codes Administration.

This Code shall be denoted by a three part section number: (1) 9, referring to Chapter 9, Code of General Ordinances; (2) the article number; and (3) the specific section number. If the section number is for a provision superseding a model code provision it will coincide with that model code section number.

Section 9.1.102. Purpose.

(a) Purpose.

(1) Building Code. This Code shall be construed to secure its expressed intent, which is to benefit the public safety, health and welfare insofar as they are affected by building construction, through structural strength, adequate means of egress facilities, sanitary equipment, light and ventilation, and fire safety; and in general, to promote safety to life and property from hazards incident to the construction design, erection, installation, alteration, addition, removal, demolition, replacement, location, relocation, moving, quality of materials or use and occupancy, operation and maintenance of buildings, structures or premises.

(2) Administrative Article. This Article provides the administrative procedures to be followed by all persons engaged in the construction, design, erection, installation, alteration, addition, removal, demolition, replacement, location, relocation, moving, quality of materials, or use and occupancy, operation and maintenance of buildings, structures or premises, as regulated by Articles II through VIII of this Code.

Section 9.1.103. Application to Existing Buildings and Building Service Equipment.

(a) General. Buildings, structures and their building service equipment to which additions, alterations or repairs are made shall comply with all the requirements of the Technical Articles for new facilities, except as specifically provided in this section.

(b) Alterations or Repairs.

(1) General.

(A) Additions, alterations or repairs may be made to any structure without requiring the existing structure to comply with all the requirements of this Code unless as specifically deemed necessary by the Director of Codes Administration for the general safety and welfare of the occupants and the public, provided such work conforms to that required of a new structure. Alterations or repairs shall not cause an existing structure to become unsafe or adversely affect the performance of the building.

(B) Alterations or repairs to an existing structures which are nonstructural and do not adversely affect any structural member or any part of the structure having a required fire resistance rating may be made with the same materials of which the structure is constructed.

(2) Ordinary Repairs. Ordinary repairs to structures may be made without application or notice to the Director of Codes Administration, but such repairs shall not include the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exit requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring or mechanical or other work affecting public health or general safety.

(c) Maintenance. All buildings, structures and building service equipment, existing and new, and all parts thereof shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by the Technical Articles shall be maintained in conformance with the Technical Articles under which installed. The owner or his designated agent shall be responsible for the maintenance of buildings, structures and their building service equipment. To determine compliance with this subsection, the Director of Codes Administration may cause any structure to be reinspected.

(d) Continuation of Existing Use. The legal use and occupancy of any structure existing on the date of adoption of this Code or for which it has been heretofore approved, may be continued without change, except as may be specifically covered in this Code or fire codes, or as may be deemed necessary by the Director of Codes Administration for the general safety and welfare of the occupants and the public.

(e) Change in Use. It shall be unlawful to make any change in the use or occupancy of any structure or portion thereof which would subject it to any special provisions of this Code without approval of the Director of Codes Administration indicating that such structure meets the intent of the provisions of law governing building construction for the proposed new use and occupancy and that such change does not result in any greater hazard to public safety or welfare.

(f) Moved Building. Buildings, structures and their building service equipment moved into or within the City shall comply with the provisions of the Technical Articles for new buildings or structures and their buildings service equipment.

(g) Historic Buildings. Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building, structure, or its building service equipment may be made without conformance to all the requirements of the Technical Articles when authorized by the Director of Codes Administration provided:

(1) The building or structure has been designated by the City Council as having special historical or architectural significance.

(2) Any unsafe conditions as described in this Code are corrected.

(3) The restored building or structure and its building service equipment will be no more hazardous based on life safety, fire safety and sanitation than the existing building.

(h) Exit Enclosures for Existing Buildings.

(1) Scope: The provisions of this section shall apply to existing group R, division 1 occupancies, this is, apartments and hotels, three (3) stories or more in height.

(2) Enclosures Required: Unless otherwise excepted by subsection (6)(F), every interior stairway, ramp or escalator shall be enclosed as specified in this section.

(3) Enclosure Construction: Every interior stairway, ramp or escalator shall be enclosed with walls of not less than one-hour fire-resistive construction. Where existing partitions form part of a stairwell enclosure, wood lath and plaster in good condition or half-inch sheetrock in good condition, or an equivalent approved by the Director of Codes Administration, may be substituted for one-hour fire-resistive construction.

(4) Openings Into Enclosures: There shall be no openings into exit enclosures except exit doorways and openings in exterior walls. Doors in stairway, ramp and escalator enclosures shall be protected by a self-closing solid wood door not less than one and three-fourths (1 3/4) inches thick, or an equivalent approved by the Director of Codes Administration. Enclosures shall include landings between flights and corridors, passageways or public rooms necessary for continuous exit to the exterior of the building.

(5) Approval by Director of Codes Administration: When presented with a request for permission to substitute construction type or material under the provisions of this section, the Director of Codes Administration shall consider, but is not limited to, similar provisions of this Code and related standards, the fire code, the use of requested substitution in common construction practice, federal and state recommendations, and the level of safety afforded inhabitants of the building by the substitution.

(6) Exceptions: The foregoing provisions shall not apply to the following situations:

(A) The stairway, ramp or escalator need not be enclosed in a continuous shaft if cut off at each story by the fire-resistive construction required by this section for stairway, ramp and escalator enclosures.

(B) An enclosure shall not be required for a stairway, ramp or escalator serving only one (1) adjacent floor and not connected with corridors or stairways serving other floors.

(C) Stairs within individual apartments and hotel rooms need not be enclosed.

(D) Buildings with at least one (1) functional interior enclosed stairwell providing access from each apartment or hotel room may have unprotected secondary exits.

(E) Stairwells, ramps and escalator enclosures in buildings five (5) or fewer stories in height with an exterior stairway or fire escape serving as a secondary exit from each apartment or hotel room need not be enclosed, provided access from each apartment or hotel room is directly onto the exterior stairway or fire escape.

(F) An enclosure shall not be required for stairways, ramps or escalators in lobby or mezzanine areas not leading to sleeping areas.

(G) Enclosures shall not be required if an automatic sprinkler system is provided for the stairway, ramp or escalator area.

(7) In addition to the powers and duties of the Building and Fire Codes Board of appeals as set forth in Section 9.1.204, the Board may consider the cost of proposed retrospective requirements if raised by the appellant. In cases of gross economic hardship determined by considering but not being limited to any of the following elements; sale value of the building, value of the building less present encumbrances, availability of financing, appellant's net worth, effect on tenants and public, and the degree of additional protection fire-resistant material and enclosed stairwells would provide, it may require alternative fire prevention and safety measures.

(i) Underground Space.

(1) General. Underground space to which additions, alterations or repairs are made shall comply with all the requirements for new space except as specifically provided in this section.

Improvements such as building construction within such existing underground space shall be regulated as applicable by requirements of the this Code and as modified by the Underground Space Article.

(2) Additions, Alterations and Repairs: More Than Fifty Percent. When additions, alterations or repairs of underground space within any twelvemonth period exceed fifty (50) percent of the area of an existing underground space, such space shall be

made to conform to the requirements for new underground space.

(3) Additions, Alterations and Repairs: Twenty-Five to Fifty Percent. Additions, alterations, and repairs exceeding twenty-five (25) percent but not exceeding fifty (50) percent of the area of an existing underground space and complying with the requirements for new space may be made to such space within any twelve-month period, without making the entire space comply.

(4) Additions, Alterations and Repairs: Twenty-Five Percent or Less. Structural additions, alterations and repairs to any portion of an existing underground space, within any twelve-month period, not exceeding twenty-five percent of the area of the space shall comply with all the requirements for new space; except that minor structural additions, alterations or repairs, when approved by the Director of Codes Administration, may be made with the same materials of which the space is constructed.

(5) Existing Occupancy. Underground space in existence on December 16, 1982, may have its existing use or occupancy continued, if such use or occupancy was legal at that time, providing such continued use is not dangerous to life.

(6) Maintenance. All underground space, both existing and new, and all parts thereof, shall be maintained in a safe and sanitary condition. All devices or safeguards which are required by this Article in a space when developed, altered or repaired shall be maintained in good working order. The owner or his designated agent shall be responsible for the maintenance of underground space.

(j) Flood Plain. The provisions of Chapter 40, Code of General Ordinances, must be met for any alteration, encroachment or substantial improvement accomplished in a regulatory floodplain as designated on the official floodplain document.

(k) Disconnecting Utilities. Prior to the demolition, removal or moving of any existing structure releases shall be obtained from the utilities as described in Section 9.1.302(f).

(l) Accessible Buildings.

(1) Purpose. This provision is intended to apply to existing buildings insofar as they may be practically and reasonably modified to include the required accessible entrances, routes of travel, and toilet facilities. It is not intended that the rehabilitation, restoration, or remodeling of existing buildings be prevented by engineering or architectural design requirements which are not feasible because of the unique design of the existing building or because of the unreasonable economic costs which would be required because of the unique design of the existing building.

(B) Review. The provisions of Section 9.1.105 - "Alternate Materials and Methods of Construction" and Section 9.1.106 - "Modifications" shall apply to any request that the required accessible entrances, routes of travel or toilet facilities be changed or excused. If the cost of improvements required in Section 9.1.103(l) for existing buildings or facilities exceeds 50% of the cost of other improvements made within a twelve (12) month period, then part or all of those required improvements may be waived at the discretion of the Director of Codes Administration.

(3) Substantial Alteration.

(A) Defined. For purposes of this section, an alteration to any existing building or facility exceeding 2 stories in height or 10,000 sq. ft. in floor area on any floor level is a substantial alteration if the total area of the alteration proposed and all other alterations for the building or facility within a twelve (12) month period, exclusive of damage repair or as a result of changes to this code which apply retroactively to existing buildings, equals eighty (80%) or more of the total area of the building or facility.

(B) Requirements. Unless excepted by the Director of Codes Administration, all existing buildings and facilities undergoing a substantial alteration shall meet the following requirements.

(i) Entrances. At least one entrance in the existing building or facility shall be accessible to physically handicapped persons.

(ii) Accessible routes of travel. If the only access to the substantial alteration is through the existing building or facility, then at least one accessible route of travel shall provide access through the existing building or facility to all rooms, elements, and spaces in the substantial alteration.

(iii) Toilet and bathing facilities. If there are no toilet rooms and bathing facilities in the substantial alteration and these facilities are provided in the existing building, then at least one toilet (one, where available, for each sex) in the existing building shall be accessible.

(iv) Public access to buildings adjacent to parking garages and access to other activities in a building. See Table 33-A, Footnotes 9 and 12.

(4) Additions. Additions to existing buildings shall comply with the requirements of the Technical Articles for new facilities as provided in Section 9.1.103(a) and, where not inconsistent, with the requirements for substantial alterations.

(5) Additional Requirements. Where this code or other applicable codes or regulations require greater access than that required by this section, the provisions requiring the greatest access shall apply.

Section 9.1.104. Conflicting Provisions.

Wherever conflicting provisions or requirements occur between this Code and the model codes adopted by this Code, this Code shall apply.

Wherever conflicting provisions or requirements occur between this Article, the Technical Articles and any other codes or laws, the most restrictive shall govern.

Where in any specific case different sections within any of the Technical Articles specify different materials, methods of construction or other requirements, the most restrictive shall govern. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Where conflicts occur between any specific provisions of this Article and any administrative provisions in any technical article which is then applicable those provisions becoming the law last in time shall prevail.

Section 9.1.105. Alternate Materials and Methods of Construction.

The provisions of the Technical Articles are not intended to prevent the use of any material or method of construction not specifically prescribed by the Technical Articles, provided any alternate has been approved and its use authorized by the Director of Codes Administration.

The Director may approve any alternate, provided he finds that the proposed design is satisfactory and complies with the provisions of the Technical Articles and that the material, method or work offered is, for the purpose intended at least the equivalent of that prescribed in the Technical Articles in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation.

The Director of Codes Administration shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding its use. The details of any action granting approval of an alternate shall be recorded and entered into the files of the Department of Codes Administration.

Section 9.1.106. Modifications.

Whenever there are practical difficulties involved in carrying out the provisions of the Technical Articles, the Director of Codes Administration may grant modifications for individual cases, provided he shall first find that a special individual reason makes the strict letter of

the Technical Articles impractical and the modification is in conformity with the intent and purpose of the Technical Articles, and that such modification does not lessen health, life and fire safety requirements or any degree of structural integrity. The details of actions granting modifications shall be recorded and entered in the files of the Department of Codes Administration.

Section 9.1.107. Tests.

Whenever there is insufficient evidence of compliance with any of the provisions of the Technical Articles or evidence that materials or construction do not conform to the requirements of the Technical Articles, the Director of Codes Administration may require tests as evidence of compliance to be made at no expense to the City.

Test methods shall be as specified by the Technical Articles or by other recognized test standards. In the absence of recognized and accepted test methods for the proposed alternate, the Director of Codes Administration shall determine test procedures.

All tests shall be made by an approved agency. Reports of such tests shall be retained by the Director of Codes Administration for the period required for the retention of public records.

Section 9.1.201. Code Enforcement Agency.

The Department of Codes Administration is charged with the enforcement of this Code.

Section 9.1.202. Powers and Duties of the Director of Codes Administration.

(a) General. The Director of Codes Administration is hereby authorized to enforce all the provisions of this Code.

(b) Right of Entry. Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the Director of Codes Administration or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the Director of Codes Administration or his authorized representative may enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the Director of Codes Administration by such codes, provided that if such building or premises be occupied, he shall first present proper credentials and request entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. Should entry be refused, the Director of Codes Administration or his authorized representative shall have recourse to every remedy provided by law to secure entry.

(c) Stop Orders. Whenever any work is being done contrary to the provisions of this Code, the Director of Codes Administration may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the Director of Codes Administration to proceed with the work. Failing to stop work when ordered is a violation of this Code. Proceeding to work, once work is stopped under terms of this section, without obtaining authorization from the Director of Codes Administration is a violation of this Code.

(d) Occupancy Violations. Whenever any building or structure or building service equipment therein regulated by this Code is being used contrary to the provisions of such codes, the Director of Codes Administration may order such use discontinued by written notice served on any person causing such use to be continued. Such person shall discontinue the use within the time prescribed by the Director of Codes Administration after receipt of such notice to make the structure, or portion thereof, comply with the requirements of such code. Failing to discontinue such use when ordered is a violation of this Code. Unless authorized by the Director of Codes Administration removing a posted notice or sign indicating that a structure is not to be occupied is a violation of this Code.

(e) Authority to Disconnect Utilities. The Director of Codes Administration or his authorized representative shall have the authority to disconnect any utility service or energy supplied to the building, structure or building service equipment therein regulated by this Code in case of emergency where necessary to eliminate an immediate hazard to life or property. The Director of Codes Administration shall whenever possible notify the serving utility, the owner and occupant of the building, structure or building service equipment of the decision to disconnect prior to taking such action, and shall notify such serving utility, owner and occupant of the building,

structure or building service equipment, in writing, of such disconnection immediately thereafter.

(f) Authority to Condemn Building Service Equipment. Whenever the Director of Codes Administration ascertains that any building service equipment regulated in the Technical Articles has become hazardous to life, health, property, or becomes unsanitary, he may order in writing that such equipment either be removed or restored to a safe or sanitary condition, whichever is appropriate. The written notice itself shall fix a time limit for compliance with such order. No person shall use or maintain defective building service equipment after receiving such notice.

When such equipment or installation is to be disconnected, a written notice of such disconnection and causes therefor shall be given within twenty-four (24) hours to the serving utility, the owner and occupant of such building, structure or premises.

When any building service equipment is maintained in violation of the Technical Articles and in violation of any notice issued pursuant to the provisions of this section, the Director of Codes Administration may institute any appropriate action to prevent, restrain, correct or abate the violation.

(g) Connection After Order to Disconnect. No person shall make connections from any energy, fuel or power supply nor supply energy or fuel to any building service equipment which has been disconnected or ordered to be disconnected by the Director of Codes Administration or the use of which has been ordered to be discontinued by the Director of Codes Administration until the Director of Codes Administration authorizes the reconnection and use of such equipment.

(h) Building Numbers. The Director of Codes Administration is authorized to promulgate standards by which buildings are numbered and to assign or reassign, numbers and addresses according to those standards.

(i) Liability. The Director of Codes Administration or his authorized representative charged with the enforcement of this Code, acting in good faith and without malice in the discharge of his duties, shall not thereby render himself personally liable for any damage that may occur to persons or property as a result of any act or by reason of any act or omission in the discharge of his duties. Any suit brought against the Director of Codes Administration or employee because of such act or omission performed by him in the enforcement of any provision of this Codes shall be defended by legal counsel provided by the City until final termination of such proceedings.

This Code shall not be construed to relieve from or lessen the responsibility of any person owning, operating or controlling any building, structure or building service equipment therein for any damages to persons or property caused by defects, nor shall the Department of Codes Administration or the City be held as assuming any such liability by reason of the inspections authorized by this Code or approvals issued under this Code.

(j) Cooperation of Other Officials and Officers. The Director of Codes Administration may request, and shall receive so far as is required in the discharge of his duties, the assistance and cooperation of other officials of the City.

(k) Rules and Regulations. The Director of Codes Administration is authorized to make and promulgate reasonable and necessary rules and regulations to provide for the efficient administration of the this Code, and to implement the substantive and procedural requirements of this Code. A copy of rules and regulations shall be filed in the office of the city clerk.

Section 9.1.203. Unsafe Conditions.

(a) General. No person, firm, corporation, partnership, association, organization, or governmental agency properly regulated by the City shall erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, maintain or own any building, building use, structure, sign, appendage, or building service equipment in an unsafe manner.

(b) Unsafe Buildings, Structures, Building Service Equipment or Signs Maintenance.

(1) General. All buildings, structures, signs or building service equipment regulated by this Code which are structurally inadequate or have inadequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life are, for the purpose of this section, unsafe.

(2) Maintenance of Signs. All signs, together with all of their supports, braces, guys and anchors, shall be kept in repair and in proper state of preservation. The display surfaces of all signs shall be kept neatly painted or posted at all times. Signs which no longer advertise a bona fide business, product or service shall be removed by the owner, agent or person having the beneficial use of the premises upon which such sign may be found within thirty (30) days after written notice from the Director of Codes Administration. Upon failure to comply with the notice within the specified time, the Director of Codes Administration is hereby authorized to cause removal of the sign.

The Director of Codes Administration shall certify the charge for any such action to the Director of Finance as a special assessment represented by a special tax bill against the real property affected. The tax bill shall be a lien upon said property and be enforced to the same extent and in the same manner as special tax bills issued pursuant to Article VII of the Charter. The tax bill from date of issuance shall be a lien on the property until paid. This procedure does not preempt any other remedy the City may have.

(c) Unsafe Use. Any use of buildings, structures or building service equipment constituting a hazard to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is, for the purpose of this section, an unsafe use.

(d) Unsafe Appendages. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in the Building Code are hereby designated as unsafe building appendages.

(e) Unsafe Underground Spaces, Buildings, Structures. All unsafe underground spaces, buildings, structures or portions thereof are regulated as in Sections 9.1.203 (b) and (c) above.

(f) Emergency Provisions. Where it is reasonably appears there is an immediate danger to the health, safety, or welfare of any person, the Director of Codes Administration may take emergency measures to vacate and repair or demolish an unsafe building, building use, structure, sign or appendage.

Section 9.1.204. Board of Appeals.

(a) Purpose. For the purpose of determining questions of fact as to the acceptability and adequacy of alternate materials, equipment and types of construction and providing for the review of the decisions of the Director of Codes Administration in the interpretation of the building code and interpretations of the Fire Director of the fire code, there is hereby established the Building and Fire Codes Board of Appeals, described hereafter as the Board.

(b) Right of Appeal - Building Code. Except in emergencies, any decision of the Director of Codes Administration in the enforcement of this Article may be appealed to the Board by any person aggrieved by any decision of the Director of Codes Administration. Such appeal must be taken within ten (10) days from the date of the order or other ruling appealed by filing with the Director of Codes Administration a written notice of appeal setting forth the grounds therefor. Before the Board is called, the appellant shall pay a fee of thirty dollars ($30.00), payable to the City Treasurer. The Director of Codes Administration shall then transmit to the Board all papers constituting the record upon which action appealed from is taken.

Except in cases designated as emergencies, an appeal to the Board stays all enforcement of the determination from which the appeal is being taken.

(c) Right of Appeal - Fire Code. Except in emergencies, any decision of the Fire Director in the enforcement of the fire code may be appealed to the Board by any person aggrieved in accordance with the provisions of Articles V and VI, Chapter 14, Code of General Ordinances of Kansas City, Missouri.

(d) Composition and Appointment.

(1) Composition. The Board shall consist of twelve (12) members and twelve (12) alternates. Each member and alternate shall be qualified by experience and training to pass upon matters pertaining to building construction.

Two (2) members and two (2) alternates shall be professional engineers registered by the State of Missouri; one (1) member and one (1) alternate shall be architects registered by the State of Missouri; one (1) member and one (1) alternate shall be building contractors; one (1) member and one (1) alternate shall be home builders; one (1) member and one (1) alternate shall be representatives of labor; one (1) member and one (1) alternate shall be licensed mechanical contractors; one (1) member and one (1) alternate shall be licensed electrical contractors; one (1) member and one (1) alternate shall be licensed plumbing contractors; one (1) member and one (1) alternate shall be licensed heating and ventilating contractors; one (1) member and one (1) alternate shall be licensed fire protection contractors; and one (1) member and one (1) alternate shall have permits to operate protective signaling systems.

The Director of Codes Administration shall serve in a ministerial capacity as secretary to the Board. The city attorney or his representative shall attend all meetings held by the Board. The Fire Director or his representative shall attend at least all meetings which are pertinent to the enforcement of the fire code.

(2) Appointment. Members and their alternates shall be appointed by the Mayor with the approval of the City Council, and shall serve for a term of four (4) years; however, all members shall continue in office until their respective successors shall have been appointed. The mayor may remove members and alternates for just cause upon written notice.

(e) Powers and Duties - Building Code. The Board shall have the power to approve the use of alternate materials, equipment and types of construction whenever in any specific case the Board shall find and determine that the application of a general rule or regulation governing such use will, by reason of exceptional circumstances or conditions, constitute a practical hardship; to hear and render decisions on all appeals from the decisions of the Director of Codes Administration; and to hear and render decisions on appeals from the various examining committees created by the building code. The Board shall further be empowered to interpret the intent of the building code in specific cases and to authorize responsible, minimum modification from the literal provisions of the code where it is determined that such modification is, for the purpose intended, at least the equivalent of that prescribed in the code with respect to strength, fire resistance or safety. All rulings and actions of the Board shall be consistent with the spirit and intent of the building code.

The Board shall adopt reasonable rules and regulations for its conduct as it may deem necessary.

The Board may recommend to the Director of Codes Administration and the Fire Director such new legislation as is consistent with the board's decisions.

(f) Powers and Duties - Fire Code. The Board shall have the powers and duties as set forth in Articles V and VI, Chapter 14 of the Code of General Ordinances for the purpose of determining questions of fact as to the acceptability and adequacy of alternate materials, equipment, methods of preventing fires and promoting fire safety, and for providing for the review of the decisions of the Fire Director in the interpretation of the fire code of the city.

(g) Meetings. The Board shall fix a reasonable time for the public hearing of appeals, as well as for due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing before the Board, any party may appear in person or by agent or by attorney. The hearings of appeals before the Board shall be transcribed. The transcript may be obtained from the court reporter at the cost of the requesting party.

(h) Conflict of Interest. Members of the Board shall conduct themselves in accordance with Section A7.24, Administrative Code of Kansas City, Missouri.

(i) Decisions. All decisions of the Board shall be by a majority vote of the attending members or their alternates provided that a quorum is present. The attendance of five members or their alternates shall be considered a quorum. All decisions of the Board shall be in writing and shall be filed with the city clerk, with a copy to the appellant, the Director of Codes Administration and the Fire Director.

Section 9.1.205. Licenses or Registrations Required

(a) Heating and Ventilating. Any persons doing heating or ventilating work or causing such work to be done shall first be licensed as a heating and ventilating contractor or shall be doing such work under the direct supervision of a licensed heating and ventilating contractor. All work shall be limited to the scope of work as defined in the Licensing Article of this Code.

(b) Refrigeration. Any persons doing refrigeration work or causing such work to be done shall first be licensed as a refrigeration contractor or shall be doing such work under the direct supervision of a licensed refrigeration contractor. All work shall be limited to the scope of work as defined in the Licensing Article of this Code.

(c) Boilermaking and Pressure Vessels. Any persons doing boiler work or causing such work to be done shall first be licensed as a boilermaking contractor or shall be doing such work under the direct supervision of a licensed boilermaking contractor. All work shall be limited to the scope of work as defined in the Licensing Article of this Code.

(d) Pipe-Fitting, Pressure Vessels. Any persons doing pipe-fitting work or causing such work to be done shall first be licensed as a pipe-fitting contractor or shall be doing such work under the direct supervision of a licensed pipe-fitting contractor. All work shall be limited to the scope of work as defined in the Licensing Article of this Code.

(e) Plumbing. Any person doing plumbing work or causing such work to be done shall first be licensed as required by the Licensing Article of this Code as a plumbing contractor or a journeyman plumber doing such work under the direct supervision of a licensed plumbing contractor. All work shall be limited to the scope of work as defined in the Licensing Article of this Code.

(f) Gas Fired Appliances. Any persons installing or servicing gas fired appliances shall first be licensed as a gas fired contractor or shall be doing such work under the direct supervision of a licensed gas fired appliance contractor. All work shall be limited to the scope of work as defined in the Licensing Article of this Code.

(g) Electrical. Any persons doing electrical work or causing such work to be done shall first be licensed as an electrical contractor or shall be doing such work under the direct supervision of a licensed electrical contractor. All work shall be limited to the scope of work as defined in the Licensing Article of this Code.

(h) Fire Protection Systems. Any person or organization who engages in the installation, alteration, modernization, repair, maintenance or service of equipment regulated by Chapter 38 of the Building Article of this Code shall first be licensed or registered as required by the Registration and Licensing Articles of this Code or such work may be done under the direct supervision of any person or organization who holds such license or registration. All work shall be limited to the scope of work as defined in the Registration and Licensing Articles of this Code.

(i) Elevators, Escalators, Walks, Lifts, and Hoists. Any person or organization who engages in the installation, alteration, modernization, repair, maintenance or service of elevators, escalators, walks, lifts or hoists shall be registered in accordance with the Registration Article of this Code or such work may be done under the direct supervision of any person or organization who is registered in accordance with the Registration Article of this Code. All work shall be limited to the scope of work as defined in the Registration Article of this Code.

(j) Signs. Any person or organization who engages in the business of maintaining, erecting, painting or removing signs or marquees shall be registered in accordance with the Registration Article of this Code or such work may be done under the direct supervision of any person or organization who is registered in accordance with the Registration Article of this Code. All work shall be limited to the scope of work as defined in the Registration Article of this Code.

(k) Wrecking. Any person, firm or organization who contracts to demolish any building for another shall first be registered with the Director of Codes Administration in the appropriate class of registration as set forth in the Registration Article of this Code.

Exception: The owner of record may demolish any one-story building which is at least ten (10) feet from all property lines or any two-story building which is at least fifteen (15) feet from all property lines. Such work must be done by the owner, by his family, or by his employees.

(l) Exceptions for Homeowners. A permit required by this Code may be issued to any person to do work regulated by this Code in a single family dwelling used exclusively for living purposes, including the usual accessory buildings, providing such person certifies that he is the bona fide owner of such dwelling and accessory buildings and that the same are to be occupied by said owner provided that said owner shall personally purchase all material and perform all labor in connection therewith.

Section 9.1.206. (Reserved)

Section 9.1.207. Violations.

(a) General. It shall be unlawful for any person, firm, corporation, partnership, association, organization, or governmental agency properly regulated by the City to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, maintain or own any building, premises, sign, structure, or building service equipment or cause or permit the same to be done in violation of this Code.

(b) Violations. Any person, firm, corporation, partnership, association, organization or governmental agency properly regulated by the City violating any of the provisions of this Code shall be deemed guilty of a misdemeanor. Each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued or permitted shall be a separate offense.

Section 9.1.208. Penalty.

Conviction of any violation of this Article shall be punished by a fine of not more than five hundred dollars ($500.00), or by imprisonment of not more than one hundred eighty (180) days, or by both such fine and imprisonment. The imposition of penalties herein prescribed shall not preclude the city attorney from instituting appropriate action, including equitable and extraordinary remedies, to prevent any unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, or to restrain, correct or abate a violation or to prevent the occupancy of a building or structure or portion thereof, or of the premises, or to prevent an illegal act, conduct of business or use in or about the premises.

Section 9.1.301. Permits.

(a) Permits Required.

(1) General. It shall be unlawful to construct, enlarge, alter or demolish a structure or change the occupancy of a building or structure requiring additional strength, exit or sanitary provisions; or to change to another use; or to install or alter any equipment or sign for which provision is made or the installation of which is regulated by this Code, without first obtaining the required permit; except that repairs, as defined in Section 9.1.103(b) and which do not involve any violation of this Code and work as specified in subsection (b) of this section, shall be exempted from this provision.

Exceptions: In cases of emergency, the person or other entity doing work or causing work to be done may proceed with the work and file application for a permit within seventy-two (72) hours after commencement of emergency work. Emergency shall be considered to exist only in those situations wherein life, health and safety would be adversely affected if work were not commenced immediately, and the burden shall be upon the person claiming such emergency to exist to prove the same by clear and convincing evidence.

(2) Moved Buildings.

(A) Moving, Raising or Shoring. No building or fixed structure shall be moved on or across a street or alley without a permit issued by the Director of Codes Administration in accordance with the provisions set forth in other portions of this section and in section 9.1.103 (f). No building or major portion thereof shall be raised or shored without a permit from the Director of Codes Administration.

(B) Building Systems. A permit shall be obtained for all heating, ventilating, comfort cooling, refrigeration systems, boilers, unfired pressure vessels, pipe-fitting, incinerators and miscellaneous heat-producing appliances, moved with or installed in any moved building. A separate

permit shall be obtained for the equipment installed in each separate building or structure.

(3) Conditional Permits: Upon written application, the Director of Codes Administration may issue conditional permits which shall not be considered a building permit for the purpose of Chapter 31, "Subdivisions", Code of General Ordinances.

(4) Temporary Electrical Service Permit. Permits for temporary service installations not to exceed ninety (90) days' duration may be granted for fairs, carnivals, exhibitions, exterior lighting for decorative display and similar purposes. Permits for temporary service installations not to exceed one hundred eighty (180) days' duration may be granted for construction jobs. The time limit shall be subject to renewal, if requested in writing and if the Director of Codes Administration determines that the temporary permit is not being used to evade the requirements of permanent electrical service installation, will not adversely affect the public safety, or is justified because of circumstances not within the control of the permit holder.

(5) Special Nighttime Building Permits.

(A) Notwithstanding any other provision of this Code or of any other provision of the Code of General Ordinances, no construction work, including excavation, hauling, dumping or filling, may be performed between the hours of 9:00 p.m. and 7:00 a.m. within five hundred (500) feet of an occupied residential structure located in an area zoned residential unless the Director of Codes Administration issues a special building permit authorizing the work.

Exceptions: The following types of construction work are excepted from the requirement of obtaining a special nighttime building permit:

1. Emergency work authorized pursuant to Section 9.1.301(a)(1).

2. Construction work being completely conducted inside a closed-in structure whenever such construction work does not involve the use of jackhammers, air compressors or other heavy equipment or continuing truck operations.

3. Roofing during the months of June through September, both inclusive.

(B) The Director of Codes Administration shall address in each special building permit issued authorizing nighttime work the following items:

1. Traffic routes to be used by construction equipment and trucks;

2. Means of lighting the construction site or place of operation;

3. Whether noise level shall be a provision of the permit;

4. Type of work to be done and the nature of the project; and

5. Density of the residential area potentially affected by the nighttime work.

(C) The Directors of Health and Transportation are authorized to assist the Director of Codes Administration in establishing criteria for the issuance of a special building permit authorizing nighttime work.

(b) Exempted Work. A permit shall not be required for the types of work in each of the separate classes of permit as listed below. Exemption from the permit requirements of this Code shall not be deemed to grant authorization for any work to be done in violation of the provisions of the Technical Articles or any other laws or ordinances of the City.

(1) Building Permits. A building permit shall not be required for the following:

(A) One-story detached accessory buildings used as tool and storage sheds, playhouses and similar uses provided the project roof area does not exceed two hundred (200) square feet.

(B) Oil derricks.

(C) Movable cases, counters and partitions not over five (5) feet high.

(D) Retaining walls which are not over four (4) feet in height measured from grade on the low side of the wall, unless supporting a surcharge or impounding flammable liquids or when adjacent to public right-of-way.

(E) Fences.

(F) Water tanks supported directly upon grade if the capacity does not exceed five thousand (5000) gallons and the ratio of height to diameter or width does not exceed two (2) to one (1).

(G) Platforms, walks and driveways not more than thirty (30) inches above grade and not over any basement or story below.

(H) Temporary motion picture, television and theater stage sets and scenery.

(I) Window awnings supported by an exterior wall of Group R, Division 3, and Group M Occupancies when projecting not more than fifty four (54) inches.

(J) Prefabricated swimming pools accessory to a Group R, Division 3 Occupancy in which the pool walls are entirely above the adjacent grade and if the capacity does not exceed five thousand (5000) gallons.

(K) Reroofing one and two family residences with light roof covering. Not more than two (2) overlays of roofing shall be applied.

(L) Construction or alteration of public utility generation, communication, transmission and distribution facilities used by such utilities duly franchised or authorized as such in the city. Administrative office buildings for such franchised utilities, shall require building permits as described in 9.1.301 (a)(1).

(2) Mechanical Permits. A mechanical permit shall not be required for the following:

(A) Any portable heating appliance.

(B) Any portable ventilating equipment.

(C) Any portable cooling unit.

(D) Any portable evaporative cooler.

(E) Any closed system of steam, hot or chilled water piping within any heating or cooling equipment as defined by the Mechanical Article.

(F) Replacement of any component part of assembly of an appliance which does not alter its original approval and complies with other applicable requirements of the Technical Articles.

(G) Any refrigerating equipment which is part of the equipment for which a permit has been issued pursuant to the requirements of the Technical Articles.

(H) Any unit refrigerating system as defined in the Mechanical Article.

(I) Modifications of process piping subject to frequent change unless being installed with pumps, pressure tanks and related equipment, as covered in Chapter 23 of the Mechanical Article.

(3) Plumbing Permits. A plumbing permit shall not be required for the following:

Repairs which involve only the working parts of a faucet or valve, clearance of stoppages, or repairing or replacement of defective fixtures, valves, or appliances provided alterations or extensions of piping systems are not made.

(4) Elevator Permits. An elevator permit shall not be required for the following:

(A) Material hoists;

(B) Mobile scaffolds, towers, and platforms;

(C) Powered platform and equipment for exterior and interior building maintenance;

(D) Conveyors and related equipment;

(E) Cranes, derricks, hoists, hooks, jacks, and slings;

(F) Industrial trucks;

(G) Portable equipment (except as covered by Part VIII of the Elevators (et al.) Article;

(H) Tiering or piling machines used to move material to and from storage located and operating entirely within one story;

(I) Equipment for feeding or positioning material at machine tools, printing presses, etc.;

(J) Skip or furnace hoists;

(K) Wharf ramps;

(L) Amusement devices;

(M) Stage and orchestra lifts;

(N) Lift bridges;

(O) Railroad car lifts or dumpers;

(P) Mechanized parking garage equipment;

(Q) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing an elevator;

(R) Mine elevators not located in or adjacent to a building or structure.

(5) Electrical Permits. An electrical permit shall not be required for the following:

(A) Repairs and Maintenance: Minor repair work, including the replacement of lamps or the connection of approved portable electrical equipment to approved permanently installed receptacles.

(B) Public Service Agencies: The installation, alteration or repair of electrical equipment for the operation of communications and signals or the transmission of intelligence by wire by public service agencies, except for fire alarm systems.

(C) Power Companies: The installation, alteration or repair of electrical equipment of a power or public service company for its use in the generation, transmission, distribution or metering of electricity.

(D) Temporary Testing Systems: The installation of any temporary system required for the testing or servicing of electrical equipment or apparatus.

(6) Sign Permits. A sign permit shall not be required for the following:

(A) The changing of the advertising copy or message on a painted or printed sign only. Except for theater marquees and similar signs specifically designed for the use of replaceable copy, electric signs shall not be included in this exemption.

(B) Painting repainting or cleaning of an advertising structure or the changing of the advertising copy or message thereon shall not be considered an erection or alteration which requires a sign permit unless a structural change is made.

(C) Any sign placed or painted on the inside of a building or on the inside or outside of any bus, taxicab or other vehicle.

(D) Any sign painted or lettered directly on the wall of any building or structure which advertises the

name of the owner or lessee or sublessee of the building, or the products manufactured, sold or stored in such building; or any sign painted on the surface of any window or door of such building.

(E) Nameplates or professional signs attached directly to the wall of a building or other structure and which do not project more than six (6) inches beyond the property line.

(F) Miscellaneous traffic or other municipal signs, danger signs, railroad crossing signs, legal notices or trespassing signs, or signs of public service companies indicating danger or aids to service or safety.

(G) Emergency, nonadvertising signs.

(H) Bulletin boards for public, charitable or religious institutions when such bulletin boards are located on the premises of the institution.

(I) Real estate signs advertising the sale, rental or lease of the premises on which they are maintained; provided that there is not more than one (1) such sign for any street frontage and the total gross area does not exceed thirty-two (32) square feet.

(J) Signs which are embedded or set into a building or which are so constructed and erected as to become a part of the building.

(K) Tablets constructed of bronze, brass, stone or other noncombustible materials, when built or attached to the walls of a building or other structure; provided, that such tablets bear only the name of the owner, the name or use of the building, the date of erection of the building or commemorative matter.

(L) Signs announcing the name of the architect, engineer and contractors of a building under construction, alteration or repair, and announcing the character of the building enterprise or the purpose for which the building is intended; provided, that such signs are placed on fences erected as barriers for the work under construction, or on the temporary building, or on the construction canopy or on the building under construction.

(M) Signs of public service companies indicating danger, ownership of property, offices or places where their service is available to the public, when the signs are placed flat against the wall of a building or other structure.

(N) Political and other ideological signs may be installed on private property when permission is obtained from the owner of such property. Such signs shall not exceed twenty (20) square feet in areas zoned R-1 or R-2, one or two family dwellings, and shall not exceed thirty-two (32) square feet in all other areas. It shall be a violation of this Code for a property owner or occupant to permit the posting of a sign which exceeds the prescribed size.

Section 9.1.302. Application for Permit.

(a) Application. To obtain a permit, the applicant shall first file an application therefore in writing on a form furnished by the Department of Codes Administration for that purpose. Every such application shall:

(1) Identify and describe the work to be covered by the permit for which application is made.

(2) Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.

(3) Indicate the use or occupancy for which the proposed work is intended.

(4) State the valuation of any new building or structure or any addition, remodeling or alteration to an existing building.

(5) Be signed by permittee, or his authorized agent, who may be required to submit evidence to indicate such authority.

(6) Give such other data and information as may be required by the Director of Codes Administration.

(7) Special Requirements - Permits for Moving a Building. Application for permits to move, raise or shore a building or structure shall be made to the Director of Codes Administration; and every such application shall indicate:

1. The present location of the building to be moved.

2. The proposed location of the building.

3. Evidence that all public utilities have been properly disconnected.

4. The length, width and height of the building.

5. The principal materials of construction of the building.

6. The length of time required to do the proposed work. Note that building moving permits are valid for five (5) days only.

7. The name and address of the owner of the property where the building is to be moved.

8. The name and address of the owner of the building.

9. The name and address of a contact person during the move.

10. Proof of permission from the owner or owners to move, raise, or shore the building.

11. Approval by the Director of Transportation of a moving route plan.

12. A satisfactory pre-move inspection report from Codes Administration on general code conformance of the structure to be moved.

13. Evidence of a completed foundation at the proposed location. Note the foundation permit will be issued only after presentation of a satisfactory "pre-move" inspection report as described above in item 12.

14. Brief description of proposed condition the present site is to be left in upon completion of removal of the structure (when site is in Kansas City, Missouri only).

(8) Demolition Work.

1. Permit required. The work of demolishing any building or structure shall not commence until a permit has been issued by the Director of Codes Administration in accordance with the provisions set forth in this article.

2. Application for permit. All applications for permits to wreck, demolish or raze a building or structure shall be made to the Director of Codes Administration, and every such application shall state:

(A) The location of the building or structure to be wrecked.

(B) The location where materials will be deposited.

(C) The length, width and height of the building.

(D) The principal materials of construction of the building.

(E) The length of time required to complete the proposed work.

(F) The name and address of the owner of the building.

(G) The type of equipment to be used to wreck the building.

3. Conditions of permit. The work authorized by a wrecking permit shall be commenced within four (4) calendar days from the date of issuance of such permit and shall be continuous until the work is completed. For the purpose of this Article, the term "continuous" shall mean the normal rate of progress in keeping with good demolition practices. If the work is suspended or abandoned more than four (4) consecutive calendar days after the work is commenced, the permit may be expired.

   The time for demolition of a one or two story dwelling shall not exceed fifteen (15) calendar days from the date of permit issuance.

   Exception: Weather or other conditions beyond the control of the permit holder.

(b) Plans and Specifications.

(1) General. The application for any type permit shall be accompanied by at least three (3) sets of plans and specifications drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that it will conform to the provisions of this Code and all relevant laws, ordinances, rules and regulations. Where required by state law, plans and specifications shall be prepared and sealed by an architect or professional engineer registered to practice as such in the State of Missouri.

Exception: The Director of Codes Administration may waive the submission of plans, calculations, etc., if he finds that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this Code.

(2) Identification. The first substantive sheet of plans shall list the address and legal description of the project and the name and addresses of the owner and the preparer of the plans.

(3) Site Plan. The set of plans shall include a site plan which shows the location of the proposed building and of all existing buildings on the property.

(c) Engineering Data. One set of adequate details of structural, mechanical, electrical and fire protection work involving computations, stress diagrams and other essential technical data shall accompany submitted plans and bear the seal of an architect or professional engineer registered in the State of Missouri. Plans for buildings more than two stories in height of other than Group R, Division 3 or Group M occupancies shall indicate how required structural and fire resistive integrity will be maintained where penetrations are made for electrical, mechanical, plumbing and communications conduits, pipes and similar systems.

(d) Design Certification. Submitted plans, specifications and engineering data for each applicable discipline shall be certified in writing as being prepared in conformance with the this Code and zoning ordinance. Such certification shall include the name, signature, Missouri registration, and phone number for each designer on the project.

(e) Regulatory Floodplain Data. Permit applications for buildings or structures within any area designated as a regulatory floodplain in the official floodplain document shall include floor elevations and floodproofing details, as required, in conformance with Section 40.4, Code of General Ordinances. Where floodproofing construction techniques are required, the building or structure, together with attendant utility and sanitary facilities, shall be designed so that below the level specified in Section 40.4(c)(3) the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and the permit applicant shall provide certification by a professional engineer or architect registered to practice as such in the State of Missouri that the floodproofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regulatory flood.

(f) Demolition or Moving of Structures. Before a structure can be demolished, removed, or moved, the owner or agent shall notify all utilities having service connections within the structure such as water, electric, gas, sewer, telephone, steam and other connections. A permit to demolish, remove or move a structure shall not be issued

until a release is obtained from the utilities, stating that their respective service connections and appurtenant equipment, such as meters and regulators, have been removed or sealed and plugged in a safe manner.

Section 9.1.303. Permits Issuance.

(a) Issuance. The application, plans and specifications, and other data, filed by an applicant for permit shall be reviewed by the Director of Codes Administration. Such plans may be reviewed by other departments of the city to verify compliance with any applicable laws under their jurisdiction. If the Director of Codes Administration finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this Code and other pertinent laws and ordinances, and that the fees specified in Section 9.1.304 have been paid, he shall issue a permit therefor to the applicant.

When the Director of Codes Administration issues the permit where plans are required, he shall endorse in writing or stamp the plans and specifications "APPROVED". Such approved plans and specifications shall not be changed, modified or altered without authorizations from the Director of Codes Administration, and all work shall be done in accordance with the approved plans. The Director of Codes Administration may issue a permit for the construction of part of a building, structure or building service equipment before the entire plans and specifications for the whole building, structure or building service equipment have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of the Technical Articles. The holder of such permit shall proceed at his own risk without assurance that the permit for the entire building, structure or building service will be granted.

(b) Retention of Plans. One set of approved plans and specifications shall be returned to the applicant and shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress. One set of approved plans, specifications and computations shall be retained by the Director of Codes Administration until after final inspection when it is concluded that the work complies with the provisions of this Code.

(c) Validity of Permit. The issuance of a permit or approval of plans and specifications shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this Code or of any other ordinance. No permit presuming to give authority to violate or cancel the provisions of this Code shall be valid.

The issuance of a permit based upon plans, specifications and other data shall not prevent the Director of Codes Administration from thereafter requiring the correction of errors in the plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this Code or of any other ordinances or laws.

(d) Expiration.

(1) General. Every permit issued by the Director of Codes Administration under the provisions of the Technical Articles shall expire by limitation and become null and void, if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained so to do, and the fee therefore shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that any suspension or abandonment has not exceeded one year.

A permit may be extended by the Director of Codes Administration for a period(s) not to exceed six months upon written request from the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken.

(2) Sign Permit. An erection permit shall authorize erection or relocation of the sign or sign structure for a period of six (6) months. If the work authorized under a permit has not been completed within six (6) months after the date of issuance, the permit shall become null and void.

(3) Building Moving Permits. The work authorized by a moving permit shall be commenced within three (3) calendar days from the date of issuance of such permit. If the work is suspended or abandoned more than two (2) consecutive calendar days after the work is commenced, the permit shall expire. The length of time permitted for moving any building and placing on a permanent foundation shall not exceed five (5) calendar days from the date of permit issuance. A permit may be renewed or extended by the Director of Codes Administration upon request of the permit holder or the Director of Codes Administration concludes that work could not be completed within the allotted time or that work was suspended as a result of circumstances not reasonably within the control of the permit holder, such as weather, mechanical failures, and other unanticipated difficulties.

(e) Suspension or Revocation.

(1) General. The Director of Codes Administration may, in writing, suspend or revoke a permit issued under the provisions of this Code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this Code.

(2) Sign Permit. The Director of Codes Administration is authorized and empowered to suspend and revoke any permit issued upon failure of the holder thereof to comply with any of the provisions of this Code. The Director of Codes Administration is also authorized and empowered to revoke a permit for the erection of any sign or other structure which, by reason of its position, shape or color, may obstruct or interfere with the view of or be confused with any authorized traffic sign, signal or device.

(3) Hearings. The holder of a permit may request a hearing before the Director of Codes Administration to consider the suspension or revocation of a permit.

(f) Building Moving Permits: No building shall be moved into or within the city unless it has been inspected and approved by the Director of Codes Administration for conformance with the minimum requirements of this Article. If the applicant complies with the provisions of this Article, the Director of Codes Administration shall issue a permit for the proposed work. The permit holder shall notify the department at least twenty-four (24) hours before starting the work. Fees shall be assessed in accordance with the schedule for "Building Permit Fees", Section 9.1.304(a)(2) or (3) and shall be based on the value of the structure to be moved.

Section 9.1.304 Fees.

(a) Permits.

(1) Valuation. The determination of the value or valuation under any of the provisions of these codes shall be made by the Director of Codes Administration. The value to be used in computing the permit and plan review fees shall be the total value of all construction work for which the permit is issued. All fees shall be rounded off to the next whole dollar amount. Fees may be waived at the discretion of the Director of Codes Administration during times of declared emergency.

(2) One & Two Family Detached Dwelling Building, Mechanical, Plumbing, Electrical, Elevator and Fire Protection Permit Fees.

Total Valuation	Fee
0 - $700	$10.00
$701 - $1,000	15.00
$1,001 - $1,500	18.75
$1,501 - $2,000	25.00
$2,001 - $100,000:	
For the first $2,000	25.00
Plus, for each additional $1,000 or fraction thereof, to and including $100,000	3.00
$100,001 and over:	
For the first $100,000	319.00
Plus, for each additional $1,000 or fraction thereof	1.00

(3) Electrical, Plumbing, Mechanical, Elevator, Pressure Vessel, Fire Protection, and Building Permit Fees
For Other Than One & Two Family Detached Dwelling:

Valuation	Electrical & Plumbing	Mechanical	Elevator	Pressure Vessel	Fire Protection	Building
$0 - 200	22.00	29.00	23.00	14.00	13.00	16.00
$201 - 500	27.00	29.00	23.00	14.00	13.00	16.00
$501 - 700	31.00	79.00	61.00	24.00	22.00	16.00
$701 - 800	31.00	79.00	61.00	24.00	22.00	32.00
$801 - 1000	37.00	79.00	61.00	24.00	22.00	32.00
$1001 - 1500	49.00	79.00	61.00	24.00	22.00	32.00
$1501 - 2000	61.00	79.00	61.00	24.00	22.00	32.00
$2001 - 3000						
For the first $2,000	61.00	119.00	88.00	36.00	33.00	32.00
plus for each additional $1,000 or fraction thereof...	9.00	NA	NA	NA	NA	NA
$3001 - 4000						
For the first $3,000	70.00	119.00	88.00	36.00	33.00	50.00
plus for each additional $1,000 or fraction thereof...	9.00	NA	NA	NA	NA	NA
$4001 - 6000						
For the 1st $4,000	79.00	162.00	122.00	50.00	45.00	50.00
plus for each additional $1,000 or fraction thereof...	9.00	NA	NA	NA	NA	NA
$6001 - 7000						
For the 1st $6,000	97.00	162.00	122.00	50.00	45.00	75.00
plus for each additional $1,000 or fraction thereof...	9.00	NA	NA	NA	NA	NA
$7001 - 10,000						
For the 1st $7,000	106.00	216.00	166.00	66.00	60.00	75.00
plus for each additional $1,000 or fraction thereof...	9.00	NA	NA	NA	NA	NA
$10,001 - 20,000						
For the 1st $10,000	133.00	216.00	166.00	66.00	60.00	106.00
plus for each additional $1,000 or fraction thereof...	9.00	15.00	12.00	5.00	4.50	NA
$20,001 - 50,000						
For the 1st $20,000	223.00	366.00	286.00	116.00	105.00	106.00
plus for each additional $1,000 or fraction thereof...	9.00	15.00	12.00	5.00	4.50	5.50

Electrical, Plumbing, Mechanical, Elevator, Pressure Vessel, Fire Protection and Building Permit Fees
For Other Than One & Two Family Detached Dwelling:
(Continued)

Valuation	Electrical & Plumbing	Mechanical	Elevator	Pressure Vessel	Fire Protection	Building
$50,001 - 100,000						
For the 1st $50,000	493.00	816.00	646.00	266.00	240.00	271.00
plus for each additional $1,000 or fraction thereof...	8.50	15.00	12.00	5.00	4.50	5.50
$100,001 - 200,000						
For the 1st $100,000	918.00	1,566.00	1,246.00	516.00	465.00	546.00
plus for each additional $1,000 or fraction thereof...	8.50	14.00	11.00	4.50	4.00	5.50
$200,001 - 500,000						
For the 1st $200,000	1,768.00	2,966.00	2,346.00	966.00	865.00	1,096.00
plus for each additional $1,000 or fraction thereof...	4.25	14.00	11.00	4.50	4.00	4.00
$500,001 - 1 Million						
For the 1st $500,000	3,043.00	7,166.00	5,646.00	2,316.00	2,065.00	2,296.00
plus for each additional $1,000 or fraction thereof...	4.25	6.50	5.25	2.25	2.00	4.00
Over $1 Million						
For the 1st $1 Million	5,168.00	10,416.00	8,271.00	3,441.00	3,065.00	4,296.00
plus for each additional $1,000 or fraction thereof...	1.75	2.25	1.75	1.10	1.00	1.00

(4) Demolition Permit Fees:

Total Square Feet	Fee
0 - 200	$12.00
201 - 1,500	28.00
1,501 - 7,000	60.00
7,001 - 50,000:	
For the first 7,000	60.00
Plus, for each additional 1,000 square feet or fraction thereof, to and including 50,000 square feet	3.25
50,001 and over:	
For the first 50,000	199.75
Plus, for each additional 1,000 square feet or fraction thereof	1.10

(5) Signs.

Type of Sign	Permit Fee
(A) Combination Signs:	
To and including 20 square foot area	$90.00
And for each additional 20 square foot area or fraction thereof	$15.00
(B) Flat Wall Signs:	
To and including 300 square feet	$90.00
And for each additional 300 square foot area or fraction thereof	$15.00
(C) Marquees:	
Each marquee	$300.00
(D) Roof Signs:	
For surface area not to exceed 300 square feet	$300.00
And for each additional 300 square foot area or fraction thereof	$75.00
(E) Temporary Signs:	
Each sign	$30.00
(F) Free Standing Signs:	
Same as provided for Combination Signs.	

(b) Plan Review.

(1) Plan Review Fees: When the total valuation of a proposed building exceeds one hundred thousand dollars ($100,000) and a plan is required to be submitted, a plan checking fee shall be paid to the Director of Codes Administration at the time of submitting plans and specifications for checking. Such plan checking fee shall be one-half of the permit fee and shall be a credit toward the total fee when the permit is issued.

(2) Expiration of Plan Review. Applications for which no permit is issued within one hundred eighty (180) days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the Director of Codes Administration. The Director of Codes Administration may extend the time for action by the applicant for a period not exceeding one hundred eighty (180) days upon request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

(c) Supplementary Permit Fees: The fee for a supplementary permit to cover any additional value not included in the original permit shall be the difference between the fee paid for the original permit and the fee which would have been required had the original permit included the entire value.

(d) Investigation/Late Permit Fees:

(1) Wherever any work for which a permit is required by this Article has been commenced without first obtaining a permit, a special investigation may be made before a permit may be issued for such work.

(2) Where work for which any permit is required by this Article is started prior to obtaining the permit, the fee specified for such permit shall be doubled. This provision shall not be construed as permission to begin work without the required permit except as follows:

(A) In case of an emergency as set forth in section 9.1.301(a), or

(B) In case the work is being done at a one-family dwelling by the person who owns and occupies such dwelling and the permit is applied for before the end of the workday following notification.

(e) Fee for Certificate of Occupancy: Where a certificate of occupancy is required other than in connection with work under a building permit, the person applying for the certificate shall, at the time of filing application therefor, pay to the Director of Codes Administration a fee of $60.00.

(f) Inspection Fees.

(1) Annual Inspection Fees.

(A) Boilers and Unfired Pressure Vessels

Fees for annual inspections (including certificate for one (1) year) for steam and hot water heating boilers, and unfired pressure vessels are as follows:

Capacity	Fee
Low-pressure steam and hot water boilers:	
Boilers rated not over 480 MBH (output)	$19.00
Boilers rated 480 MBH and over	$29.00
High-pressure boilers operated at pressures greater than fifteen (15) pounds per square inch:	
Miniature boilers, not over 16" diameter	$10.50
Boilers up to 50 HP (output)	$19.00
Boilers 51 HP to 300 HP	$29.00
Boilers over 300 HP	$44.00
Air receivers and unfired pressure vessels:	
120 gal. capacity and over	$19.00

The Director of Codes Administration shall keep a record of:

1. Proper identification of the equipment inspected.

2. Name of owner/tenant.

3. Amount of pressure allowed.

4. Date of the last test and inspection.

(B) Underground Space. The following schedule of fees shall apply to the required annual inspection when inspected by the Director of Codes Administration:

Area	Fee
1. Public space:	
For the first 1 million square feet	$10.00
For each additional 1 million square feet or fraction thereof	$5.00
2. Developed space:	
For the first 1 million square feet	$20.00
For each additional 1 million square feet or fraction thereof	$10.00

3. When the inspection is made by a professional engineer without city inspection, the certificate fee shall be twenty (20) percent of the above fees.

(2) Elevator Test and Inspection Fees. Certificates for initial inspections and acceptance tests, five-year and three-year inspection and maintenance tests, annual renewal certificates, operational tests and periodic, routine and special maintenance or operational inspections shall be assessed fees as follows:

(A) Initial Inspection and Acceptance Tests: $45.00 for the first 3 floors, or 30 feet of travel, plus $3.50 for each additional 3 floors or 30 feet of travel or fraction thereof.

(B) 5-year and 3-year Maintenance Inspection and Tests: Same as (A) above.

(C) 5-year and 3-year or Special Maintenance Tests Only: $23.00 for the first 3 floors or 30 feet of travel plus $2.00 for each additional 3 floors or 30 feet of travel or fraction thereof.

(D) Annual or Special Operational Test and Inspection: $34.00 for the first 3 floors plus $2.00 for each

additional 3 floors or fraction thereof.

(E) Minimum Fee: All called-for inspections or tests shall be subject to a $15.00 minimum fee if the inspection or test is not made or is not completed and the inspector has appeared at the inspection or test site ready to inspect or observe a test.

(g) Fee Refunds: Where no portion of the plan check or inspection work covered by a permit issued by the Director of Codes Administration has been commenced, the permit holder may request in writing that the permit be canceled. The permittee shall then be entitled to a refund of ninety (90) percent of the applicable fee actually paid, except that a full refund will be made when the fee was paid or collected in error. Refunds will not be made for fees representing work having been done prior to the time the fee refund request is made. Under any circumstance, fee refund requests must be made within one hundred eighty (180) days after the date of payment if no permit is obtained, or thirty (30) days after the permit is cancelled or expired.

Section 9.1.305 Inspections

(a) General. All construction or work for which a permit is required shall be subject to inspection by the Director of Codes Administration and certain types of construction shall have inspection by Special Inspectors as specified in Section 9.1.306. A survey of the lot may be required by the Director of Codes Administration to verify that the structure is located in accordance with approved plans. It shall be the duty of the person requesting any inspections required either by this Code or the Technical Articles to provide access to and means for proper inspection of such work. Neither the city nor the Director of Codes Administration shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

(b) Inspection Requests.

General. It shall be the duty of the person doing the work authorized by a permit to notify the Director of Codes Administration that such work is ready for inspection. The Director of Codes Administration may require that every request for inspection be filed at least one working day before such inspection is desired. Such request may be in writing or by telephone at the option of the Director of Codes Administration.

(c) Approval Required. No work shall be done on any part of the building, structure or building service equipment beyond the point indicated in each successive inspection without first obtaining the approval of the Director of Codes Administration. Such approval shall be given only after an inspection shall have been made of each successive step in the construction as indicated by each of the inspections required in Subsection 9.1.305(e).

There shall be a final inspection and approval on all buildings and building service equipment when completed and ready for occupancy or use.

(d) Required Inspections. Reinforcing steel or structural framework of any part of any building or structure shall not be covered or concealed without first obtaining the approval of the Director of Codes Administration.

The Director of Codes Administration, upon notification from the permit holder or his agent, shall make the following inspections and shall either approve that portion of the construction as completed or shall notify the permit holder or his agent wherein the same fails to comply with this Code.

(1) Foundation Inspection: To be made after excavations for footings are complete and any required reinforcing steel is in place. For concrete foundations, any required forms shall be in place prior to inspection. All materials for the foundation shall be on the job, except where concrete is ready mixed in accordance with U.B.C. Standard No. 26-13, the concrete need not be on the job. Where the foundation is to be constructed of approved treated wood, additional inspections may be required by the Director of Codes Administration.

(2) Concrete Slab or Under-Floor Inspection: To be made after all in-slab or underfloor building service equipment, conduit, piping accessories and other ancillary equipment items are in place but before any concrete is poured or floor sheathing installed, including the subfloor.

(3) Rough-in Inspection: To be made after the roof, all framing, fire blocking and brac-

ing are in place and all pipes, chimneys and vents are complete and the rough electrical, plumbing, and heating wires, pipes, and ducts are approved.

(4) Fire Resistive Rated Assembly: To be made at such time so as to verify the construction of each fire resistive rated assembly is in accordance with its listing.

(5) Final Inspection: To be made after all work under permit has been completed for the building/tenant space.

(e) Required Building Service Equipment Inspections.

The requirements of this Section shall not be considered to prohibit the operation of any building service equipment installed to replace existing building service equipment serving an occupied portion of the building in the event a request for inspection of such building service equipment has been filed with the Director of Codes Administration not more than forty-eight (48) hours after such replacement work is completed, and before any portion of such building service equipment is concealed by any permanent portion of the building.

(f) Periodic Inspections.

(1) Mechanical.

(A) Boilers and Unfired Pressure-Vessels.

1. General. All boilers and unfired pressure vessels are required to be inspected annually and approved by the Director of Codes Administration. A boiler or unfired pressure vessel which has been installed, repaired or re-erected in the City, for which inspection is required, shall not be operated until it has been inspected by the Director of Codes Administration, or as otherwise provided in this Section, and an operating certificate has been issued and is displayed in the vicinity of such equipment. The owner, user or agent of the property where there is a boiler or unfired pressure vessel has the responsibility to notify the Director of Codes Administration, giving address and requesting inspection where inspection is required.

2. *Exceptions. The following are excluded from required annual inspections:*

a. Boilers under U.S. Government supervision, locomotive boilers and unfired pressure vessels on railroad cars and automotive equipment.

b. Heating boilers and air-handling unfired pressure vessels located in and used for group R, division 3 and group M, division 1 and 2 occupancies.

c. Unfired pressure vessels under one hundred twenty (120) gallon capacity.

The Director of Codes Administration shall have the option of making an internal inspection, external inspection or a hydrostatic test, whichever may be necessary to determine the condition of the boiler or unfired pressure vessel. In cases where defects are discovered, the Director of Codes Administration shall report in writing to the owner or user, giving a description and location of the defect, and stating the urgency of repair; i.e. ten (10) days, fifteen (15) days, or if immediate repair is necessary. For the purpose of this Code, major repairs are defined as those which in any way affect the pressure, capacity, temperature or safety of a boiler or unfired pressure vessel.

An operating certificate shall become void, irrespective of any unexpired term, upon either the necessity for, or the actual accomplishment of, a major repair subsequent to the issuance of such operating certificate. The fee for

the issuance of another operating certificate shall be the same as the annual inspection fee required by the type of pressure vessel or boiler involved and shall expire on the expiration date of the voided operating certificate.

3. Annual Inspection Fees. See Section 9.1.304(f) for schedule of annual inspection fees.

(B) Insurance Safety Inspection. The Director of Codes Administration may accept, in lieu of the above annual inspections (other than the original inspection), a boiler insurance company's inspection, when made by an inspector commissioned by the National Board of Pressure Vessel Inspectors. In such cases the insuring company shall furnish a copy of its inspections to the Director of Codes Administration. If such reports indicates the boiler to be in satisfactory condition, the Director of Codes Administration shall issue a certificate to the owner or operator of the boiler. The fee for such certificate(s) issued without city inspection shall be fifty (50) percent of the annual inspection fee. The insuring company shall notify the Director of Codes Administration of all cancellations due to unsatisfactory boiler conditions.

(2) Elevators.

(A) General. All elevator equipment vertical and inclined, shall be inspected as required by Article V.

(B) Certificate of Inspection. Where the inspections and tests indicate that the installation is in a safe operating condition, and in the case of a new installation, conforms to this Article and the plans and specifications filed, the Director of Codes Administration shall issue a certificate of inspection to the owner of the elevator or his agent. Such certificate shall be kept posted on the elevator. In the case of escalators and manlifts, such certificate shall be posted in a conspicuous place adjacent to the entrance of each escalator or manlift. No elevator, dumbwaiter, escalator, moving walk, workmen's hoist, manlift, chairlift or wheelchair lift which is covered by this Code shall be used without such certificate.

(C) Revocation of Certificate. Any certificate issued may be revoked if it is determined that the equipment is not in compliance with this Code or that the fee for any required inspection or test has not been paid.

(D) Fees for Tests and Inspections. See Section 9.1.304 (f)(2) for schedule of fees.

(E) Limited Certificates. The Director of Codes Administration may permit the temporary use of any equipment regulated by this Code during the installation, alteration or repair, under the authority of a limited certificate issued for each class of service. Such limited certificate shall not be issued until the equipment has been tested under contract load and the car or counterweight safeties, terminal-stopping devices and other safety equipment has been tested and found to be safe for the class of service. Equipment operating under the authority of a limited certificate may be shut down or be subject to a double inspection fee if repairs or other requirements have not been completed in a timely manner.

(3) Underground Space.

(A) Periodic Inspection. All group U occupancies and all developed occupancies therein shall be inspected by the Director of Codes Administration once each year. The Director of Codes Administration may accept in lieu thereof a professional engineer's inspection report.

(B) Certificate of Inspection. Where the inspection indicates that the

installation is in a safe operating condition, and in the case of a new installation conforms to this Code and this Article, a certificate of inspection shall be issued to the owner or his agent. Such certificate shall be maintained in an appropriate location.

(C) Certificate Fees. See Section 9.1.304 (f)(1)(B) for schedule of fees.

(4) Communication Towers for Television and Radio Transmission or Reception. All new and existing structures shall be inspected for structural adequacy at least once every five (5) years. A report of the findings of such inspection shall be submitted to the Director of Codes Administration to verify the conditions found on each occasion. The report shall be certified by a professional engineer registered to practice in the State of Missouri. The report shall state that in his opinion the structure is safe and in such condition that it is capable of carrying the loads for which it was originally designed without any repairs or modifications or what areas require repair before such certification can be given.

Section 9.1.306. Special Inspections.

(a) General. In addition to the inspections required by Section 305, the owner shall employ a special inspector during construction on the following types of work:

(1) Concrete. During the taking of test specimens and placing of all reinforced concrete and pneumatically placed concrete.

Exceptions:

1. Concrete for foundations conforming to minimum requirements of Table No. 29-A or for Group R Division 3 or Group M, Division 1 Occupancies, provided the Director of Codes Administration finds that a special hazard does not exist.

2. For foundation concrete when the structural design is based on a f_c no greater than 2000 psi.

3. Nonstructural slabs on grade, including prestressed slabs on grade when effective prestress in concrete is less than 150 pounds per square inch.

4. Site work concrete full-supported on earth and concrete where no special hazard exists.

(2) Ductile Moment-Resisting Concrete Frame: As required by Section 2625(j) of this code.

(3) Reinforcing Steel and Prestressing Steel:

(A) During all stressing and grouting of prestressed concrete.

(B) During placing of reinforcing steel, placing of tendons and prestressing steel for all concrete required to have special inspection by Item No. 1.

Exception: The special inspector need not be present during entire reinforcing steel-and prestressing steel-placing operations, provided he has inspected for conformance with the approved plans, prior to the closing of forms or the delivery of concrete to the job site.

(4) Welding:

(A) Ductile moment-resisting steel frames. As required by Section 2722(f) of this code.

(B) All structural welding, including welding of reinforcing steel.

Exceptions:

1. When welding is done in an approved fabricator's shop.

2. When approved by the Director of Codes Administration, single-pass fillet welds when stressed to less than 50 percent of allowable stresses and floor and roof deck welding and welded studs when used for structural diaphragm or composite sys-

tems may have periodic inspections in accordance with Section 306(e) of this code. For periodic inspection, the inspector shall check qualifications of welders at the start of work and then make final inspection of all welds for compliance prior to completion of welding.

(5) High-Strength Bolting: During all bolt installations and tightening operations.

Exceptions:

(1) The special inspector need not be present during the entire installation and tightening operation, provided he has:

(i) Inspected the surfaces and bolt type for conformance to plans and specifications prior to start of bolting.

(ii) And will, upon completion of all bolting, verify the minimum specified bolt tension for 10 percent of the bolts for each connection with a minimum of two bolts per connection.

(2) In bearing-type connections when threads are not required by design to be excluded from the shear plane, inspection prior to or during installation will not be required.

(6) Structural Masonry: During preparation of masonry wall prisms, sampling and placing of all masonry units, placement of reinforcement, inspection of grout space, immediately prior to closing of cleanouts, and during all grouting operations.

Exception: Special inspection need not be provided when design stresses have been adjusted to permit noncontinuous inspection.

(7) Reinforced Gypsum Concrete: When cast-in-place Class B gypsum concrete is being mixed and placed.

(8) Insulating Concrete Fill: During the application of insulating concrete fill when used as part of a structural system.

Exception: The special inspections may be limited to an initial inspection to check the deck surface and placement of reinforcing. The special inspector shall supervise the preparation of compression test specimens during this initial inspection.

(9) Spray-Applied Fireproofing: As required by U.B.C. Standard No. 43-8.

(10) Piling, Drilled Piers and Caissons: During driving and testing of piles and construction of cast-in-place drilled piles or caissons. See Items Nos. 1 and 3 for concrete and reinforcing steel inspection.

(11) Special Grading, Excavation and Filling: During earthwork excavations, grading and filling operations inspection to satisfy requirements of Chapter 29 and Chapter 70 (Appendix) of this Code.

(12) Special Cases: Work which, in the opinion of the Director of Codes Administration, involves unusual hazards.

(b) Special Inspector. The special inspector shall be a qualified person who shall demonstrate his competence, to the satisfaction of the Director of Codes Administration, for inspection of the particular type of construction or operation requiring special inspection.

(c) Duties and Responsibilities of the Special Inspector.

(1) The special inspector shall observe the work assigned for conformance with the approved design drawings and specifications.

(2) The special inspector shall furnish inspection reports to the Director of Codes Administration, the engineer or architect of record, and other designated persons. All discrepancies shall be brought to the immediate attention of the contractor for correction, then, if uncorrected, to the

proper design authority and to the Director of Codes Administration.

(3) The special inspector shall submit a final signed report stating whether the work requiring special inspection was, to the best of his knowledge, in conformance with the approved plans and specifications and the applicable workmanship provision of this code.

(d) Waiver of Special Inspection. The Director of Codes Administration may waive the requirement for the employment of a special inspector if he finds that the construction is of minor nature.

(e) Periodic Special Inspection. Some inspections may be made on a periodic basis and satisfy the requirements of continuous inspection, provided this periodic scheduled inspection is performed as outlined in the project plans and specifications and approved by the Director of Codes Administration.

(f) Approved Fabricators. Special inspections required by this section and elsewhere in this code shall not be required where the work is done on the premises of a fabricator registered and approved by the Director of Codes Administration to perform such work without inspection. The certificate of registration shall be subject to revocation by the Director of Codes Administration if it is found that any work done pursuant to the approval is in violation of this code. The approved fabricator shall submit a Certificate of Compliance that the work was performed in accordance with the approved plans and specifications to the Director of Codes Administration and to the engineer or architect of record. The approved fabricator's qualifications shall be contingent on compliance with the following:

(1) The fabricator has developed and submitted a detailed fabrication procedural manual reflecting key quality control procedures which will provide a basis for inspection control of workmanship and the fabricator plant.

(2) Verification of the fabricator's quality control capabilities, plant and personnel as outlined in the fabrication procedural manual shall be by an approved inspection or quality control agency.

(3) Periodic plant inspections shall be conducted by an approved inspection or quality control agency to monitor the effectiveness of the quality control program.

(4) It shall be the responsibility of the inspection or quality control agency to notify the approving authority in writing of any change to the procedural manual. Any fabricator approval may be revoked for just cause. Reapproval of the fabricator shall be contingent on compliance with quality control procedures during the past year.

Section 9.1.307. Connection Approval.

(a) Energy Connections. No person shall make connections from a source of energy, fuel or power to any building service equipment which is regulated by the Technical Articles and for which a permit is required by this Code, until approved by the Director of Codes Administration.

(b) Temporary Connections. The Director of Codes Administration may authorize the temporary connection of the building service equipment to the source of energy, fuel or power for the purpose of testing building service equipment, or for use under a temporary Certificate of Occupancy.

Section 9.1.308. Certificate of Occupancy.

(a) Use or Occupancy: No vacant land and no building or structure in group A, B, E, H, I or R occupancy shall be used or occupied, and no change in the existing occupancy classification of a building, structure, land or portion thereof shall be made until the permit holder or owner has applied for and the Director of Codes Administration has issued a certificate of occupancy therefor as provided herein.

(b) Change in Use. Changes in the character or use of a building shall not be made except as specified in the this Code.

(c) Certificate Issued. It shall be the responsibility of the permit holder to request a final inspection and to apply for a certificate of occupancy when required. It shall be unlawful for a permit holder to permit occupancy of a structure before a certificate of occupancy is issued. It shall be unlawful for a permit holder to obtain a temporary certificate of occupancy and fail to complete the required work. Only if the owner of property

has applied for and secured a certificate of occupancy shall the permit holder be excused from this responsibility. After final inspection when it is concluded that the building or structure complies with the provisions of the Technical Articles and other applicable ordinances, the Director of Codes Administration shall issue a certificate of occupancy which shall state the following:

(1) The building permit number.

(2) The address of the building.

(3) The name and address of the owner.

(4) A description of that portion of the building for which the certificate is issued.

(5) A statement that the described portion of the building complies with the requirements of this Code and the Technical Articles for the group and division of occupancy and the use for which the proposed occupancy is classified.

(6) The name of the Director of Codes Administration.

(d) Temporary Certificate. If the Director of Codes Administration finds that no substantial hazard will result from occupancy of any building or portion thereof before the same is completed, he may issue a temporary Certificate of Occupancy for the use of a portion or portions of a building or structure prior to the completion of the entire building or structure.

(e) Suspension or Revocation. The Director of Codes Administration may, in writing, suspend or revoke a certificate of occupancy issued under the provisions of this Code whenever the certificate is issued in error, or on the basis of incorrect information supplied, or when it is determined that the building or structure or portion thereof is in violation of any ordinance or regulation or any of the provisions of this Code. The holder of a certificate of occupancy may request a hearing before the Director of Codes Administration to consider the suspension or revocation of a certificate of occupancy.

ARTICLE II - BUILDING

Section 9.2.1 Incorporating the Uniform Building Code (1985)

The Uniform Building Code, (1985) promulgated by the International Conference of Building Officials is adopted and incorporated in this Article by reference as if fully set forth, except as it is amended by the following sections.

Part I. Chapters 1, 2, and 3 - Administrative -- Delete. See Article I - Administrative.

Section 9.2.509. Pedestrian Walkways.

(a) General. See Uniform Building Code.

(b) Construction. See Uniform Building Code.

(c) Openings Between Pedestrian Walkways and Buildings. See Uniform Building Code.

(d) Width. See Uniform Building Code.

(e) Maximum Length. See Uniform Building Code.

(f) Multiple Pedestrian Walkways. See Uniform Building Code.

(g) Required Exits. See Uniform Building Code.

(h) Pedestrian Walkways Over Public Streets. See Uniform Building Code.

(i) Access. All new public pedestrian walkways or public pedestrian walkways substantially altered per Sec. 9.1.103(l)(3)(A) over, under, along or across any street or between buildings on private property shall be an accessible route of travel for the physically handicapped constructed in accordance with the specifications of this Code. New buildings or buildings undergoing "substantial alterations" as defined in Sec. 9.1.103(l)(3)(A) shall provide accessibility for the physically handicapped to existing or new connections to public pedestrian walkways.

Section 9.2.511. Access to Toilets and Other Facilities.

(a) Access to Water Closets. See Uniform Building Code.

(b) Access to Lavatories, Mirrors and Towel Fixtures. See Uniform Building Code.

(c) Water Fountains. See Uniform Building Code.

(d) Telephones. See Uniform Building Code.

(e) Uniform Identification of Restrooms.

(1) Signage on each door in new buildings or "substantial alterations" as defined in Section 9.1.103(l)(3)(A) shall include the following:

(A) Either a male or female international symbol (silhouette), whichever is appropriate, which is at least 6" in height and 3" in width.

(B) The word "Men" or "Women", whichever is appropriate, using letters which are at least 5/8" in height and raised at least 1/32".

(C) The word "Men" or "Women", whichever is appropriate, using Braille symbols (dot) for the blind.

(D) The international symbol of accessibility for physically disabled people when the facility meets or exceeds specifications of this Code.

Section 9.2.1101. Division 2. Tanks and Towers.

For occupancy separations, see Table No. 5-B

Section 9.2.1213. Accessibility and Adaptability of Buildings and Facilities.

All new apartment buildings and existing apartment buildings undergoing "substantial alterations" as defined in Section 9.1.103 (l)(3)(A) shall have all units adaptable for use by the physically handicapped in those buildings of four or more units with one or more elevators and all ground floor units accessible to the physically handicapped in buildings of four or more units without an elevator. Adaptive design shall include doorways with a clear unobstructed width of not less than 32 inches; an accessible route into and through the dwelling; light switches, electrical outlets, thermostats and other environmental controls in accessible locations; reinforcements placed in bathroom walls for future installation of grab bars; and wheelchair maneuvering space in kitchens and bathrooms.

All new hotels and motels and existing hotels and motels undergoing "substantial alterations" as defined in Section 9.1.103 (l)(3)(A) shall have at least one unit and not less than 1% of the total number of dwelling units or guest rooms accessible to the physically handicapped.

Section 9.2.2305. Roof Design.

(d) Snow-Loads. Snow loads full or unbalanced shall be considered in place of loads set forth in Table No. 23-C, where such loading will result in larger members or connections. Potential accumulation of snow at valleys, parapets, roof structures and offsets in roofs of uneven configuration shall be considered. Where snow loads occur, the snow loads shall be determined from the American National Standard ANSI A58.1-1982, Section 7, Tables 18, 19, 20, and 21; and Figures 6, 8, 9, 10, 11 and 12.

Section 9.2.2903

(a) General. Excavation or fills for buildings or structures shall be so constructed or protected that they do not endanger life or property. All excavation remaining open for a period exceeding thirty (30) days shall be entirely enclosed and separated from the remainder of the property by protective fence or other permanent structure at least four (4) feet in height.

Slopes for permanent fills shall be not steeper than 2 horizontal to 1 vertical. Cut slopes for permanent excavations shall be not steeper than 2 horizontal to 1 vertical unless substantiating data justifying steeper cut slopes are submitted. Deviation from the foregoing limitations for cut slopes shall be permitted only upon the presentation of a soil investigation report acceptable to the Director of Codes Administration.

No fill or other surcharge loads shall be placed adjacent to any building or structure unless such building or structure is capable of withstanding the additional loads caused by the fill or surcharge.

Existing footings or foundations which may be affected by any excavation shall be underpinned adequately or otherwise protected against settlement and shall be protected against lateral movement.

Fills to be used to support the foundations of any building or structure shall be placed in accordance with accepted engineering practice. A soil investigation report and a report of satisfactory placement of fill, both acceptable to the Director of Codes Administration, shall be submitted.

(b) Protection of Adjoining Property. See the Uniform Building Code.

Section 9.2.2907. Footings.

(a) General. Footings and foundations, unless otherwise specifically provided, shall be constructed of masonry, concrete or treated wood in conformance with U.B.C. Standard No. 29-3 and in all cases shall extend below the frost line, except when erected upon solid rock or otherwise protected from frost. Footings of concrete and masonry shall be of solid material. Foundations supporting wood shall extend at least six (6) inches above the adjacent finish grade. Footings shall have a minimum depth of thirty-six (36) inches unless another depth is recommended by an approved foundation investigation.

Section 9.2.3325. Table 33-A, "Minimum Egress and Access Requirements" shall read as follows:

See Table 33-A attached.

Section 9.2.4501. Permanent Occupancy of Public Property. General.

(a) Scope: No part of any structure or any appendage thereto shall project beyond the property line of a building site and encroach below, on, or above public property, except where allowed without a permit in this chapter or as otherwise permitted by special ordinance.

(b) Construction: Structures or appendages regulated by this Article shall be constructed of materials as specified in this Article, Section 1710.

(c) Projection: The projection of any structure or appendage shall be the distance measured horizontally from the property line to the outermost point of the projection.

(d) Other Ordinances: No provisions of this Article shall be construed to permit the violation of other ordinances regulating the use and occupancy of public property.

TABLE NO. 33-A—MINIMUM EGRESS AND ACCESS REQUIREMENTS

USE[1]	MINIMUM OF TWO EXITS OTHER THAN ELEVATORS ARE REQUIRED WHERE NUMBER OF OCCUPANTS IS AT LEAST	OCCUPANT LOAD FACTOR[2] (Sq. Ft.)	ACCESS BY MEANS OF A RAMP OR AN ELEVATOR MUST BE PROVIDED FOR THE PHYSICALLY HANDICAPPED AS INDICATED[3]
1. Aircraft Hangars (no repair)	10	500	Yes
2. Auction Rooms	30	7	Yes
3. Assembly Areas, Concentrated Use (without fixed seats) Auditoriums Bowling Alleys (Assembly areas) Churches and Chapels Dance Floors Lobby Accessory to Assembly Occupancy Lodge Rooms Reviewing Stands Stadiums	50	7	Yes[4,5]
4. Assembly Areas, Less-concentrated Use Conference Rooms Dining Rooms Drinking Establishments Exhibit Rooms Gymnasiums Lounges Stages	50	15	Yes[4,6]
5. Children's Homes and Homes for the Aged	6	80	Yes[11]
6. Classrooms	50	20	Yes[8]
7. Dormitories	10	50	Yes[7]
8. Dwellings	10	300	No
9. Garage, Parking	30	200	Yes[9]
10. Hospitals and Sanitariums—Nursing Homes	6	80	Yes
11. Hotels and Apartments	10	200	Yes[11]
12. Kitchen—Commercial	30	200	No
13. Library Reading Room	50	50	Yes[4]
14. Locker Rooms	30	50	Yes
15. Malls (see Appendix Chapter 7)	—	—	—
16. Manufacturing Areas	30	200	Yes[7]
17. Mechanical Equipment Room	30	300	No
18. Nurseries for Children (Day-care)	7	35	Yes
19. Offices	30	100	Yes[11]
20. School Shops and Vocational Rooms	50	50	Yes
21. Skating Rinks	50	50 on the skating area; 15 on the deck	Yes[4]
22. Storage and Stock Rooms	30	300	No
23. Stores—Retail Sales Rooms Basement Ground Floor Upper Floors	10 50 10	20 30 50	Yes Yes Yes
24. Swimming Pools	50	50 for the pool area; 15 on the deck	Yes[4]
25. Warehouses	30	500	No
26. All others	50	100	

(Continued)

[1]For additional provisions on number of exits from Group H and I Occupancies and from rooms containing fuel-fired equipment or cellulose nitrate, see Sections 3320, 3321 and 3322, respectively.

[2]This table shall not be used to determine working space requirements per person.

[3]Elevators shall not be construed as providing a required exit.

[4]Access to secondary areas on balconies or mezzanines may be by stairs only, except when such secondary areas contain the only available toilet facilities.

[5]Reviewing stands, grandstands and bleachers need not comply.

[6]Access requirements for conference rooms, dining rooms, lounges and exhibit rooms that are part of an office use shall be the same as required for the office use.

[7]Access to floors other than that closest to grade may be by stairs only, except when the only available toilet facilities are on other levels.

[8]When the floor closest to the grade offers the same programs and activities available on other floors, access to the other floors may be by stairs only, except when the only available toilet facilities are on other levels.

9 Public access to floors, other than that closest to grade, which provide direct access to an adjacent structure may be by stairs only when at least one other handicapped accessible direct access is provided to the adjacent structure which connects the garage to an elevator in the adjacent structure.

10 See Section 3303 for basement exit requirements.

11 When the floor closest to grade offers activities such as conference rooms, dining rooms, drinking establishments, exhibit rooms, gymnasiums, lounges, and stages, access to other floors with similar activities may be by stairs only, except when the only available toilet facilities are on other levels.

(e) Permit Required: The Director of Codes Administration shall issue a permit to construct an encroachment only when such encroachment is authorized by special ordinance. Encroachments may require approval from the Municipal Art Commission, Department of Public Works, or the Department of Parks and Recreation if required by ordinance or regulations applicable thereto.

The permittee shall keep in force insurance, issued by a company approved by the Director of Finance, meeting the following conditions:

(1) Liability insurance with either a combined single-limit policy of $500,000; or a split-limit policy of $100,000/$300,000 bodily injury and $100,000 property damage.

(2) The city shall be added as an additional insured to such policy by separate endorsement.

(3) The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in, cancellation of, said policy at least ten (10) days prior thereto.

(4) Before the permit is issued, and annually thereafter, the permittee shall deposit with the city a certificate of insurance evidencing that the endorsements required by (2) and (3) have been met.

Authorization for an encroachment shall be construed as a permit and not a grant and may be revoked by the city at any time; and upon revocation, the permittee or the owner of the property adjacent to or adjoining such encroachment, at the same time the removal of said encroachment may be required, shall cause the removal of same and construction of necessary walls and footings to protect the public property without expense to the city.

Exceptions: Permits shall not be required for:

1. *Cornices, sills, pediments and similar projections of decorative character when not more than ten (10) inches beyond the property line provided that every part of such projection is not less than ten (10) feet above the sidewalk and not less than fourteen (14) feet above any alley or vehicular trafficway.*
2. *Wheel guards of metal or concrete with rounded surfaces when encroaching onto public property, except alleys, not more than ten (10) inches and not more than eighteen (18) inches above grade.*
3. *Metal wall plates and metal angle corners when projecting onto public property not more than one (1) inch.*
4. *Sill cocks, fire department connections and sprinkler system control valves when encroaching onto public property not more than eight (8) inches.*
5. *Awnings providing construction, projection, clearances and design conforming with this Article, Section 4506.*
6. *Footings conforming with this Article, Sections 4502 and 4503.*
7. *Curbs or buffer blocks conforming with this Article, Section 4502.*

(f) Existing Encroachments: Parts of existing buildings and structures which already project beyond the street lot line or building line may be maintained as constructed until their removal is directed by the Director of Public Works.

Section 9.2,4508. Canopies.

(a) Definition: An over-hanging fixed or stationary roof-like structure for shelter or shade which is supported by attachment to the building and provided with supports. A canopy shall include any object or decoration attached to or made a part of said canopy.

(b) Projection and Clearance: The horizontal clearance between a canopy and the curb line shall not be less than two (2) feet.

A canopy shall be at least eight (8) feet above the ground or pavement below. Canvas valances shall be permitted but shall not be less than seven (7) feet from the ground or pavement below.

(c) Thickness: The maximum height or thickness of a canopy measured vertically from its lowest to its highest point shall not exceed three (3) feet when the canopy projects more than two-thirds (2/3) of the distance from the property line to the curb line.

(d) Construction:

(1) Canopies shall be designed and constructed to safely support the load requirements as indicated in Chapter 23 of this Article. Canopies shall be supported by the wall of the building and with approved stanchions.

(2) Canopies shall be constructed of noncombustible materials.

Exception: Canopies may have combustible coverings.

(e) Location Prohibited: All canopies shall be so located as not to interfere with the operation of any standpipe or to obstruct the clear passage of stairways or exits.

Section 9.2.4600. Demolition - General.

The work of demolition or moving of any building shall not commence until the structures required for protection of persons and property are in place. Such structures shall conform to the requirements as set forth in Chapter 44 of this Article.

The Director of Codes Administration may require the permittee to submit plans and a complete schedule for demolition or moving work. Where such are required, no work shall be done until such plans and schedule are approved by the Director of Codes Administration.

(a) Scope: In addition to the other requirements of this Article and the general ordinances, this chapter shall govern the demolition and moving of buildings and structures. Any device or equipment such as scaffolds, ladders, derricks, hoists or similar items used in connection with demolition or moving shall be constructed, installed and maintained and operated in accordance with the regulations governing the construction, installation, maintenance and operation of such device or equipment as specified in other portions of this Article.

(b) Loads: Structures or parts of structures, or any floor or temporary support, scaffold, sidewalk barricade, bridge, device or equipment shall not be loaded in excess of the safe carrying capacity.

(c) Warning Signs: When required, demolition jobs shall be provided with danger signs which shall be conspicuously posted around the property.

(d) Lights: Between sunset and sunrise adequate lights shall be provided to properly protect persons and property from hazards of pits, excavations, fences, barriers, equipment, building materials or rubbish in, upon or near a sidewalk or street. All walkways shall be provided with lights as follows:

(1) Amber lights, with capacity of at least one hundred (100) watts, on the street side on the walkway at both ends and near the corner.

(2) Other lighting consisting of sixty-watt lights spaced every ten (10) feet along the walkway.

(e) Dust: All material to be removed shall be wet sufficiently to lay the dust incidental to its removal.

(f) Rubbish and Waste: All adjacent streets, alleys, and other public ways and places shall be kept free and clear of all rubbish, refuse and loose material resulting from the moving, demolition or demolition operations.

(g) Proof of rat-abating: Proof of rat-abating of any building at least ten (10) days before the wrecking or moving may be required prior to the issuance of a wrecking or moving permit.

Section 9.2.4601. Indemnity.

Every person, firm or corporation to whom permission has been granted under the terms of this article and the general ordinances to utilize public property for the demolition work or the moving of any building, structure or utility shall at all times assume full responsibility for such demolition and moving. Such permission shall be further conditioned that any persons, firm or corporation shall, as a consideration for the use of public property, at all times release, hold harmless and indemnify the city and all of the agents and employees from any and all responsibility, liability, loss or damage resulting to any persons or property or caused by or incidental to the demolition or moving work.

Section 9.2.4602. Insurance.

Any person, firm, or corporation demolishing or moving any building, structure or utility shall keep in force insurance, issued by a company approved by the Director of Finance, meeting the conditions as set forth in Section 9.2.4501.

Exception: Insurance may not be required to demolish a one-story building which is at least ten (10) feet back from all public property lines.

Section 9.2.4603. Damage to Public Property.

As a condition of obtaining a permit to work, remove or move any building, structure or utility, the permittee assumes liability for any damage to public property occasioned by such moving, demolition or removal operations.

Section 9.2.4604. Disconnecting Service Lines.

(a) Electric, telephone and gas service: All electric, telephone and gas service lines shall be shut off and all such lines cut or disconnected outside the property line before demolition or moving is commenced. Prior to the cutting of such lines, the property owner or his agent shall notify and obtain the approval of the franchised utility service company.

(b) Other service: All water, steam, storm and sanitary sewers, or other service lines shall be shut off and capped outside the building line or curb before demolition or moving work is completed. In each case, the property owner or his agent shall obtain the approval of the utility service company or department involved before starting the work.

(c) Temporary service: If it is necessary to maintain any power, water or other lines during demolition or moving, such lines shall be temporarily relocated or protected to the satisfaction of the department and utility company in accordance with applicable ordinances.

Section 9.2.4605. Methods of Demolition.

(a) General. Except for the cutting of holes in floors for chutes and holes through which to drop materials, preparation of storage space, and other necessary preparatory work, demolition of exterior walls and floor construction shall begin at the top of the structure and proceed downward; and each story or exterior wall and floor construction shall be removed and dropped into the storage space before commencing the removal of walls and floors in the story next below. This requirement shall not prohibit the demolition of a structure in sections if positive means are taken to prevent injury to persons or damage to property. The use of other methods may be permitted when approved in advance by the Director of Codes Administration.

(b) Protection of openings. All floor openings and shafts not used for material chutes shall be floored over or enclosed with guard rails and toe boards.

Section 9.2.4606. Removal of Materials.

(a) Through chutes: Materials shall not be dropped by gravity to any point lying outside the exterior walls of the building except through enclosed wood or metal chutes.

Exception: Where the distance from the property line or sidewalk is equal to or greater than the height of the demolition work, materials may be dropped to the ground provided dust control is maintained in accordance with the provisions of other portions of this chapter.

(b) Through Floor Openings: If debris is dropped through holes in the floor without the use of chutes, the total area of the hole cut in any intermediate floor (one which lies between the floor that is being demolished and the storage floor) shall not exceed twenty-five (25) percent of such floor area.

Section 9.2.4607. Stairs and Ladders.

All stairs and ladders shall be maintained in a safe condition, and at least one (1) stairway shall be accessible as each floor is demolished.

Section 9.2.4608. Condition of Site.

Upon completion of the removal of the building, structure, or utility, by either demolition or moving, the ground shall be left in a clean, smooth condition. Holes in the ground, basements or cellars shall be filled with inorganic material; provided, however, the top one (1) foot of fill shall be clean earth. The filling of such excavation may not be required when a building permit has been issued for a new building on a site and the construction thereof is to start within sixty (60) days after the completion of demolition or moving operations. The holder of the building permit shall provide such excavation with a temporary barricade protecting the excavation on all sides as specified for safety by the Director of Codes Administration. Temporary barricades

may remain in position for a time not exceeding five (5) days, after which a solid barricade shall be provided or the excavation filled.

Section 9.2.6500. Accessibility and Usability for Physically Handicapped People.

The American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People, ANSI A117.1-1986, approved by the American National Standards Institute is adopted and incorporated in this Article by reference as if fully set forth, except as it is amended by the following sections:

Part 2 - Recommendations to Adopting Authorities -- Delete.

4.3.10. Egress. Handicapped accessible routes serving any handicapped accessible space or element shall also serve as a means of egress for emergencies or connect to a handicapped accessible place of refuge in new buildings or substantial alterations as defined in Section 9.1.103(l)(3)(A). Such accessible routes and places of refuge shall comply with the requirements of this Code. Areas of refuge shall be connected to a means of emergency egress and shall be constructed per Section 3309 of this Code with minimum dimensions of 36" x 60". Such areas of refuge shall not encroach into required exit widths nor shall exit door swings encroach into required space for areas of refuge. Where this Code requires more than one means of egress from any space or room, then a like number of means of egress shall also be provided for handicapped people. The means of egress shall be arranged so as to be readily accessible from all accessible rooms and spaces.

Section 9.2.6501. Application.

Whenever the provisions of the Building Code require provisions for persons with physical disabilities the American National Standard for Buildings and Facilities - Providing Accessibility and Usability for Physically Handicapped People, ANSI A117.1-1986, shall apply.

APPENDICES.

The following chapters of the Appendix are hereby adopted:

- Chapter 7 Division 1 - "Covered Mall Buildings"

- Chapter 7 Division 11 - "Aviation Control Towers"

- Chapter 11 - "Agricultural Buildings"

- Chapter 12 - "Requirements for Group R, Division 3 Occupancies", except as amended by the following sections:

Section 1201. General.

(a) Purpose. This chapter shall be construed to secure its expressed intent, which is to benefit the public safety, health and welfare insofar as they are affected by building construction, through structural strength, adequate means of egress facilities, sanitary equipment, light and ventilation, and fire safety; and in general, to promote safety to life and property from hazards incident to the construction, design, erection, installation, alteration, addition, removal, demolition, replacement, location, relocation, moving, quality of materials, or use and occupancy, operation and maintenance of buildings, structures or premises.

(b) Scope. The provisions of this Chapter apply to the construction, prefabrication, alteration, repair, use, occupancy and maintenance of detached one or two family dwellings and one family townhouses not more than three (3) stories in height and their accessory structures.

Section 1202. One and Two Family Dwelling Code Adopted.

Buildings regulated by this chapter shall be designed and constructed to comply with the requirements of the One and Two Family Dwelling Code (1986), promulgated by the International Conference of Building Officials, the Building Officials and Code Administrators International, Inc., and the Southern Building Code Congress International, Inc., which is adopted and incorporated in this Article by reference as if fully set forth, except as it is amended by the following sections:

Section R-101, Delete.

Section R-102, Delete.

Section R-103, Delete.

Section R-104, Delete.

Section R-105, Delete.

Section R-106, Delete.

Section R-107, Delete.

Section R-108, Delete.

Section R-109, Delete.

Section R-110, Delete.

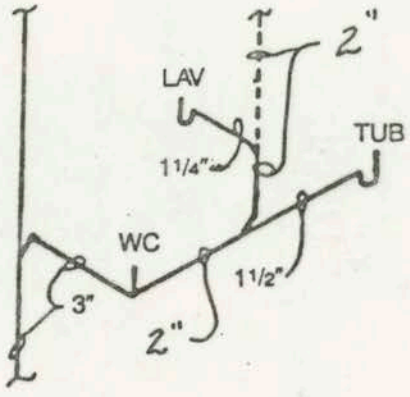
Section R-111, Delete.

Section R-113, Delete.

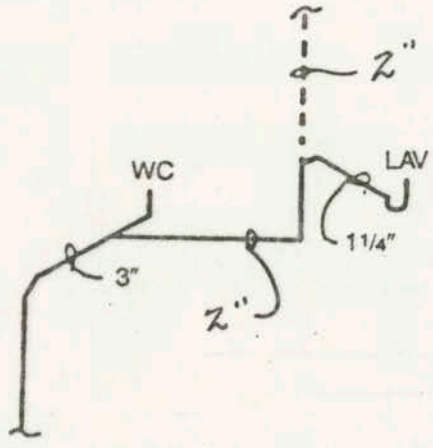
Section P-2206.9, Delete.

Figure P-2007.7.2, Typical Single Bath Wet Vent Arrangements. Amend as shown.

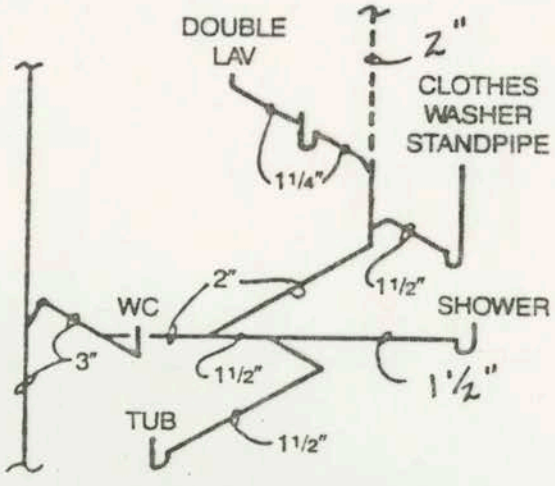
Figure No. P-2207.7.2
TYPICAL SINGLE-BATH WET-VENT ARRANGEMENTS



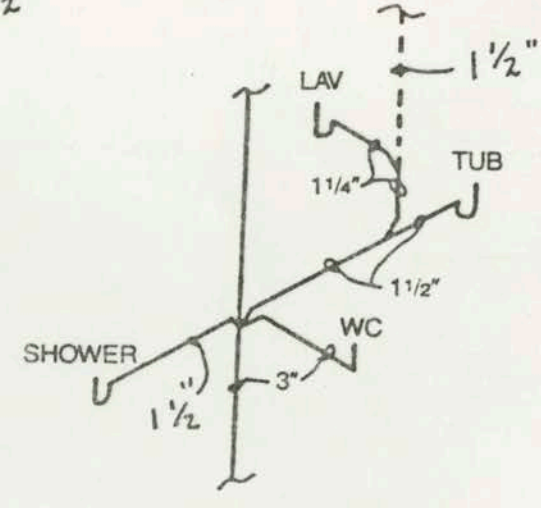
A. TYPICAL SINGLE-BATH



B. TYPICAL POWDER ROOM



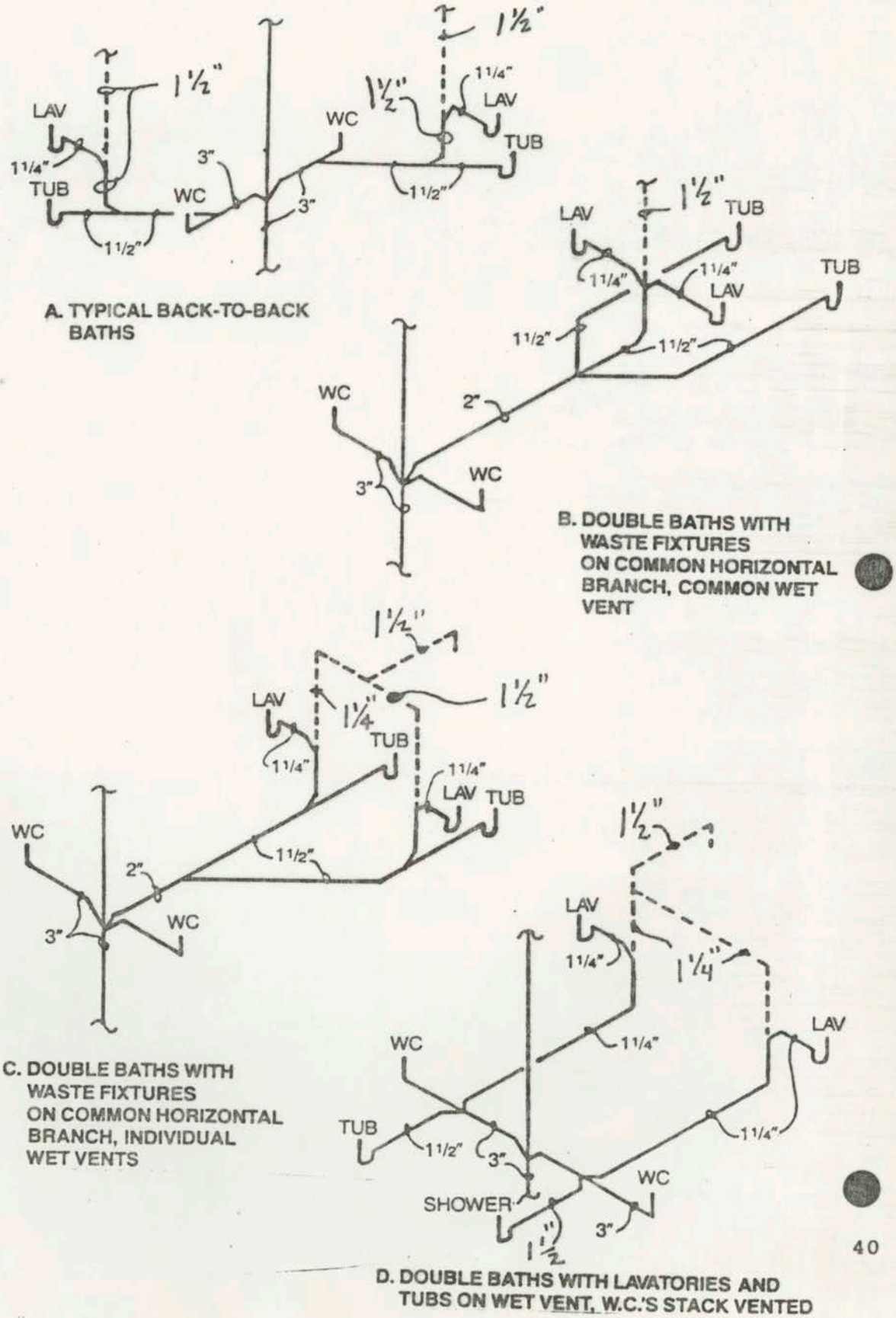
C. MORE ELABORATE SINGLE-BATH ARRANGEMENT



D. COMBINATION WET- AND STACK-VENTING WITH STACK FITTING

Figure P-2207.7.3, Typical Double Bath Wet Vent Arrangements. Amend as shown.

Figure No. P-2207.7.3
TYPICAL DOUBLE-BATH WET-VENT ARRANGEMENTS



A. TYPICAL BACK-TO-BACK BATHS

B. DOUBLE BATHS WITH WASTE FIXTURES ON COMMON HORIZONTAL BRANCH, COMMON WET VENT

C. DOUBLE BATHS WITH WASTE FIXTURES ON COMMON HORIZONTAL BRANCH, INDIVIDUAL WET VENTS

D. DOUBLE BATHS WITH LAVATORIES AND TUBS ON WET VENT, W.C.'S STACK VENTED

Figure P-2207.7.5, Waste Stack Serving as Wet Vent for Laundry Group. Amend as shown.

Figure No. P-2207.7.5
WASTE STACK SERVING AS WET VENT FOR LAUNDRY GROUP

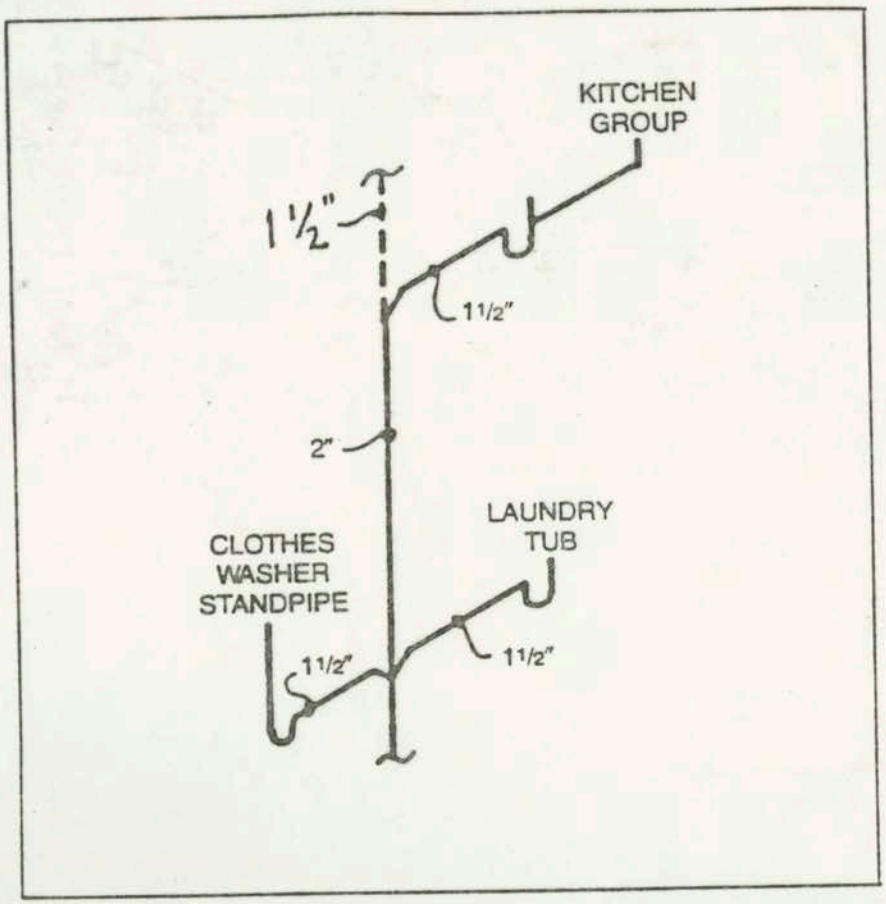
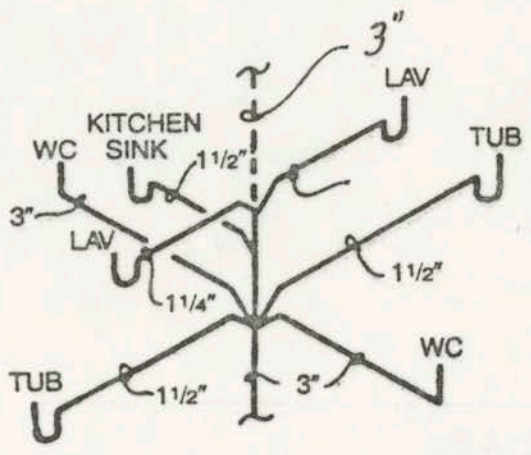
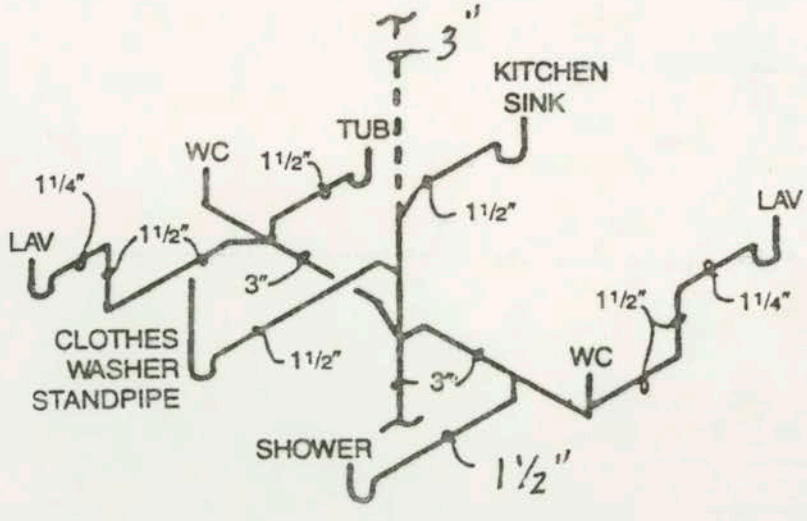


Figure P-2207.8.2 Typical Methods of Connecting Fixture Drains to Stack in Stack Vented Systems. Amend as shown.

Figure No. P-2207.8.2
TYPICAL METHODS OF CONNECTING FIXTURE DRAINS TO STACK IN STACK-VENTED SYSTEMS



A. Waste Fixtures Connected Directly to Stack



B. Waste Fixtures Connected to Water Closet Horizontal Branch

Figure P. 2207.8.3, Typical Single Stack System for a Two Story Dwelling. Amend as shown.

Figure No. P-2207.8.3
TYPICAL SINGLE-STACK SYSTEM FOR A TWO-STORY DWELLING

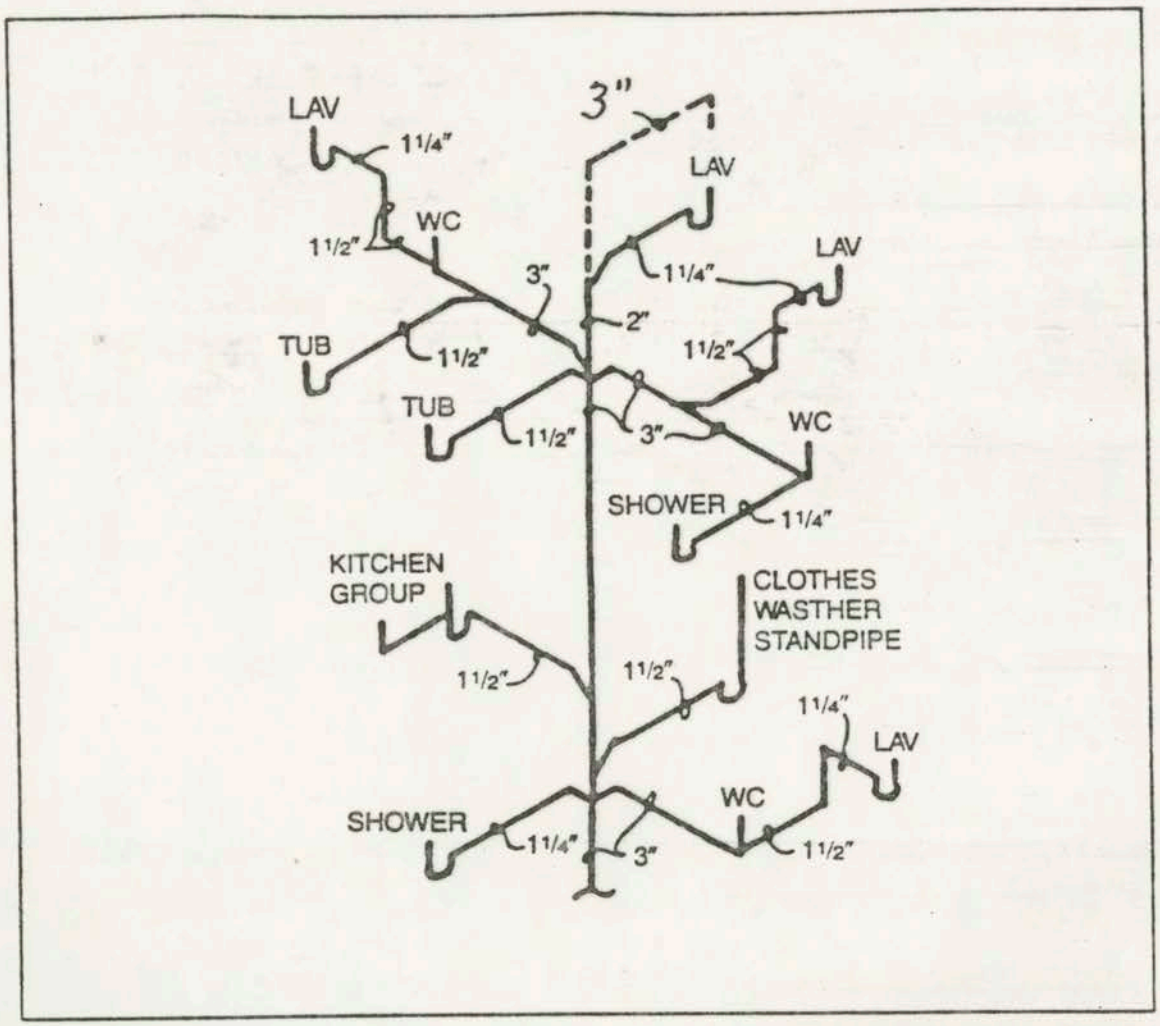


Figure P. 2207.9-A, Typical Uniformly Sized Horizontal Branch System. Amend as shown.

Figure No. P-2207.9-A
TYPICAL UNIFORMLY SIZED HORIZONTAL BRANCH SYSTEM

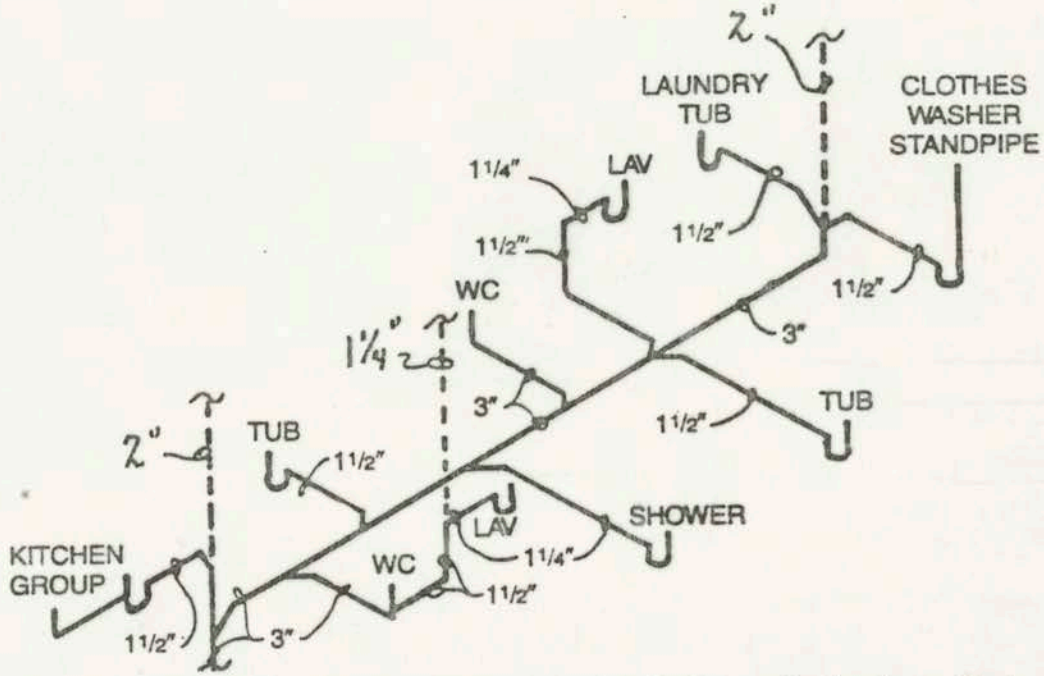


Figure 2207.9-B, Typical Horizontal Branch System Reducing in Size Utilizing Wet Venting. Amend as shown.

Figure No. P-2207.9-B
TYPICAL HORIZONTAL BRANCH SYSTEM REDUCING IN SIZE UTILIZING WET VENTING

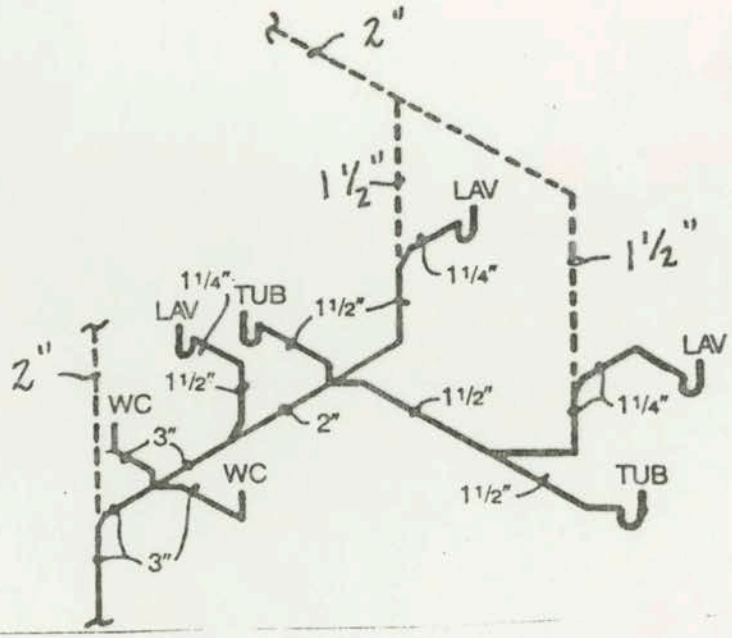


Table 2207.6 Minimum Size for Dry Vent. Amend as shown.

Table No. P-2207.6
MINIMUM SIZE FOR DRY VENTS

VENTING APPLICATION	LOAD SERVED (d.f.u.)	VENT SIZE (In.)
Individual fixture vent (single trap only)	3.9 or less 4.0 or more	1 1/4 1 1/2
Common vent, waste stack vent or wet vent extension	3.9 or less 4.0 to 6.9 7.0 to 15.9	2 2 2
Soil stack vent	6.9 or less 7.0 to 15.9 16.0 to 30.0	2 2 3
Vent stack	10.9 or less 11.0 to 30.0	2 3

Section P-2208. Delete.

Section P-2503-1. General. The type of private sewage disposal system shall be determined on the basis of location, soil porosity, and groundwater level as determined by the Director of Codes Administration based upon the results of tests performed for the owner or permit holder by a registered engineer or a licensed plumbing contractor.

Part VI "Electrical" shall conform to the Electrical Article of the this Code incorporating the National Electrical Code.

Part VII, "Energy Conservation" shall conform to the Model Energy Code (1986).

- Chapter 53 - Model Energy Code "Energy Conservation in New Building Construction" except as it is hereby amended by the following sections:

Section 5301. Purpose.

(a) The provisions of this Code shall regulate the design of building envelopes for adequate thermal resistance and low air leakage and the design and selection of mechanical, electrical, service water heating and illumination systems and equipment which will enable effective use of energy in new building construction.

It is intended that these provisions provide flexibility to permit the use of innovative approaches and techniques to achieve effective utilization of energy. These provisions are structured to permit compliance with the intent of this Code by any one of the three paths of design:

(1) A systems approach for the entire building and its energy-using subsystems which may utilize nondepletable sources. See Chapter 4, Model Energy Code (1986);

(2) A component performance approach for various building elements and mechanical systems and components. See Chapter 5, Model Energy Code (1986);

(3) Specified acceptable practice. See Chapter 6, Model Energy Code (1986).

Compliance with any one of these paths meets the intent of this chapter. This chapter is not intended to abridge safety, health or environmental requirements mandated by other applicable statutes, codes or ordinances.

(b) The Model Energy Code (1986) is hereby adopted with the following exceptions:

Section 101.1, Delete

Section 101.2, Delete

Section 103, Delete

Section 104, Delete

Section 105, Delete

Section 106, Delete.

- Chapter 55 "Membrane Structures"

- Chapter 70 "Excavation and Grading", except as it is amended by the following sections:

Section 7002. Scope. This chapter sets forth rules and regulations to control excavation, grading and earthwork construction including fills and embankments, not already authorized by a valid permit issued by a city department; establishes the administrative procedure for issuance of permits; and provides for approval of plans and inspection of grading construction.

Section 7007. Fees shall be assessed in accordance with the schedule for "Building Permit Fees", Section 9.1.304.

- Tables 70-A and 70-B -- Delete.

- Section 7008 -- Delete.

ARTICLE III - MECHANICAL

Section 9.3.1 Incorporating the Uniform Mechanical Code (1985).

The Uniform Mechanical Code (1985) promulgated by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials is adopted and incorporated in this Article by reference as if fully set forth except as it is amended by the following sections:

Part I, Chapters 1, 2 and 3 - Administrative - Delete See **Article I - Administrative.**

Section 9.3.2002(d). Duct Enclosure.

A duct serving a Type I hood which penetrates a wall or floor shall be enclosed in a duct enclosure from the point of penetration to the outside air. A duct may only penetrate exterior walls at locations where unprotected openings are permitted by the Building Article. Duct enclosures shall be constructed as the Building Article requires shaft enclosures to be constructed. Duct enclosures shall be of at least one-hour fire-resistive construction in all buildings and shall be of two-hour fire-resistive construction in Types I and II fire-resistive buildings. The duct enclosure shall be sealed around the duct at the point of penetration and vented to the exterior through weather-protected openings. The enclosure shall be separated from the duct by at least three (3) and not more than twelve (12) inches and shall serve a single grease exhaust duct system.

APPENDICES:

The following Chapters of the Appendix are hereby adopted:

Appendix A - Uniform Mechanical Code Standards, and Uniform Building Code Standards.

Appendix B - Chapter 21 - Steam and Hot-Water Boilers, Steam and Hot-Water Piping (Hydronics).

Appendix B - Chapter 23 - Hydronic Panel Heating Systems.

ARTICLE IV - PLUMBING

Section 9.4.1. Incorporating the Uniform Plumbing Code (1985)

The Uniform Plumbing Code (1985) promulgated by the International Association of Plumbing and Mechanical Officials is adopted and incorporated in this Article by reference as if fully set forth, except as it is amended by the following sections:

Part I - Administrative - Delete See Article I - Administrative.

Section 9.4.303 (b).

When a public sewer is not available for use, the building sewer shall be connected to an approved private sewage disposal system. Private sewage disposal systems shall be engineered.

Section 306, Delete

Section 314, Delete

Section 318, Delete

Section 320, Delete

Section 321, Delete

Section 322, Delete

Section 401 (a)(2), Delete

Section 9.4.409 (a), Drainage Below Curb and Also Below Main Sewer Level.

(a) Where the floor elevation of a basement or first story is below the elevation of the curb where the building sewer crosses under the curb or is below the elevation of the finished grade at the property line where the building sewer crosses under a property line and where the floor is also above the crown level of the main sewer, the drainage piping shall drain by gravity into the main sewer. Floor drains and shower drains connected to drainage piping in such floors shall be protected from the back flow of sewage by installing approved type back water valves.

(b) See Uniform Plumbing Code.

(c) See Uniform Plumbing Code.

(d) See Uniform Plumbing Code.

(e) See Uniform Plumbing Code.

(f) See Uniform Plumbing Code.

(g) See Uniform Plumbing Code.

(h) See Uniform Plumbing Code.

(i) See Uniform Plumbing Code.

(j) See Uniform Plumbing Code.

(k) See Uniform Plumbing Code.

(l) See Uniform Plumbing Code.

Section 9.4.501. Vents Required.

Each plumbing fixture trap, except as otherwise provided in this Article, shall be protected against siphonage and back pressure; and air circulation shall be assured throughout all parts of the drainage system by means of vent pipes installed in accordance with the requirements of this chapter and as otherwise required by this Article. The floor drain (where used as such) need not be vented, provided it is within twenty-five (25) feet of a 3-inch stack or horizontal drain which has at least a 3-inch diameter vent extension through the roof.

Section 9.4.503 (a) (2), Delete.

Section 9.4.604. Indirect Waste Receptors.

(a) Plumbing Fixtures. All plumbing fixtures or other receptors receiving the discharge of indirect waste pipes shall be approved for the use proposed and shall be of such shape and capacity as to prevent splashing or flooding and shall be located where they are readily accessible for inspection and cleaning. No standpipe receptor for any clothes washer shall extend more than forty-eight (48) inches, nor less than thirty (30) inches above finished floor. No trap for any clothes washer standpipe receptor shall be installed more than twelve (12) inches above finished floor. No indirect waste receptor shall be installed in any toilet room, closet, cupboard or storeroom, nor in any other portion of the building not in general use by the occupants thereof; except standpipes for clothes washers may be installed in toilet and bathroom areas when the clothes washer is installed in the same room.

Section 9.4.608. Appliances.

(b) Automatic Clothes Washer. A standpipe for an automatic Clothes Washer need not be separately vented provided all of the following criteria apply:

(1) The standpipe is used with an approved "P" trap.

(2) The "P" trap is within twenty-five (25) feet of a 3-inch stack which extends through the roof.

(c) Dishwasher. Dishwashing machines shall discharge separately into a trap or trapped fixture. Domestic dishwashing machines may discharge into the tailpiece of the kitchen sink or the dishwasher connection of a food waste grinder.

Section 9.4.708. Industrial Interceptors and Separators.

(f) Sample Port. Each interceptor shall be provided with a sample port downstream from the interceptor and located outside of the building served. Manholes serving only one building may be an acceptable alternate when approved by the Director of Pollution Control.

Section 9.4.910. Plumbing Fixtures Required.

Each building shall be provided with minimum sanitary facilities as prescribed in Appendix C of this Code.

Section 9.4.1004. Materials.

(e) Water service lines shall be soft "K" copper with flared fittings and connections.

Section 9.4.1007. Water Pressure, Pressure Regulators and Pressure Relief Valves.

(a) See Uniform Plumbing Code.

(b) Excessive Water Pressure. Where local water pressure is in excess of 100 pounds per square inch, an approved type pressure regulator preceded by an adequate strainer shall be installed and the pressure reduced to 100 pounds per square inch or less. For potable water services up to and including 1 1/2 inch regulators, provision shall be made to prevent pressure on the building side of the regulator from exceeding main supply pressure. Approved regulators with integral bypasses are acceptable. Each such regulator and strainer shall be accessibly located and shall have the strainer readily accessible for cleaning without removing the regulator or strainer body or disconnecting the supply piping. All pipe size determinations shall be based on 80 percent of the reduced pressure.

(c) See Uniform Plumbing Code.

(d) See Uniform Plumbing Code.

(e) See Uniform Plumbing Code.

(f) See Uniform Plumbing Code.

(g) See Uniform Plumbing Code.

Section 9.4.1010. Air Chambers.

Each water supply line to a fixture, except tank type water closets, shall terminate with an air chamber, or the supply system may be equipped with an approved adequately sized shock absorber which is accessible for servicing. All air chambers shall be placed in a vertical position in a tee opening. Unless otherwise approved by the Director of Codes Administration, each air chamber shall be not less than fifteen (15) inches in length, and of a diameter not less than the branch it serves.

APPENDICES

The following chapters of the Appendix are hereby adopted.

Appendix C - Minimum Plumbing Facilities, except the prefacing paragraph.

Appendix D - Rainwater Systems. Rainwater systems shall conform to Appendix D with the following exceptions:

(a) General. Storm water runoff from roofs and paved areas shall be collected and discharged into an approved storm sewer system before the storm water leaves the premises.

Exceptions:

(1) Connection to a storm sewer system shall not be required for one and two family dwellings and their accessory buildings.

(2) Individual connections to a storm sewer system shall not be required for one, two and three story garden type apartments.

ARTICLE V - ELEVATORS, ESCALATORS, WALKS, LIFTS AND HOISTS

PART I - ELEVATORS AND ESCALATORS

Section 9.5(1).1. Incorporating the American National Standard Safety Code for Elevators and Escalators.

Incorporating the American National Standard Safety Code for Elevators and Escalators, ANSI A17.1, 1984, and the American National Safety Code for Existing Elevators and Escalators, ANSI A-17.3, 1986, approved by the American National Standards Institute is adopted and incorporated in this Article by reference as if fully set forth, except as it is hereby amended by the following sections:

ANSI A17.1 - 1984

Section 102.2(c)(3). Delete.

Section 1001.1. Delete.

Section 1004.1. Delete.

Section 1007.1. Delete.

Section 1010.2. Delete

Section 1010.3. Delete

Section 1010.4. Delete

ANSI A17.3 - 1986

Section 2.1.4(c)(3). Delete.

Section 9.5(1).2.3.2. Drains.
Sumps, with or without pumps are permitted.

Section 3.11.3. Delete.

Section 4.5.2.(d). Delete.

Section 4.5.2.(f). Delete.

PART II - PERSONNEL HOISTS

Section 9.5.(3).1. Incorporating the American National Standard Safety Requirements for Personnel Hoists.

The American National Standard Safety requirements for Personnel Hoists, ANSI A10.4-1981, published by the American National Standards Institute is adopted and incorporated in this Article by reference as if fully set forth.

ARTICLE VI - ELECTRICAL

Section 9.6.1. Incorporating the National Electrical Code (1987).

The National Electrical Code (1987) promulgated as a standard of the National Fire Protection Association is adopted and incorporated in this Article by reference as if fully set forth, except as it is amended by the following sections.

ARTICLE 230. SERVICES

Section 9.6.230-42(d). Service-entrance Conductors and Equipment.

Service conductors shall be sized in accordance with the provisions of the National Electrical Code, but shall have not less than eighty (80) percent of the ampacity of the sum of the service equipment switches or circuit breakers, nor less than eighty (80) percent of the bus bar rating of the service equipment.

The sum of the ampacities of all service breakers or switches shall not exceed one hundred twenty five (125) percent of the bus bar rating of the service equipment.

Section 9.6.310-16. Conductor Ampacities.

Revise heading of Table 310-16 to read as follows:

> Table 310-16 Ampacities of Insulated Conductors
> rated 0-2000 Volts, 60^{O} C to 90^{O} C.
> Not more than three conductors in Raceway or Cable or Earth (Direct Buried), based on ambient temperature of 30^{O}C (86^{O}F).

Section 9.6. Table 310-25. Delete Table 310-25 including notes to Table 310.25.

Section 9.6. Table 310-26. Delete Table 310-26 including notes to Table 310-26.

Section 9.6. Table 310-27. Delete Table 310-27 including notes to Table 310-27.

Section 9.6. Table 310-28. Delete.

Section 9.6. Table 310-30. Delete.

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(b) Automatic Clothes Washer. A standpipe for an automatic Clothes Washer need not be separately vented provided all of the following criteria apply:

(1) The standpipe is used with an approved "P" trap.

(2) The "P" trap is within twenty-five (25) feet of a 3-inch stack which extends through the roof.

(c) Dishwasher. Dishwashing machines shall discharge separately into a trap or trapped fixture. Domestic dishwashing machines may discharge into the tailpiece of the kitchen sink or the dishwasher connection of a food waste grinder.

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(f) Sample Port. Each interceptor shall be provided with a sample port downstream from the interceptor and located outside of the building served. Manholes serving only one building may be an acceptable alternate when approved by the Director of Pollution Control.

Section 9.4.910. Plumbing Fixtures Required.

Each building shall be provided with minimum sanitary facilities as prescribed in Appendix C of this Code.

Section 9.4.1004. Materials.

(e) Water service lines shall be soft "K" copper with flared fittings and connections.

Section 9.4.1007. Water Pressure, Pressure Regulators and Pressure Relief Valves.

(a) See Uniform Plumbing Code.

(b) Excessive Water Pressure. Where local water pressure is in excess of 100 pounds per square inch, an approved type pressure regulator preceded by an adequate strainer shall be installed and the pressure reduced to 100 pounds per square inch or less. For potable water services up to and including 1 1/2 inch regulators, provision shall be made to prevent pressure on the building side of the regulator from exceeding main supply pressure. Approved regulators with integral bypasses are acceptable. Each such regulator and strainer shall be accessibly located and shall have the strainer readily accessible for cleaning without removing the regulator or strainer body or disconnecting the supply piping. All pipe size determinations shall be based on 80 percent of the reduced pressure.

(c) See Uniform Plumbing Code.

(d) See Uniform Plumbing Code.

(e) See Uniform Plumbing Code.

(f) See Uniform Plumbing Code.

(g) See Uniform Plumbing Code.

Section 9.4.1010. Air Chambers.

Each water supply line to a fixture, except tank type water closets, shall terminate with an air chamber, or the supply system may be equipped with an approved adequately sized shock absorber which is accessible for servicing. All air chambers shall be placed in a vertical position in a tee opening. Unless otherwise approved by the Director of Codes Administration, each air chamber shall be not less than fifteen (15) inches in length, and of a diameter not less than the branch it serves.

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ARTICLE VI - ELECTRICAL

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The sum of the ampacities of all service breakers or switches shall not exceed one hundred twenty five (125) percent of the bus bar rating of the service equipment.

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Revise heading of Table 310-16 to read as follows:

> Table 310-16 Ampacities of Insulated Conductors
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> Not more than three conductors in Raceway or Cable or Earth (Direct Buried), based on ambient temperature of 30^{o}C (86^{o}F).

Section 9.6. Table 310-25. Delete Table 310-25 including notes to Table 310.25.

Section 9.6. Table 310-26. Delete Table 310-26 including notes to Table 310-26.

Section 9.6. Table 310-27. Delete Table 310-27 including notes to Table 310-27.

Section 9.6. Table 310-28. Delete.

Section 9.6. Table 310-30. Delete.

ARTICLE VII - SIGNS

Section 9.7.101. Title.

This Article shall be known as the "Sign Article" of the City of Kansas City, Missouri, may be cited as such, and will be referred hereinafter as "this Article".

Section 9.7.201. Definitions.

Area of Signs. For the purpose of computing permit fees, the area of any sign shall be estimated on the basis of the largest rectangle that is required to enclose the sign. In case of an irregular sign, the area shall be the sum of the areas of the rectangles necessary to enclose the sign (computed for one (1) side only). The area of V-Type signs, multi-faced signs, two-face ground signs, and signs as faces for marquees shall be computed on the total face area.

Combination Sign is any sign incorporating any combination of the features of pole, projecting, and roof signs.

Free Standing Sign is any sign which is supported by one (1) or more columns, uprights, or braces in or upon the ground or supported directly upon the ground.

Marquee is a permanent roofed structure attached to and supported by the building and projecting over public property.

Roof Sign is a sign erected upon or above a roof or parapet of a building or structure.

Sign is any advertisement, announcement, direction or communication produced in whole or in part by the construction, erection, affixing, or placing of a structure on any land or on any other structure or produced by painting on or posting or placing any printed, lettered, pictured, figured or colored material on any building, structure or surface.

Sign Structure is any structure which supports or is capable of supporting any sign as defined in this Article. A sign structure may be a single pole and may or may not be an integral part of the building.

Wall Sign is any sign attached to or erected against the wall of a building or structure, with the exposed face of the sign in a plane parallel to the plane of said wall.

Section 9.7.301. Permits Required.

See this Code Section 9.1.301.

Section 9.7.302. Application for Permit.

See this Code Section 9.1.302

Section 9.7.303. Permits Issuance.

See this Code Section 9.1.303.

Section 9.7.304. Permit Fees.

See this Code Section 9.1.304.

Section 9.7.401. Design and Construction.

(a) General. The supports for all signs or sign structures shall be placed in or upon private property and shall be securely built, constructed and erected in conformance with the requirements of this Article.

(b) Design. Signs and sign structures shall be designed and constructed to sustain all dead loads and all other loads specified in this Code. Any system or method of construction to be used shall be based on a rational analysis in accordance with well established principles of mechanics. Such analysis shall result in a system which provides a complete load path capable of transferring all loads and forces from their point of origin to the load-resisting elements.

(c) Materials. Materials of construction for signs and sign structures attached to buildings shall be of the quality and grade as specified for buildings in the Building Article of this Code.

(1) All signs containing electrical wiring shall be subject to the provisions of the electrical code and the electrical components used shall bear the label of an approved testing agency.

(2) Restrictions on Combustible Materials. All new free standing signs and sign structures shall have structural framing members of noncombustible materials.

Exception: Free Standing Signs not exceeding ten (10) feet in height may be constructed of any material meeting the requirements of this Article.

(3) Nonstructural Trim. Nonstructural trim and portable display surfaces may be of wood, metal, approved plastics or any combination thereof.

Section 9.7.403. Projection and Clearance.

(a) General. All types of signs shall conform to the clearance and projection requirements of this Section.

(b) Clearance From High-Voltage Power Lines. Signs shall be located not less than six (6) feet horizontally or twelve (12) feet vertically from overhead electrical conductors which are energized in excess of seven hundred fifty (750) volts. The term "overhead conductors" as used in this section means any electrical conductor, either bare or insulated, installed above the ground.

(c) Clearance From Fire Escapes, Exits or Standpipes. No sign or sign structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit or standpipe.

(d) Projection Over Public Property. No sign or sign structure shall be placed, erected or maintained on, in, or above any adjoining public right-of-way, except wall signs which must be at least ten (10) feet above the grade of any sidewalk above which it projects.

Section 9.7.1501. Existing Signs.

Signs legally erected that were existing on the effective date of this Article, which do not conform to the provisions of this Article shall be permitted to continue during the usable life thereof but shall not be reinstalled unless the location and installation thereof are made to comply with this Article or any other applicable ordinances or regulations.

ARTICLE VIII - UNDERGROUND SPACE

Section 9.8.101. Title.

This Article shall be known as the "Underground Space Article" of the Building Code of Kansas City, Missouri; may be cited as such; and will be referred to hereinafter as "this Article."

Section 9.8.102. Definitions.

For the purpose of this Article, certain terms are defined as follows:

Existing is that which was done prior to the adoption (date) November 19, 1979, or for which a legal permit has been issued.

Public Way is any parcel of land (space) unobstructed by development not less than sixteen (16) feet in width and with a clear height not less than seven (7) feet appropriated to the free passage of the public.

Street is any roadway, not less than sixteen (16) feet in width, which has been specifically set aside for public use.

Underground Space is the cavern resulting from the extraction of subsurface-located material from underground areas in such a manner that the surface area of the property is not disturbed except in the vicinity of the entrances.

Yard is an open unoccupied space, other than streets and public ways, unobstructed by development to a clear height of not less than seven (7) feet.

Section 9.8.103. Occupancy Requirements.

(a) General. Group U occupancies shall be: a subsurface structure formed out of a horizontal layer of solid limestone by the room-and-pillar method of mining when such underground space is developed into a community housing, manufacturing, offices, warehousing, storage facilities and other classes of occupancy.

Since the basic underground space is formed of solid limestone, it shall be considered Type I construction as defined in the Building Code. As such, areas are unlimited.

Each individual subsurface building shall be classified and developed in accordance with the applicable requirements set forth in Part III of the Building Article.

(b) Exit Facilities. The streets and roadways throughout the underground space shall be considered to be horizontal, continuous and unobstructed means of egress to either the exterior of the underground space through portals or to a refuge area in another building in the underground space.

One (1) or more refuge areas shall be provided in large underground spaces whenever the travel distance from any building exit to the exterior exit of the underground space exceeds thirty five hundred (3500) feet. It shall provide ten (10) square feet of floor area for each person it is intended to serve. This area may be used during normal operations as a lunchroom, public restrooms, security station, maintenance, office or other uses provided it is continually available and usable as a refuge area during normal business hours.

(c) Light, Ventilation and Sanitation. All portions of Group U occupancies customarily used by human beings shall be provided with artificial light, air and sanitary facilities as required in this Article for the individual occupancy of the developed areas. Toilet facilities shall be located either in the developed occupancies or conveniently in the underground space.

(d) Shaft Enclosures. Elevator shafts, vent shafts, exit stairways and other vertical openings extending to the exterior or other floors of the underground space, shall be enclosed with two-hour fire-resistive construction.

(e) Fire Protection Systems. Fire protection systems shall be provided as required by this Article and the Building Article.

(f) Special Hazards. No hazardous materials, liquids or chemicals shall be stored in Group U occupancies except as permitted in Table No. 9-A of the Building Article.

Every room containing a boiler, furnace or central heating plant shall be separated from the rest of the underground space by at least two-hour fire-resistive construction; shall have a minimum of two (2) fire-rated means of access, one (1) for personnel use not less than two (2) feet in width and one (1) large enough to permit removal of the largest unit; and no other openings shall be permitted from this room to the

underground space other than pipes, ducts or conduits, properly sealed. All combustion air, chimney or flue vent, relief vent(s) and fuel piping shall enter this boiler-furnace room directly to and from he exterior. All other installation, operating and maintenance provisions shall be required as by this Code.

(g) Emergency and Exit Signs. All streets and roadways within the underground space shall be identified for emergency purposes by readily visible signs. Lettering shall be not less than four (4) inches high and not less than one-half (1/2) inch wide and shall be of luminescent finish. The signs shall not be higher than four (4) feet above the road surface.

Each pillar on each side of a street or roadway shall be identified by name, letter or number; and below each street sign shall be a large directional arrow with the word "EXIT" in letters not less than six (6) inches high nor less than three-fourths inch wide. All signs and letters shall be of reflective or luminescent paint. The exit arrow shall point in the direction of the nearest exit or horizontal exit.

All street identification and exit routing shall be shown on maps of the underground space, in color, shall be distributed to all personnel using the facility; shall be posted in all offices; shall be posted at the entrances and exits; and shall be given to the police and fire departments having jurisdiction in the facility. The maps shall be brought up-to-date annually as required to be current.

(h) Central Control Station. Every Group U occupancy shall contain a central control station near an entrance portal of the underground space. Such station may serve as a guard room, security office or manager's office. The station shall contain an annunciator panel which has a separate electrically operated visual signaling device for each remote alarm initiating (automatic) device, such as fire detectors, smoke detectors, water flow switches and for each manual alarm initiating device, such as a manual pull station or manually operated switch.

At or near the annunciator panel shall be a large map indicating in reasonable detail the entire underground space, identifying by letter, name and/or number each pillar, each building and each tenant space. The location of each manual or automatic detection device shall be identified by a pilot light with coded letter and/or number to match the visual signal on the annunciator panel and wired in parallel so that the person in charge or firemen can immediately locate an emergency.

Any one of the remote manual or automatic alarm indicating devices shall set off a general alarm through audible signals as bells, horns, sirens or voice system capable of being operated from the central control station on a general as well as a selective basis dependent upon the compartmentation involved. The alarm should be designed to be heard by all occupants within the building or designated portions thereof as specified for the voice communication system, as well as transmitting an alarm automatically to the local fire department.

Section 9.8.104. Fire Resistance of Walls.

Exterior walls shall have fire resistance and opening protection as set forth in Table No. 8-A of this Article. Other provisions of the Building Article shall apply when not in conflict with this Article.

Section 9.8.105. Allowable Floor Areas - One Story Areas.

The area of a building shall not exceed the limits set forth in Table 8-C of this Article except as provided in Section 9.8.106.

Section 9.8.106. Allowable Area Increases.

(a) General. The floor areas specified in Section 9.8.105 may be increased by one of the following when the developed area is provided with an approved automatic fire-extinguishing system throughout:

(1) Separation on Two Sides. Where public space, streets or yards more than twenty (20) feet in width extend along and adjoin two (2) sides of the building, floor areas may be increased at a rate of one and one-fourth (1.25) percent for each foot by which the minimum width exceeds twenty (20) feet, but the increase shall not exceed fifty (50) percent.

(2) Separation on Three Sides. Where public space, streets or yards more than twenty (20) feet in width extend along and adjoin three (3) sides of the building, floor areas may be increased at two and one-half (2.5) percent for each foot by which the

minimum width exceeds twenty (20) feet; but the increase shall not exceed one hundred (100) percent.

(3) Separation on All Sides. Where public space, streets or yards more than twenty (20) feet in wid h extend on all sides of a building and adjoin the entire perimeter, floor areas may be increased at a rate of five (5) percent for each foot by which the minimum width exceeds twenty (20) feet. Such increases shall not exceed one hundred (100) percent.

(b) Unlimited Area. No buildings of any occupancy shall be permitted to have unlimited area.

(c) Automatic Fire-Extinguishing Systems. The area specified in Section 9.8.105 may be tripled if the building is provided with an approved automatic fire-extinguishing system throughout. The area increases permitted in this subsection may be compounded with that specified in paragraph (1), (2), or (3) of subsection (a) of this section. The increases permitted in this subsection shall not apply when automatic fire extinguishing systems are installed under the substitution for one-hour fire-resistive construction pursuant to Section 508 of the Building Article.

Section 9.8.107. Fire-Resistive Substitution.

Where one-hour fire-resistive construction throughout is required by this Article, an approved automatic fire-extinguishing system, as specified in Chapter 38 of the Building Article, may be substituted, provided such system is not otherwise required.

Exception: Such substitution shall not waive nor reduce required fire-resistive construction for:

(1) Occupancy separations (Section 503(c), Building Article).

(2) Exterior wall protection due to proximity of property lines (Section 504(b), Building Article).

(3) Area separations (Section 505(e), Building Article).

(4) Shaft enclosures (Section 1706, Building Article).

(5) Stair enclosures (Section 3309, Building Article).

(6) Type of construction separation (Section 1701, Building Article).

Section 9.8.108. Requirements Based on Construction.

The structural adequacy of an underground space shall be certified by a professional engineer registered by the state to practice as such prior to making application for a building permit.

Each individual developed area shall be constructed in accordance with the applicable requirements set forth in parts V, VI, VII, IX, X and XI of Article II of this Code and this Article.

All buildings for which a certificate of occupancy has been issued shall be subject to annual inspections as set forth in Section 9.1.305(f)(3).

Section 9.8.109. Exiting.

(a) Purpose. The following Sections shall be used to determine occupant loads and to provide minimum standards of egress facilities for occupants of buildings in underground spaces.

(b) Scope. Every building or portion thereof shall be provided with exits as required by this part and applicable requirements in the Building Article.

(c) Definitions. For definitions, see Chapter 4 of the Building Article.

(d) Determination of Occupant Load. Occupant loads for buildings shall be determined as set forth in Chapter 33 of the Building Article.

(e) Exit Requirements.

(1) Number of Exits. Every building or other developed area shall have at least one (1) exit, and shall have not less than two (2) exits where required by Table No. 33-A of the Building Article.

Every building having an occupant load of five hundred (500) to nine hundred ninety-nine (999) shall have not less than three (3) exits.

Every building having an occupant load of one thousand (1,000) or more shall have not less than four (4) exits.

(2) Width of Exits. The total width of exits in feet shall not be less than the total occupant load divided by fifty (50). Such width shall be divided approximately equally among the separate exits provided.

(3) Arrangement of Exits. When more than one (1) exit is required, they shall be arranged a reasonable distance apart so that if one becomes blocked, the other exit or exits will be available.

(4) Distance to Exits. The maximum distance of travel from any point in a building to an exterior exit door, horizontal exit, exit passageway, refuge area or enclosed stairway shall not exceed:

Two hundred (200) feet in a building without an automatic fire extinguishing system.

Four hundred (400) feet in a building with an automatic fire-extinguishing system.

(5) Exits Through Adjoining Areas. Exits from a room may open into an adjoining room or area provided such adjoining room or area provides a direct means of egress to an exit corridor, exit stairway, exterior exit, horizontal exit or exit passageway.

Foyers, lobbies and reception rooms shall not be construed as adjoining rooms.

Section 9.8.110. Doors.

For requirements for doors in buildings, see Section 3305 of the Building Article.

Section 9.8.111. Corridors.

For requirements for corridors in buildings, see Section 3305 of the Building Article.

Section 9.8.112. Stairways.

For requirements for stairways in buildings, see Section 3306 of Building Article.

Section 9.8.113. Other Exit Requirements.

For other exit requirements, including exit signs and illumination, see Chapter 33 of the Building Article.

Section 9.8.114. Refuge Area.

(a) General. A required refuge area shall have enclosing walls of four-hour fire-resistive construction. The entrance and exit shall be through a vestibule. Doors to both the vestibule and to the refuge areas shall have a one and one-half (1 1/2) hour fire-resistive rating and be provided with closing devices. No other openings shall be permitted in the walls of the refuge area.

(b) Vestibule Size. The vestibule shall have minimum dimensions for forty-four (44) inches in width and seventy-two (72) inches in direction of travel.

(c) Vestibule Ventilation. The vestibule shall be provided with an exhaust fan for the purpose of removing any smoke which might be admitted during entry from the street. Such exhaust shall empty into the street in order to make the refuge area as smokeproof as possible.

(d) Utilities. Emergency lighting, ventilation and communication systems shall be provided for the refuge area to be available in case of emergency.

Section 9.8.115. Fire Protection Systems - General.

Fire protection systems shall be provided as set forth in Chapter 38 of the Building Article, except when modified in this Article.

Section 9.8.116. Wet Standpipes.

Approved wet standpipes shall be provided:

(1) When required by one Building Article.

(2) In all buildings not protected by an automatic fire-extinguishing system throughout the building.

Section 9.8.117. Fire Hydrants.

(a) Where Required. Fire hydrants shall be located along streets and roads at not more than five hundred (500) foot intervals.

Exception: Where an automatic fire-extinguishing system is provided throughout.

(b) Water Supply. Approved fire hydrants shall have not less than a six-inch connection with the water main. A valve shall be installed in the connection to the main.

(c) Inlet. Each hydrant shall have a six-inch inlet.

(d) Outlets. Each new or replacement hydrant shall have one (1) four-inch hose outlet.

(e) Pumper Connection. Each hydrant shall have one (1) four-inch pumper connection.

(f) Physical Protection. Each hydrant shall be protected from physical damage when subject to damage from vehicles.

(g) Thrust-Protection. Thrust protection shall be provided at all pipe turns by installing steel anchors, thrust blocks or other approved methods.

Section 9.8.118. Mechanical Systems - Heating and Cooling.

When heating and cooling systems are provided in any portions of Group U occupancies, such systems shall be installed in accordance with the Mechanical Article.

Section 9.8.119. Ventilation.

The quality of air in Group U occupancies, shall be certified annually by a professional engineer registered by the state to
practice as such. Acceptable quality of air shall mean a concentration of less than fifty (50) ppm of CO (carbon monoxide) in all underground occupancies.

Section 9.8.120. Plumbing Systems - General.

Plumbing systems installed in Group U occupancies, including developed areas therein, shall comply with the applicable requirements of the Building Article and the Plumbing Article, except as modified by this Article.

Section 9.8.121. Vent Termination.

Each vent pipe or stack serving a plumbing system in a building in an underground structure shall terminate vertically through the roof or horizontally through the wall of such building to a street or yard. When terminated through a wall, the vent terminal shall be as high above the floor as possible and shall be at least twenty-five (25) feet from any door, window or ventilation intake opening in the building wall. The open end of such vent terminal shall be covered with a protective screen.

Section 9.8.122. Underground Structure Trap.

Whenever a building sewer serving an underground structure coveys sanitary sewage to a public sewer, a trap shall be installed on the main sewer line outside the underground structure. The purpose of the trap is to prevent the passage of odors, gases and pests from entering the subsurface structure plumbing system from the public sewer and not to be used as a ventilating duct for the public sewer.

A fresh-air inlet shall be connected on the upstream side of this trap so as not to interfere with the cleanouts therein. The upper end of the fresh-air inlet shall terminate in a protected area at least twenty (20) feet from a portal or other opening into the underground structure. The upper end of the inlet shall be turned down and shall be provided with a substantial protected screened cover. The air inlet must be sized properly and must remain open in order to maintain fixture trap seals in the plumbing system.

Section 9.8.123. Private Sanitary Sewage Disposal System.

When a subsurface structure is located in an area where a public sewer is not available, a private system shall be installed either inside or outside the structure. Such system shall include properly designed septic tanks and underground leaching systems or other approved systems.

Section 9.8.124. Electrical Systems.

Electrical systems installed in Group U Occupancies, including developed areas therein shall comply with the applicable requirements of the Building Article and the Electrical Article, except as modified by this Article.

Section 9.8.125. Elevator Systems - General.

Elevator systems installed in Group U Occupancies, including developed areas therein, shall comply with the applicable requirements of the Building Article and the Elevators, Escalators, Walks, Lifts, and Hoists Article, except as modified by this Article.

Section 9.8.126. Emergency Access.

When it is not feasible to provide emergency doors at required intervals vertically for single elevators in subservice structures, an alternate method of egress such as a ladder or stair shall be provided and separated from the car by a smoke barrier partition.

ARTICLE IX - REGISTRATION

Section 9.9.100. Title.

This article shall be known as the "Registration Article" may be cited as such, and will be referred to hereinafter as "this Article".

Where the term "Codes Administrator" is used in this Article, this shall mean the Codes Administrator or his authorized representative.

Section 9.9.101. Authority.

(a) Determination of Qualifications. There is hereby vested in the Codes Administrator the duty of examining the qualifications of applicants for certain registration certificates established and required by the various articles of the Building Code, including the issuance, reissuance, renewal, suspension or revocation of such registration certificates.

(b) Responsibilities.

(1) The Codes Administrator shall establish examining procedures and shall be the examining agent for Certificates of Registration.

(2) The Codes Administrator shall establish procedures consistent with this Article for issuance of Certificates of Registration.

Section 9.9.102. Registration Defined and Required.

(a) Definition. Registration is authority granted to the person, firm, partnership, company, corporation, association, agency or other entity to whom it is issued to engage in the business of contracting for certain work; registration is not transferable.

(b) Registration Required. Registration shall be required for all types of work herein after classified and described.

EXCEPTIONS:

(1) Public utility companies will not be required to obtain registration for the firm or corporation nor for their employees when engaged in the installation, operation, and maintenance of equipment which will be used for the production, generation, transmission, or distribution of the product or service from the source of the product or service through the facilities owned or operated by such utility company to the point of the customer service including the metering.

(2) The owner of record may demolish any one-story building which is at least 10 feet from all property lines or any two-story building which is at least 15 feet from all property lines. Such work must be done by the owner, by members of his family, or by his employees.

Section 9.9.103. Classification and Requirements for Registration.

(a) General. There shall be various classes of registration and the holder of each registration certificate shall be authorized to do the following:

(1) Elevator Contractor Class I.- Installation, alteration, modernization, maintenance, service or repair of any electrically or electrohydraulically powered passenger and freight elevators, escalators or moving walks. All work performed by a registered Elevator Contractor Class I shall be done by or under the direct supervision of an approved Elevator Supervisor Class I.

(2) Elevator Contractor Class II. Installation, alteration, modernization, maintenance, service or repair of any hand-powered freight elevator, electric or hand-powered dumbwaiter, manlift, private residence elevator, chair-lift, workmen's hoist, material hoist, conveyor and related equipment. A Class II registration is also required for any person, firm or corporation engaged only in the maintenance, service or minor alteration of equipment covered by a Class I registration when such equipment is owned or operated by the person, firm or corporation. All work performed by a registered Elevator Contractor Class II shall be done by or under the direct supervision of an approved Elevator Supervisor Class I or Elevator Supervisor Class II.

(3) Fire Protection Contractor Class II. Installation of only dry, wet or combination standpipe systems as defined in Chapter 38, Uniform Building Code, or the Building Article, and installation of fire hydrant lines. All work performed by a registered Fire Protection Contractor Class II shall be done by or under the direct supervision of an approved Fire Protection Supervisor Class I or Fire Protection Supervisor Class II. (As amended by ordinance no. 61386)

Indemnity Insurance. As a condition precedent to a Fire Protection Contractor Class II, Sign Contractor Class I and II, and Wrecking Contractor Class I and II registration being issued or renewed, the applicant shall furnish to the City a certificate of insurance in a company approved by the director of Finance meeting the following requirements:

(a) Liability insurance with either a combined single-limit policy of $500,000.00; or split limit policy of $100,000.00/$300,000.00 bodily injury and $100,000.00 property damage.

(b) The city shall be added as an additional insured to such policy by separate endorsement.

(c) The policy shall contain a separate endorsement requiring the insurance company to notify the city in writing of any change in, or cancellation of, said policy at least 10 days prior thereto.

(d) Before the registration is issued, and annually thereafter, the permittee shall deposit with the city a certificate of insurance evidencing that the foregoing coverage is in force and that the endorsements required by (b) and (c) have been issued.

Cash Deposit. A Fire Protection Contractor Class II shall place with the Director of Finance a cash deposit in the amount of $500. Should the contractor in any event fail to pay bills rendered by the City for any obligation, permit, service or material, the amount of such bill or bills shall be deducted from the deposit. Failure of the contractor to pay such bill or bills or his failure to maintain the deposit in the full amount of $500 shall be cause for denial of the issuance of further permits.

(4) Fire Protection Contractor Class III. Installation, of only special systems using carbon dioxide, foam, dry chemical or inert gas for the control or extinguishment of fire. All work performed by a registered Fire Protection Contractor Class III shall be done by or under the supervision of an approved Fire Protection Supervisor Class I or Fire Protection Supervisor Class III.

(5) Sign Contractor Class I. Installation, maintenance or repair of outdoor advertising making use of outdoor rental poster panels or paint boards. All work performed by a registered Sign Contractor Class I shall be done by or under the supervision of an approved Sign Supervisor Class I. If electrical wiring is involved a licensed Electrical Contractor Class I or Class II is required.

Indemnity Insurance. As a condition precedent to a Sign Contractor Class I registration being issued or renewed, the applicant shall furnish to the City a certificate of insurance as required in Item (3) of this Section.

(6) Sign Contractor Class II. Installation, maintenance or repair of outdoor advertising making use of media other than outdoor rental poster panels or paint boards. All work performed by a registered Sign Contractor Class II shall be done by or under the direct supervision of an approved Sign Supervisor Class I or Class II. If electrical wiring is involved a licensed Electrical Contractor Class I or Class II is required.

Indemnity Insurance. As a condition precedent to a Sign Contractor Class II registration being issued or renewed, the applicant shall furnish to the City a certificate of insurance as required in Item (3)(b) of this Section.

(7) Wrecking Contractor Class I. Demolition of any building, structure, or portion thereof, without limitation of height or size. All work performed by a registered wrecking Contractor Class I shall be done by or under the supervision of an approved Wrecking Supervisor Class I.

Indemnity Insurance. As a condition precedent to a Wrecking Contractor Class I registration being issued or renewed, the applicant shall furnish to the City a certificate of insurance as required in Item (3) of this Section.

(8) Wrecking Contractor Class II. Demolition of any building, not more than 3 stories in height, excluding the basement. All work performed by a registered Wrecking Contractor Class II shall be done by or under the supervision of an approved Wrecking Supervisor Class I or Wrecking Supervisor Class II.

Indemnity Insurance. As a condition precedent to a Wrecking Contractor Class II registration being issued or renewed, the applicant shall furnish to the City a certificate of insurance as required in Item (3) of this Section.

Section 9.9.104. Application, Fee and Notification.

(a) Application. Every applicant for contractor registration shall fill out a form provided by the Codes Administrator. The name of a designated supervisor shall appear on the registration application.

(b) Fee. An application fee of $10.00 shall be paid at the time of filing.

EXCEPTION: - The City and its Departments shall be exempt.

Such fee shall not be refundable and shall not apply on the registration fee.

(c) Notification. After review of each application, appropriate action shall be taken and the applicant shall be notified accordingly.

After notification of approval, the applicant shall procure the registration certificate within 90 days or such application shall become null and void. Thereafter, a new application with fee shall be filed.

If the application for registratio is disapproved, the applicant may appeal from such adverse decision to the Board of Appeals in the manner provided in Article I of the Building Code. In any event, no refund shall be given.

Section 9.9.105. Contractor Registration Fees.

(a) Annual Fees Required. Annual contractor registration fees shall be paid as set forth in this section.

EXCEPTION: No registration fee for the City and itsdepartments shall be required when performing work for the City.

(b) Prorating of Fees. In cases where the registration is first issued after the beginning of the year, the annual fee shall be prorated monthly.

(c) Annual Fees for Contractor Registration.

Elevator Contractor Class I	$ 72.00
Elevator Contractor Class II	$ 48.00
Fire Protection Contractor Class II	$ 48.00
Fire Protection Contractor Class III	$ 48.00
Sign Contractor Class I	$ 72.00
Sign Contractor Class II	$ 48.00
Wrecking Contractor Class I	$ 72.00
Wrecking Contractor Class II	$ 36.00

(d) Fee Refund. Contractor Registration fees shall not be refundable.

Section 9.9.106. Registration Renewal. Contractor registrations shall be renewed before July 1 of each year. It shall be a violation of this Article to perform any work after expiration of a registration.

Section 9.9.107. Reissuance of Registration. The Codes Administrator shall have the authority to reissue a registration provided that there is no change in either the supervisor or principals of the firm. Otherwise, the registration shall be null and void and a new application shall be filed.

Section 9.9.108. Registered Contrac

(a) General. All registered contract
sible for work requiring a permit u
of the Building Code and, without
items herein listed.

(1) To submit a written report
ministrator within 72 hours of any ac
construction or undertaking which
time, injury or death to any person
building or structure.

(2) To provide minimum saf
equipment to protect workmen and
scribed by the Building Code.

(3) To observe and comply with
dinance prescribing measures for the
and of the public.

(4) To observe and comply with
dinances or Regulations or any Fed
or Regulations.

(5) To present his registration ca
by the Codes Administrator.

(6) To employ a qualified super
with the requirements of the Buildin
vide the name of such supervisor
registration card.

(7) To obtain a permit when the

(8) To faithfully construct, witho
or disregard of drawings and specifi
drawings and specifications have b
proved by the Codes Administrator
for same, unless such changes are
Codes Administrator.

(9) To obtain inspection servic
are required by the Building Code.

(10) To pay any fee assessed und
Building Code.

(11) To obey any order issued
the Building Code.

(12) To provide all vehicles used
a business where a registration is
Building Code with identification of
manner as prescribed by the Codes A

(13) To maintain satisfactory levels of competence, integrity, workmanship and recognized practice.

(14) To notify the Codes Administrator in writing within 10 days should the qualified supervisor leave the employ of the contractor.

(b) Indemnification. The applicant, in accepting the registration, hereby agrees that when the applicant or his subcontractors or agents make an excavation in a street sidewalk, alley, curb or public place in the City with or without a permit the applicant does:

(1) Indemnify, save harmless and defend the City on any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of an excavation made by the applicant, his subcontractor or agent.

(2) Indemnify, save harmless and defend the City from any and all liability for the City's own negligence occurring by reason of the opening or excavation. This indemnification agreement covering the City's liability for its own negligence shall not apply to injuries or damages sustained while City employees are present at the excavation pouring concrete or asphalt therein.

(3) The applicant assumes the sole responsibility for maintaining proper barricades and/or lights as required by Section 30.2 of the General Ordinances from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(4) For any and all other liability incurred subsequent to the completion of the operation and the excavation having been opened for travel, the applicant indemnifies the City for work performed by the applicant in the City, except liability arising out of the sole negligence of the City.

(5) These indemnification agreements shall not cover accidents occurring after a period of 2 years from the date of the completion of the resurfacing.

(6) The applicant shall restore or reimburse the City for restoring with the same material and in the same condition as before a street cut was made, all streets, sidewalks, alleys, curbs, or public property which have been disturbed or removed by him, his agents or his employees.

(7) The applicant shall comply with all applicable rules of City departments and all applicable ordinances of the City.

Section 9.9.109. Validity of Contra

(a) Change of Name, Organizatio
change in name, business designati
registration shall have the legal effe
registration and of operating withou
such changes shall, therefore, be re
Administrator within 10 days after

(b) Incorporation or change in inc
new legal entity requires a new regi
one or more stockholders or direc
tion.

(c) The organization of a partnersh
partnership creating a new legal e
registration even though one or m
are registered.

(d) The dissolution of a corpora
which has been registered, termin
and no individual or firm may ope
istration.

**Section 9.9.110. Suspension or Re
tion.**

(a) Authority. The Codes Admi
the suspension or revocation of a
registered contractor commits one
lowing acts or omissions:

(1) Failure to comply with a
contractor responsibilities as o
9.9.108.

(2) Knowingly combining or c
son, firm or corporation by permitt
to be used by such person, firm or

(3) By acting as agent, associa
other capacity with persons, firm
evade the provisions of the Buildin

(4) Violation of any provisi
Code.

(b) Procedure. When any of the
herein enumerated are committed
tractor and the Codes Administra
sion or revocation proceedings, th
as follows:

(1) The registered contractor
writing by certified mail or persona

(2) A hearing before the Building and Fire Codes Board of Appeals as set forth in Section 9.1.204 shall be held, but no sooner than ten (10) days from the date of notification.

(3) When a hearing is conducted, the contractor and all other interested parties may be in attendance. The Building and Fire Codes Board of Appeals shall consider all properly admitted evidence. It shall determine whether a registration should be suspended for any period not to exceed six (6) months or be revoked.

(4) At the end of any period of suspension a registered contractor shall be reissued the registration suspended to complete its 12 month term, unless by its original terms it would have expired. A new application shall be filed before issuance of a registration for the subsequent year.

(5) A registration revoked may not be reissued, nor may a new registration be issued within twelve (12) months from the date of the decision of the Building and Fire Codes Board of Appeals.

(6) A registration may not be revoked unless the contractor's registration had been suspended within the previous three years from the date of the notification described in Section 9.9.110(b)(1).

Section 9.9.111. Supervisor Required.

(a) General. Every registered contractor shall be required to have a supervisor as follows:

REGISTRANT	SUPERVISOR
Elevator Contractor Class I	Elevator Supervisor Class I
Elevator Contractor Class II	Elevator Supervisor Class I or Class II
Fire Protection Contractor Class II	Fire Protection Supervisor Class II
Fire Protection Contractor Class III	Fire Protection Supervisor Class III
Sign Contractor Class I	Sign Supervisor Class I
Sign Contractor Class II	Sign Supervisor Class I or Class II
Wrecking Contractor Class I	Wrecking Supervisor Class I
Wrecking Contractor Class II	Wrecking Supervisor Class I or Class II

(b) Qualifications. An applicant for a contractor registration may qualify in regard to the required supervisor in the following ways.

(1) If an individual, he may qualify by personal designation or by designation of a responsible managing employee.

(2) If a copartnership or a limited partnership, it may qualify by designation of a general partner or by designation of a responsible managing employee.

(3) If a corporation or any other combination or organization, it may qualify by the designation of a responsible managing officer or by designation of a responsible employee.

The person qualifying on behalf of an individual or firm shall be responsible for exercising such direct supervision and control of his employer's or principal's construction operations as is necessary to secure full compliance with the provisions of the various articles of the Building Code, other ordinances, and rules and regulations of the City.

(c) Change of Supervisor. The contractor registration shall be valid only as long as the named supervisor remains in the employ of the contractor in an active full time capacity.

(1) Notification of Disassociation. If the individual designated as supervisor for the registered contractor ceases for any reason whatsoever to be connected with the individual or firm to whom the contractor registration is issued, the registered contractor shall notify the Codes Administrator in writing within 10 days from such cessation.

(2) Effect of Disassociation. If a notice is given to the Codes Administrator as required above, the contractor registration shall remain in force until another supervisor is designated but not to exceed 30 days from such notice.

If the registered contractor fails to notify the Codes Administrator in writing within the 10 day period, at the end of the period the contractor registration shall be reinstated upon the approval of another supervisor.

To replace a supervisor the registered contractor shall file with the Codes Administrator an application, executed by the responsible managing employee of the firm, designating an individual to serve as supervisor as required by this Article. The application shall be accompanied by the fee fixed by this Article and shall state that the individual so serving is designated as the person responsible for work performed in the City.

Section 9.9.112. Supervisor Defined.

(a) Definition. A Supervisor is deemed qualified by the Codes Administrator to perform certain skills upon successful completion of an examination given by the Codes Administrator.

(b) Supervisors Examined. Every supervisor required for a particular registration shall be examined by the Codes Administrator and if deemed qualified shall be approved and shall be entitled to perform and supervise the work in the particular skill for which he is approved.

(c) Examination Standards. The Codes Administrator is authorized to make rules of procedure and to establish reasonable standards necessary for evaluation of supervisors. Examination standards shall be consistent with the purpose of the Building Code which is the protection of the public health and safety of the people of the City so that those who are approved under this Article of the Code are qualified to supervise or perform the work for which they may be approved.

The Codes Administrator is authorized to set standards and examine supervisors in the following areas:

(1) Applicable portions of the Building Code.
(2) Related technical knowledge.
(3) Related skills.
(4) Education.
(5) Experience.

Verification of information included on the application forms and references may be interpreted as an examination. In addition, written examinations will be given as deemed necessary by the Codes Administrator.

(d) Successful Applicants. After a supervisor has successfully passed the examination, the Codes Administrator shall make a final review of the qualifications of the applicant.

(e) Failure to Pass Examination. When a supervisor has failed to pass the examination, he shall be so notified in writing by the Codes Administrator. Every person who fails to pass the required examination shall not be eligible for another examination for a period of 30 days from the date of the first examination, and any person who shall fail to pass the second examination shall not be eligible for re-examination for 6 months from the date of the second examination.

(f) Right of Appeal. In every instance that the Codes Administrator disapproves a supervisor, the applicant may appeal that adverse decision to the Building and Fire Codes Board of Appeals in the manner provided in Section 9.1.204.

Section 9.9.113. Classification of Supervisors.

(a) General. There shall be various classes of supervisor and each supervisor shall be authorized to do the work specified for each class.

(b) Supervisors Classifications. A Supervisor shall be required for certain contractor registration as set forth elsewhere in this Article and shall allow the holder thereof to serve as supervisor as follows:

SUPERVISOR	REGISTRANT
Elevator Supervisor Class I	Elevator Contractor Class I
Elevator Supervisor Class II	Elevator Contractor Class II
Fire Protection Supervisor Class II	Fire Protection Contractor Class II
Fire Protection Supervisor Class III	Fire Protection Contractor Class III
Sign Supervisor Class I	Sign Contractor Class I
Sign Supervisor Class II	Sign Contractor Class II
Wrecking Supervisor Class I	Wrecking Contractor Class I
Wrecking Supervisor Class II	Wrecking Contractor Class II

Section 9.9.114. Supervisor's Responsibility.

(a) General. All supervisors shall be responsible for compliance with the requirements of the Building Code, without limitation, and to the following items:

(1) To faithfully construct without departure from, or disregard of, approved drawings and specifications.

(2) To obey any order issued under authority of the Building Code.

(3) To observe and comply with all City ordinances prescribing measures for the safety of workmen and of the public.

(4) To observe and comply with all other City Ordinances or regulations or any Federal or State Laws or Regulations.

(5) To always maintain an active part in the supervision of the workmen under his direction.

(6) To immediately notify the Codes Administrator in writing when he leaves the employ of a registrant for whom he is the qualified supervisor.

Section 9.9.115. Suspension or Revocation of Approved Supervisor.

(a) Authority. The Codes Administrator may suspend or revoke the approval of a supervisor issued under the

provisions of this Building Code for any one or more of the following acts or omissions:

(1) Incompetence.
(2) Violation of any provision of the Building Code.
(3) Failure to comply with any of the Supervisor responsibilities as outlined in Section 9.9.114.

(b) Procedure. When any of the acts or omissions as herein enumerated are committed by a Supervisor and the Codes Administrator deems that such Supervisor should be suspended or revoked, the actions shall be as set forth in Section 9.9.110 for registered contractors.

Section 9.9.116. Transitional Provisions. Except as otherwise expressly provided herein, this Article shall not be construed to require the duplication or re-issuance of any registration within the same year, the duplication of any examination, nor the duplication of any payment of any fee for a particular grade of registration within the same year. All persons, firms, and corporations in the building and construction industries now lawfully registered under former codes and ordinances shall be deemed to be appropriately qualified hereunder. Any such registrant under a former code or ordinance who fails to re-apply for registration at the conclusion of the year shall surrender his registration and the same shall be deemed to be null and void.

Article X - LICENSING

Section 9.10.100. Title and Scope.

(a) Title. This article shall be known as the "Licensing Article," may be cited as such, and will be referred to hereinafter as "this article." Where the term "Codes Administrator" is used in this article, this shall mean the Codes Administrator or his authorized representative.

(b) Scope. Provisions of this article and other articles of the Building Code requiring employment of licensed mechanics, craftsmen or engineers shall not apply to maintenance or operation of equipment and accessories used for operations, production, or processing by public utilities, government agencies, manufacturing or processing plants or commercial enterprises which maintain a regular maintenance and operating staff supervised by a professional engineer registered by the State of Missouri. However, work under such supervision shall be performed to comply in all respects with all applicable provisions of the articles of the Building Code, including provisions for permits and inspections.

Section 9.10.101. Authority.

(a) Determination of Qualifications. There is hereby vested in the Codes Administrator and the Board of Examiners the duty of examining the qualifications of applicants for licenses and certificates established and required by the various articles of the Building Code, including the issuance, reissuance, renewal, suspension or revocation of such licenses and certificates.

(b) Responsibilities.

(1) The Board of Examiners shall establish examining procedures and shall be the examining body for Certificates of Qualification.

(2) The Codes Administrator shall establish procedures consistent with this Article for recommending the issuance of licenses.

Section 9.10.102. Licenses Defined and Required.

(a) Definition. A license is authority granted to the person, firm, partnership, company, corporation, association, agency or other entity to whom it is issued to engage in the business of contracting to perform certain work. A license is not transferable.

(b) Licenses Required. Licenses shall be required for all types of work hereinafter classified and described:

EXCEPTIONS:

(1) Public utility companies will not be required to obtain licenses for the firm or corporation nor for their employees when engaged in the installation, operation, and maintenance of equipment which will be used for the production, generation, transmission or distribution of the product or service from the source of the product or service through the facilities owned or operated by such utility company to the point of the customer service including the metering.

(2) Permits for work as required by the Building Code may be issued to any person to do any work regulated by this article in a single family dwelling used exclusively for living purposes, including the usual accessory building and quarters in connection with such buildings in the event that any such person is the bona fide owner of any such dwelling and accessory buildings and quarters, and that they are occupied by the owner, provided, that the owner shall personally perform all labor in connection with the work.

Section 9.10.103. Classification and Requirements for Licenses.

(a) General. There shall be various classes of licenses and the holder of each license shall be authorized to do the following:

(1) Boilermaking Contractor. Fabrication and installation of high or low pressure boilers or unfired pressure vessels; connection or disconnection to an existing piping system for the purpose of installation or repair; installation of low voltage wiring which does not exceed 48 volts when such wiring is not enclosed in a conduit or raceway. All work shall be performed by or under the supervision of the holder of a Master Boilermaker Certificate of Qualification.

(2) Electrical Contractor Class I. Installation, alteration, repair or removing of any electrical equipment regulated by the Building Code. All work shall be performed by or under the supervision of the holder of a Master Electrician Certificate of Qualification.

(3) Electrical Contractor Class II.

(a) Maintenance or repair of an existing facility on property owned by the licensee or his employer; or

(b) assembly, installation, wiring and connecting electric lighting fixtures and extend existing circuits not more than 10 feet; or

(c) connect new or replacement gas fired heating equipment to existing electrical circuits, extend existing circuits not more than 10 feet, and install control circuits; or

(d) assembly, installation, wiring and connection of electric signs when such connection is limited to extension of existing circuits not more than 10 feet.

All work shall be performed by or under the supervision of the holder of a Master (Limited) Electrician Certificate of Qualification or a Master Electrician Certificate of Qualification.

(4) Electrical Contractor Class III. Installation, alteration, repair, or removing of communication, fire alarm, burglar alarm, remote control, other low energy power, low voltage power, signal, sound recording and similar equipment regulated by the Building Code. All work shall be performed by or under the supervision of the holder of an Electrical Supervisor Certificate of Qualification or a Master Electrician Certificate of Qualification.

(5) Fire Protection Contractor Class I.

(a) Installation of automatic sprinkler systems; special hazard fixed piping fire control systems; automatic and manual water spray and deluge systems; and special extinguishing systems using carbon dioxide, foam, dry chemical or inert gas, and other such systems used for the control or extinguishment of fire. All work shall be performed by or under the supervision of the holder of a Fire Protection Supervisor Class I Certificate of Qualification.

(b) Cash Deposit. A Fire Protection Contractor Class I shall place with the Director of Finance a cash deposit in the amount of $500. Should the contractor in any event fail to pay bills rendered by the City for any obligation, permit, service or material, the amount of such bill or bills shall be deducted from the deposit. Failure of the contractor to pay such bill or bills or his failure to maintain the deposit in the full amount of $500 shall be cause for denial of the issuance of further permits.

(c) Indemnity Insurance. As a condition precedent to a Fire Protection Contractor Class I license being issued or renewed, the applicant shall furnish to the City a certificate of insurance in a company approved by the Director of Finance meeting the following requirements:

(i) Liability insurance with either a combined single-limit policy of $500,000.00; or split limit policy of $100,000.00 / $300,000.00 bodily injury and $100,000 property damage.

(ii) The city shall be added as an additional insured to such policy by separate endorsement.

(iii) The policy shall contain a separate endorsement requiring the insurance company to notify the City in writing of any change in, or cancellation of, said policy at least 10 days prior thereto.

(iv) Before the license is issued, and annually thereafter, the permittee shall deposit with the City a certificate of insurance evidencing that the endorsements required by (ii) and (iii) have been issued.

(6) Gas Fired Appliance Contractor. Installation, erection, alteration, repairing, servicing or resetting of gas fired appliances other than warm air heating units but including water heaters of not more than 100 gallons storage capacity; installation of low voltage wiring not exceeding 48 volts when such wiring is not enclosed in a conduit or raceway. All work shall be performed by or under the supervision of the holder of a Gas Fired Appliance Supervisor Certificate of Qualification.

(7) Heating and Ventilating Contractor. Installation, alteration, servicing, replacement, or maintenance of heating, duct and ventilation systems; connection of a humidifier which is part of a heating system, to an existing potable water supply system within a building; gas piping from the nearest cutoff valve to the burner of a warm air heating system; connection of control wiring to an existing control box; installation, alteration, servicing, replacement, removal or repair of air conditioning units not more than seven and one-half (7 1/2) tons' capacity which are a component part of an air circulation unit. All work shall be performed by or under the supervision of the holder of a Heating and Ventilating Supervisor Certificate of Qualification.

(8) Pipe-Fitting Contractor. Installation and servicing of refrigeration equipment; low-pressure hot water and steam heating systems; installation of any system containing or connected to a boiler designed to operate under a steam pressure greater than 15 pounds per square inch; installation of any system containing or connected to an unfired pressure vessel designed to operate under a pressure greater than 15 pounds per square inch; installation of industrial or chemical piping designed to operate under a pressure greater than 15 pounds per square inch; installation of pipe insulation; installation of low voltage wiring which does not exceed 48 volts when such wiring is not enclosed in a conduitor raceway. All work shall be performed under the supervision of the holder of a Master Pipe Fitter Certificate of Qualification.

(9) Plumbing Contractor.

(a) Installation of all sanitary plumbing and potable water supply piping, appliances connected there to including gas piping, and the complete installation of water heaters; the installation of piping for transmission of chemicals and gases where regulated by the code; the installation of gas ranges, domestic gas incinerators, gas dryers and gas refrigerators; the installation of steam heating plants carrying pressures not exceeding 15 pounds per square inch gauge steam; the installation of hot water heating plants carrying pressures not exceeding 30 pounds per square inch gauge hot water. All work shall be performed by or under the supervision of the holder of a Master Plumber Certificate of Qualification.

(b) Cash Deposit. A Plumbing Contractor shall place with the Director of Finance a cash deposit of not less than $150.00. Before any permit for work requiring excavation on any street, alley, public place or easement shall be issued, the applicant for such permit shall have on deposit with the Director of Finance a total of not less than $500.00. This money shall be maintained and held as a special deposit to protect the City on account of any expense it may incur in repairing, refilling, paving or resurfacing any cut or excavation, or for repairing any damages to any City owned utility as a result of work done under such permit. Should the contractor fail to pay bills rendered by the City for any obligation, permit, service or material, the amount of such bill or bills shall be deducted from the deposit. Failure of the contractor to pay such bill or bills or failure to maintain the deposit in full shall be cause for denial of issuance of further permits.

(c) Indemnity Insurance: As a condition precedent to a Plumbing Contractor license being issued or renewed, the applicant shall furnish to the City a certificate of insurance as required for a Fire Protection Contractor Class I in item (5) of this section.

(10) Refrigeration Contractor. Installation, servicing or altering a system of mechanical refrigeration or a system where refrigerant piping must be installed or where a refrigerant-containing part must be cut into for connection or assembly; installation of pipe insulation; installation of low voltage wiring which does not exceed 48 volts when such wiring is not enclosed in conduit or raceway. All work shall be performed by or under the supervision of the holder of a Refrigeration Supervisor Certificate of Qualification or a Master Pipefitter Certificate of Qualification.

Section 9.10.104. Application Fee and Notification.

(a) Application. Every applicant for a contractor license shall fill out a form provided by the Codes Administrator. When required, the name of the certified supervisor shall appear on the license application.

(b) Fee. An application fee of $10.00 shall be paid at the time of filing.

EXCEPTION: The City and its departments shall be exempt.

Such fee shall not be refundable and shall not apply on the license fee.

(c) Notification. After review of each application, appropriate action shall be taken and the applicant shall be notified accordingly.

After notification of approval, the applicant shall procure the license within 90 days or such application shall become null and void. Thereafter, a new application shall be filed.

If the application for license is disapproved, the applicant may appeal from such adverse decision to the Board of Appeals in the manner provided in Article I of the Building Code. In any event, no refund shall be given.

Section 9.10.105. Contractor License Fees.

(a) Annual Fees Required. Annual license fees shall be paid as set forth in this Section.

EXCEPTION: No license fee for the City and its employees shall be required when performing work for the City.

(b) Annual Fees for Contractor License.

Boilermaking Contractor	$ 48.00
Electrical Contractor Class I	$ 72.00
Electrical Contractor Class II	$ 48.00
Electrical Contractor Class III	$ 48.00
Fire Protection Contractor Class I	$ 72.00
Gas Fired Appliance Contractor	$ 48.00
Heating and Ventilating Contractor	$ 72.00
Pipe Fitting Contractor	$ 48.00
Plumbing Contractor	$ 72.00
Refrigeration Contractor	$ 48.00

(c) Prorating of Fees. In cases where the license is first issued after the beginning of the year, the annual fee shall be prorated monthly.

Section 9.10.106. License Renewal. Licenses shall be renewed before January 1 each year. It shall be a violation of this Article to perform any work after expiration of a license.

Section 9.10.107. Reissuance of Licenses. The Codes Administrator shall have the authority to recommend the reissuance of a license provided there is no change in either the supervisor or principals of the firm. Otherwise, the license shall be null and void and a new application shall be filed.

Section 9.10.108. Licensee Responsibility.

(a) General. All licensees shall be responsible for work requiring a permit under the provisions of the Building Code and, without limitation, to the items herein listed.

(1) To submit a written report to the Codes Administrator within 72 hours when any accident occurs on any construction or undertaking which has resulted in lost time, injury or death to any person or damage to any building or structure.

(2) To provide minimum safety measures and equipment to protect workmen and the public as prescribed by the Building Code.

(3) To observe any other City ordinances prescribing measures for the safety of workmen and of the public.

(4) To observe and comply with any other City Ordinances or Regulations or any Federal or State Laws or Regulations.

(5) To present his license card when requested by the Codes Administrator.

(6) To employ a qualified supervisor certified in accordance with the requirements of the Building Code and to provide the name of such supervisor on the employer's license card.

(7) To obtain a building permit when the same is required.

(8) To faithfully construct, without departure from or disregard of drawings and specifications, when such drawings and specifications have been filed and reviewed by the Codes Administrator and permit issued for same, unless such changes are approved by the Codes Administrator.

(9) To obtain inspection services when the same are required by the Building Code.

(10) To pay any fee assessed under authority of the Building Code.

(11) To obey any order issued under the authority of the Building Code.

(12) To provide all vehicles used in the operation of a business, where a license is required by the Building Code, with identification of such business in a manner as prescribed by the Codes Administrator.

(13) To maintain satisfactory levels of competence, integrity, workmanship and recognized practice.

(14) To notify the Codes Administrator in writing within 10 days should the qualified supervisor leave the employ of the contractor.

(b) Indemnification. The applicant, in accepting the license, hereby agrees that when the applicant or his subcontractors or agents make an excavation in a street, sidewalk, alley, curb or public place in the City with or without a permit the applicant does:

(1) Indemnify, save harmless and defend the City on any claim or loss, damage or expense sustained on account of damages to persons or property occurring by reason of an excavation made by the applicant, his subcontractor or agent.

(2) Indemnify, save harmless, and defend the City from any and all liability for the City's own negligence occurring by reason of the opening or excavation. This indemnification agreement covering the City's liability for its own negligence shall not apply to injuries or damages sustained while City employees are present at the excavation pouring concrete or asphalt therein.

(3) The applicant assumes the sole responsibility for maintaining proper barricades and/or lights as required by Section 30.2 of the General Ordinances from the time of the opening of the excavation until the excavation is surfaced and opened for travel.

(4) For any and all other liability incurred subsequent to the completion of the operation and the excavation having been opened for travel, the applicant indemnifies the City for work performed by the applicant in the City, except liability arising out of the sole negligence of the City.

(5) These indemnification agreements shall not cover accidents occurring after a period of two (2) years from the date of the completion of the resurfacing.

(6) The applicant shall restore or reimburse the City for restoring with the same material and in the same condition as before a street cut was made, all streets, sidewalks, alleys, curbs, or public property which have been disturbed or removed by him, his agents or his employees.

(7) The applicant shall comply with all applicable rules of City departments and all applicable ordinances of the City.

Section 9.10.109. Validity of License.

(a) Change of Name, Organization or Ownership. A change in name, business designation or personnel of a license shall have the legal effect of terminating the license and of operating without a license. All such changes shall, therefore, be reported by the licensee to the Codes Administrator within 10 days after making such change.

(b) Incorporation or change in incorporation creating a new legal entity requires a license even though one or more stockholders or directors have a license.

(c) The organization of a partnership or the change in a partnership creating a new legal entity requires a new license, even though one or more of the partners are licensed.

(d) The dissolution of a corporation or partnership which has been licensed terminates the license and no individual or firm may operate under such license.

Section 9.10.110. Suspension or Revocation of License.

(a) Authority. The Codes Administrator may recommend the suspension or revocation of a license when the licensee commits one or more of the following acts or omissions:

(1) Failure to comply with any of the licensee responsibilities as outlined in Section 9.10.108.

(2) Knowingly combining or conspiring with a person, firm or corporation by permitting one's license to be used by such person, firm or corporation.

(3) By acting as agent, associate, partner or in any other capacity with persons, firms or corporations to evade the provisions of the Building Code.

(4) Violation of any provisions of the Building Code.

(b) Procedure. When any of the acts or omissions as herein enumerated are committed by a license holder and the Codes Administrator recommends suspension or revocation proceedings, the procedure shall be as follows:

(1) The licensee shall be notified in writing, by certified mail or personal service.

(2) A hearing before the Building and Fire Codes Board of Appeals as set forth in Section 9.1.204 shall be held, but no sooner than 10 days from the date of notification.

(3) When a hearing is conducted, the contractor and all other interested parties may be in attendance. The Board of Appeals shall consider all properly admitted evidence. It shall recommend to the Commissioner of Revenue whether a license should be suspended for any period not to exceed six months, or be revoked.

(4) The Commissioner of Revenue or his designee shall be in attendance. The Board of Appeals' function is advisory.

(5) At the end of any period of suspension a licensed contractor shall be reissued the license suspended to complete its 12 month term, unless by its original terms it would have expired. A new application shall be filed before issuance of a license for the subsequent year.

(6) A license revoked may not be reissued, nor may a new license be issued within 12 months from the date of the decision of the Commissioner of Revenue.

(7) A license may not be revoked unless the contractor's license had been suspended within the previous three years from the date of the notification described in Section 9.10.110(b)(l).

Section 9.10.111. Supervisor Required.

(a) General. Each licensee shall be required to have a supervisor who holds a Certificate of Qualification as follows:

LICENSEE	CERTIFICATE
Boilermaking Contractor	Master Boilermaker
Electrical Contractor Class I	Master Electrician
Electrical Contractor Class II	Master (Limited) Electrician or Master Electrician
Electrical Contractor Class III	Electrical Supervisor or Master Electrician
Fire Protection Contractor Class I	Fire Protection Supervisor Class I
Gas Fired Appliance Contractor	Gas Fired Appliance Supervisor
Heating and Ventilating Contractor	Heating & Ventilating Supervisor
Pipefitting Contractor	Master Pipefitter
Plumbing Contractor	Master Plumber
Refrigeration Contractor	Refrigeration Supervisor or Master Pipefitter

(b) Qualifications. An applicant for a contractor license may qualify in regard to the required supervisor in the following ways:

(1) If an individual, he may qualify by personal certification or by certification of a responsible managing employee.

(2) If a copartnership or a limited partnership, it may qualify by certification of a general partner or by certification of a responsible managing employee.

(3) If a corporation or any other combination or organization, it may qualify by the certification of a responsible managing officer or by certification of a responsible employee.

The person qualifying on behalf of an individual or firm shall be responsible for exercising such direct supervision and control of his employer's or principal's construction operations as is necessary to secure full compliance with the provisions of the various articles of the Building Code, other ordinances, and rules and regulations of the City.

(c) Change of Supervisor. The contractor license shall be valid only as long as the required supervisor remains in the employ of the licensee in an active full time capacity.

(1) Notification of Disassociation. If the individual designated as supervisor for the licensed contractor ceases for any reason whatsoever to be connected with the individual or firm to whom the contractor license is issued, the licensed contractor shall notify the Codes Administrator in writing within 10 days from such cessation.

(2) Effect of Disassociation. When a notice is given to the Codes Administrator as required above, the contractor license shall remain in force until another supervisor is designated but not to exceed 30 days from such notice.

If the licensed contractor fails to notify the Codes Administrator in writing within the ten-day period, the contractor license shall be automatically suspended. The contractor license shall be reinstated upon the approval of another supervisor.

Section 9.10.112. Certificates of Qualification Defined and Required.

(a) Definition. A Certificate of Qualification is authority to perform certain skills and is issued by the Codes Administrator upon successful completion of an examination given by the Board of Examiners. A Certificate of Qualification is not transferrable.

(b) Certificates Required. Certificates of Qualification shall be required for all types of work hereinafter specified and classified.

(c) Supervisors. Every supervisor required for a particular license shall be examined by the appropriate examining committee and if qualified, shall be issued a Certificate of Qualification and shall be entitled to perform and supervise the work in the particular skill for which he is qualified and certified. The Certificate is an individual Certificate and shall not be construed to be a license.

(d) Application and Fee. Every applicant for a Certificate of Qualification shall fill out the form provided by the Codes Administrator and shall pay an application

fee of $10.00 at the time of filing. Such fee shall not be refundable. The application fee shall not apply on the Certificate fee.

EXCEPTION: The City and its departments shall be exempt.

(e) Temporary Certificate. At the discretion of the Codes Administrator, he may issue a temporary Certificate of Qualification. Such certificate shall be in effect until the examination procedure is completed. The applicant shall be given consideration when:

(1) He has previously been certified by the City but not suspended or revoked; or

(2) He has completed the written examination with a passing grade.

(f) Successful Applicants. After an applicant has successfully passed the examination, the Board of Examiners shall submit their recommendation to the Codes Administrator. The Codes Administrator shall make final review of the examination papers and the qualifications of the applicant.

After a successful applicant has been notified by the Codes Administrator and fails to procure such Certificate within 90 days after notification, such Certificate shall be declared null and void. Thereafter, a new application with fee shall be filed but no re-examination shall be required if application is made within one year from the date of the original examination.

(g) Failure to Pass Examination. When an applicant has failed to pass the examination, he shall be so notified in writing by the Codes Administrator. Every applicant who fails to pass the required examination shall not be eligible for another examination until the next regularly scheduled examination thereafter, and any applicant who shall fail to pass the second examination shall not be eligible for re-examination for twelve (12) months from the date of the second examination.

(h) Right of Appeal. In every instance that the Board of Examiners or the Codes Administrator disapproves the issuance of a certificate to a particular applicant, the applicant may appeal that adverse decision to the Board of Appeals in the manner provided in section 9.1.204.

Section 9.10.113. Classification of Certificates of Qualification.

(a) General. There shall be various classes of certificates of qualification, and the holder of each certificate shall be authorized to do the work specified for each class.

(b) Supervisor Certificates. A supervisor Certificate of Qualification shall be required for certain contractor licenses as set forth in this article and shall allow the holder to serve as supervisor as follows:

SUPERVISOR	LICENSEE
Electrical Supervisor	Electrical Contractor Class III
Fire Protection Supervisor Class I	Fire Protection Contractor Class I
Gas Fired Appliance Supervisor	Gas Fired Appliance Contractor
Heating & Ventilating Supervisor	Heating & Ventilating Contractor
Master Boilermaker	Boilermaking Contractor
Master Electrician	Electrical Contractor Class I, Class II or Class III
Master (Limited) Electrician	Electrical Contractor Class II
Master Pipefitter	Pipefitting Contractor or Refrigeration Contractor
Master Plumber	Plumbing Contractor
Refrigeration Supervisor	Refrigeration Contractor

(c) Operator Certificates. An Operator's Certificate of Qualification shall be required to operate and maintain the following equipment and shall entitle the holder to operate and maintain the equipment for which he is certified; except, that equipment and accessories used for operations, production or processing by public utilities, government agencies, manufacturing or processing plants or commercial enterprises may be operated and maintained by a regular operating and maintenance staff when supervised by a professional engineer registered by the State of Missouri. The work done under such supervision shall comply with all applicable provisions of this Code, including required permits and inspections.

(1) Operating Engineer. An Operating Engineer Certificate shall entitle the holder to take charge of and to operate and maintain all

steam generating boilers, steam engines, internal combustion engines, turbines, condensers, compressors, generators, motors, blowers, fuel-burning equipment, refrigeration systems, and all auxiliary apparatus, together with any necessary maintenance of piping used in connection therewith. The certificate is not required for operating the following:

(a) Steam-generating boilers carrying less than 125 pounds pressure.

(b) Boilers carrying less than 100 pounds pressure when used for driving machinery.

(c) Portable boilers less than 10 horse power in size.

(d) A system containing a Group 1 refrigerant.

(e) A system with a capacity of 10 tons or less containing any Group 2 refrigerant.

(2) Plant Operating Engineer. A Plant Operating Engineer Certificate shall entitle the holder to operate and maintain the same equipment and accessories as an Operating Engineer but is limited to only a designated plant or system of plants with similar equipment.

(3) Refrigeration Operating Engineer. A Refrigeration Operating Engineer Certificate shall entitle the holder to operate and maintain any refrigeration system. The certificate is not required for:

(a) Any system containing a Group 1 refrigerant.

(b) A system with a capacity of 10 tons or less containing any Group 2 Refrigerant.

(4) Fireman. A Fireman Certificate shall entitle the holder to operate and maintain boilers carrying less than 100 pounds pressure for the purpose of driving machinery and to operate other steam tanks or steam boilers carrying less than 125 pounds pressure. The certificate is not required for the operation of steam tanks or steam boilers carrying 15 pounds or less.

(5) Plant Fireman. A Plant Fireman Certificate shall entitle the holder to operate and maintain the same equipment and accessories as a Fireman but is limited to only a designated plant or system of plants with similar equipment.

(d) Journeyman Plumber Certificate of Qualification. A Journeyman Plumber Certificate of Qualification shall entitle the holder to labor at the trade of plumbing as an employee.

Section 9.10.114. Certificate Fees.

(a) Annual Fees. The annual fee for all Certificates of Qualification shall be $6.00.

EXCEPTION: The certificate fee for employees of the City shall be waived when performing work for the City as tradesmen or inspectors.

(b) Certificate Fee Refund. Certificate fees shall not be refundable.

Section 9.10.115. Certificate Renewal. Certificates shall be renewed January 1 of each calendar year. It shall be a violation of this Article to perform any work after expiration of a Certificate.

Section 9.10.116. Reissuance of Certificates. The Codes Administrator shall have the authority to reissue a Certificate without examination provided such reissuance shall be accomplished within two years following expiration. If a Certificate is not reissued during this time, the qualification for the Certificate shall expire and a new application shall be filed and an examination given.

Section 9.10.117. Certificate Holder's Responsibility.

(a) General. All Certificate holders shall be responsible for compliance with the requirements of the Building Code, without limitation, and to the items herein listed.

(1) To present his Certificate when requested by any member of Codes Administration.

(2) To faithfully construct without departure from or disregard of approved drawings and specifications.

(3) To obey any order issued under authority of the Building Code.

(4) To pay any fee assessed under authority of the Building Code.

(5) To observe any City ordinances prescribing measures for the safety of workmen and of the public.

(6) To always maintain an active part in the supervision of the workmen under his direction.

(7) To notify the Codes Administrator when he leaves the employ of a licensee for whom he is the qualified supervisor.

Section 9.10.118. Suspension or Revocation of Certificate.

(a) Authority. The Codes Administrator may suspend or revoke a Certificate issued under the provisions of this Article for any one or more of the following acts or omissions:

(1) Incompetence.

(2) Misuse of the Certificate.

(3) Violation of any provisions of the Building Code.

(4) Failure to comply with any of the Certificate Holder responsibilities as outlined in Section 9.10.117.

(b) Procedure. When any of the acts or omissions as herein enumerated are committed by a Certificate Holder and the Codes Administrator deems that such Certificate shall be suspended or revoked, the action shall be as set forth in Section 9.9.110 for Registered Contractors.

Section 9.10.119. Board of Examiners.

(a) Creation of Board of Examiners. There is created and established a Board of Examiners, consisting of various examining committees, which will act as a certificate examining agency for the Codes Administrator. The Board of Examiners shall have the duties, powers, and functions prescribed by this Article for the purpose of giving examinations and determining facts in connection with the issuance of Certificates of Qualification.

(b) Meetings and Secretary. The Codes Administrator shall be the Secretary of the Board without voting privilege and he shall be responsible for its organization and operation. The Secretary may meet with any or all of the examining committees for the purpose of discussion of procedures and standards applying to the committees.

(c) Procedures and By-Laws. A quorum at all meetings shall consist of at least one-half of the members. The examining committees are authorized to make rules of procedure and adopt by-laws necessary for the transaction of business consistent with the purpose and scope of the Building Code. To be effective, such rules of procedure and by-laws shall be subject to approval by the Board of Examiners.

(d) Examination Standards. The Board of Examiners shall set the examination standards to be followed by the examining committees. The standards shall be consistent with the purpose of the Building Code which is the protection of the public health and public safety of the people of the City so that those who are recommended to be certified under the Building Code are qualified in terms of their skills, knowledge, practical experience, and knowledge of pertinent law to supervise or perform the work for which they may be certified.

The Board of Examiners shall set standards and examine applicants for certificates of qualification in the following areas:

(1) Applicable technical portions of the Building Code.
(2) Related technical knowledge.
(3) Related skills.
(4) Education.
(5) Experience.

All standards, except those established by the Codes Administrator shall be approved by the Board of Examiners. Periodic review shall be made to maintain the standards current with improvements in the Building Code and building practices. If other licenses, Certificates or other requirements are imposed on the applicant by other ordinances of the City, such licenses, certificates or other requirements shall be deemed prerequisites to the recommendation for the issuance of a Certificate.

Section 9.10.120. Examining Committees.

(a) General. The examining committees shall act as an examining body for the Codes Administrator for Certificates as specified. Each committee shall have such duties, powers, and functions as prescribed by this Article and shall function as directed in the By-Laws of the Board of Examiners.

(b) Appointment. The members of the examining committees shall be appointed by the Mayor with the approval of the City Council to serve a term of four (4) calendar years and may be reappointed. One-half of the original appointments hereunder shall be for the balance of the current year so that one-half of the membership of the examining committees will be appointed at alternate intervals. The members of the examining committees shall be residents of Kansas City, Missouri, and be persons of good reputation with at least 5 years experience in their respective field. Members of the Board of Examiners may be removed by the Mayor for just cause, upon written notice.

(c) Meetings. Each committee shall elect its own chairman at the first meeting of each calendar year. The examining committees of the Board of Examiners shall conduct examinations of applicants once each month, unless no applicants are available for examination. Special examinations by the committee may be called for by the Secretary.

All decisions shall be by a majority vote of those attending providing that a quorum is present.

(d) Qualifications and Duties. The Qualifications and duties for members of the respective committees shall be as follows:

(1) Electrical Committee. The Electrical Committee shall be:

Electrical Contractor Class I
Journeyman Electrician
Architect (registered by State of Missouri)
Two (2) Professional Engineers (registered by State of Missouri)
Two (2) Electrical Contractors Class III
Public Member (not directly associated with the electrical industry)

This committee shall be responsible for the examination of applicants for the following Certificates of Qualification:

Master Electrician
Master (Limited) Electrician
Electrical Supervisor

(2) Fire Protection Committee. The Fire Protection Committee shall be:

Fire Protection Contractor Class I
Sprinkler Fitting Journeyman
Professional Engineer (registered by State of Missouri)
Architect (registered by State of Missouri)
Public Member (not associated with the building industry)

This committee shall be responsible for the examination of applicants for the following Certificate of Qualification:

Fire Protection Supervisor Class I

(3) Heating and Ventilating Committee. The Heating and Ventilating Committee shall be:

Heating and Ventilating Contractor
Heating and Ventilating Journeyman
Professional Engineer (registered by State of Missouri)
Architect (registered by State of Missouri)
Public Member (not associated with the building industry)

This committee shall be responsible for the examination of applicants for the following Certificate of Qualification:

Heating and Ventilating Supervisor.

(4) Operating Engineers Committee. The Operating Engineers Committee shall be:

Operating Engineer
Plant Operating Engineer
Architect (registered by State of Missouri)
Professional Engineer (registered by State of Missouri)
Public Member (not associated with the building industry)

This Committee shall be responsible for the examination of applicants for the following Certificates of Qualification:

Fireman
Plant Fireman
Operating Engineer
Plant Operating Engineer
Refrigeration Operating Engineer

(5) Pipefitting Committee. The Pipefitting Committee shall be:

Boilermaker
Pipefitting Contractor
Journeyman Pipefitter
Refrigeration Contractor
Architect or Professional Engineer (Registered by the State of Missouri)
Public Member (not associated with the building industry)

This committee shall be responsible for the examination of applicants for the following Certificates of Qualification:

Master Boilermaker
Master Pipefitter
Refrigeration Supervisor

(6) Plumbing Committee. The Plumbing Committee shall be:

Plumbing Contractor
Journeyman Plumber
Gas-Fired Appliance Contractor
Professional Engineer or Architect (registered by State of Missouri)
Public Member (not associated with the building industry)

This committee shall be responsible for the examination of applicants for the following Certificates of Qualification:

Master Plumber
Journeyman Plumber
Gas-Fired Appliance Supervisor

Section 9.10.121. Transitional Provisions. Except as otherwise expressly provided herein, this Article shall not be construed to require the duplication or reissuance of any license or certificate within the same calendar year, the duplication of any examination, nor the duplication of any payment of any license or certificate fee for a particular grade of license or certificate within the same calendar year. All persons, firms, and corporations in the building and construction industries now lawfully licensed under former codes and ordinances shall be deemed to be appropriately qualified or licensed hereunder. Any such licensee under a former code or ordinance who fails to re-apply for a license at the conclusion of the calendar year shall surrender his license and the same shall be deemed to be null and void.

The following are questions we have regarding the Disability Act:

1) What is the definition of "reasonable accomodations" as it applies to existing facilities, i.e. hotels, retail, restaurants, parking, green/open space (parks) and offices?

2) What degree of "renovation" triggers compliance with these bills?

3) What is the definition of "providing a service"? Could they include such activities as dentist, doctor, travel agent, bank, attorney, accounting, etc.?

4) How do the proposed requirements impact existing Kansas City, Missouri's Building Codes?

5) Dates? Grandfather/threshold provisions?

Attn Barb Burchett

Hi.

We'll discuss in detail but perhaps I can refer to the following sites will help.

Thanks!
Morrent → call 4-8959
I'm here LATE!

The following are questions we have regarding the Disability Act:

1) What is the definition of "reasonable accomodations" as it applies to existing facilities, i.e. hotels, retail, restaurants, parking, green/open space (parks) and offices? → see page 31

2) What degree of "renovation" triggers compliance with these bills? → pg 66+67

3) What is the definition of "providing a service"? Could they include such activities as dentist, doctor, travel agent, bank, attorney, accounting, etc.? → pg 58

4) How do the proposed requirements impact existing Kansas City, Missouri's Building Codes? pg 70

5) Dates? Grandfather/threshold provisions? pg 77

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etuate the discrimination of others who are subject to dministrative control.

phs (2) and (3) of the legislation are derived from provi- out in the title I of the ADA, as originally introduced s been deleted by the Substitute) and general forms of tion set out in regulations implementing section 504 of ilitation Act of 1973 (see e.g., 45 CFR Part 84). Thus, the should not be construed as departing in any way from ts included in the original "general prohibitions" title of nd these concepts are subsumed within the provision of uent titles of the legislation. Further, this legislation in intended to diminish the continued viability of sheltered and programs implementing the Javits-Wagner O'Day

graphs (B) and (C) incorporate a disparate impact stand- ure that the legislative mandate to end discrimination ng hollow. This standard is consistent with the interpre- ection 504 by the U.S. Supreme Court in *Alexander* v. 9 U.S. 287 (1985). The Court explained that members of nade numerous statements during passage of section 504 eliminating architectural barriers, providing access to tion, and eliminating discriminatory effects of job quali- ocedures. The Court then noted:

e statements would ring hollow if the resulting leg- n could not rectify the harms resulting from action scriminated by effect as well as by design.

rt also noted, however, that section 504 was not intended that a "Handicapped Impact Statement" be prepared by entity before any action was taken that might conceiv- people with disabilities. Thus, the Court rejected "the notion that all disparate-impact showings constitute cases under section 504."

01(b)(4) of the legislation specifies that "discrimination" cluding or otherwise denying equal jobs or benefits to a ndividual because of the known disability of an individ- hom the qualified individual is known to have a rela- association.

ume for example that an applicant applies for a job and the employer that his or her spouse has a disability. yer believes the applicant is the most qualified person . The employer, however, assuming without foundation plicant will have to miss work or frequently leave work th, in order to care for his or her spouse, declines to hire ual for such reasons. Such a refusal is prohibited by this ph.

st, assume that the employer hires the applicant. If he ates a neutral employer policy concerning the attend- diness, he or she may be dismissed even if the reason for or tardiness is to care for the spouse. The employer ovide any accommodation to the nondisabled employee. 02(b)(5) of the legislation specifies that discrimination e failure by a covered entity to make reasonable accom- to the known physicial or mental limitations of a quali-

fied individual with a disability who is an applicant or emp unless such entity can demonstrate that the accommodation impose an undue hardship on the operation of its business.

The duty to make reasonable accommodations applies to al ployment decisions, not simply to hiring and promotion deci This duty has been included as a form of non-discrimination o basis of disability for almost fifteen years under section 50 section 504 of the Rehabilitation Act of 1973 and under the n crimination section of the regulations implementing section 5 that Act.

The term "reasonable accommodation" is defined in se 101(8) of the legislation. The definition includes illustrations commodations that may be required in appropriate circumsta The list is not meant to be exhaustive; rather, it is intended t vide general guidance about the nature of the obligation. Fur more, the list is not meant to suggest that employers must f all of the actions listed in each particular case. Rather, the dec as to what reasonable accommodation is appropriate is one v must be determined based on the particular facts of the indiv case. This fact-specific case-by-case approach to providing rea ble accommodations is generally consistent with interpretatio this phrase under sections 501, 503, and 504 of the Rehabilit Act of 1973.

The first illustration of a reasonable accommodation includ the legislation is making existing facilities used by employe general, readily accessible to and usable by individuals with abilities.

The legislation also specifies, as examples of reasonable ac modation, job restructuring, part-time or modified work sche and reassignment to a vacant position.

Job restructuring means modifying a job so that a person w disability can perform the essential functions of the position. riers to performance may be eliminated by eliminating none tial elements; redelegating assignments; exchanging assignn with another employee; and redesigning procedures for task ac plishment.

Part-time or modified work schedules can be a no-cost way commodation. Some people with disabilities are denied employ opportunities because they cannot work a standard schedule example, persons who need medical treatment may benefit flexible or adjusted work schedules. A person with epilepsy ma quire constant shifts rather than rotation from day to night s Other persons who may require modified work schedules are sons with mobility impairments who depend on a public tran tation system that is not currently fully accessible. Allowing stant shifts or modified work schedules are examples of mea accommodate the individual with a disability to allow him o to do the same job as a nondisabled person. This legislation not entitle the individual with a disability to more paid leave than non-disabled employees.

Reasonable accommodation may also include reassignment vacant position. If an employee, because of disability, can no lo perform the essential functions of the job that she or he has he transfer to another vacant job for which the person is qual

enter and use a facility; it is access and usability which must be "ready."

"Readily achievable," on the other hand, focuses on the business operator and addresses the degree of ease or difficulty of the business operator in removing a barrier; if barrier removal cannot be accomplished readily, then it is not required.

What the "readily achievable" standard will mean in any particular public accommodation will depend on the circumstances, considering the factors listed previously, but the kind of barrier-removal which is envisioned includes the addition of grab bars, the simple ramping of a few steps, the lowering of telephones, the addition of raised letter and braille markings on elevator control buttons, the addition of flashing alarm lights, and similar modest adjustments.

This section may require the removal of physical barriers, including those created by the arrangement or location of such temporary or movable structures as furniture, equipment, and display racks. For example, a restaurant may need to rearrange tables and chairs, or a department store may need to adjust its layout of display racks and shelves, in order to permit access to individuals who use wheelchairs, where these actions can be carried out without much difficulty or expense.

A public accommodation would not be required to provide physical access if there is a flight of steps which would require extensive ramping or an elevator. The readily achievable standard only requires physical access that can be achieved without extensive restructuring or burdensome expense.

In small facilities like single-entrance stores or restaurants, "readily achievable" changes could involve small ramps, the installation of grab bars in restrooms in various sections and other such minor adjustments and additions.

The readily achievable standard allows for minimal investment with a potential return of profit from use by disabled patrons, often more than justifying the small expense.

Section 302(b)(2)(A)(v) of the legislation specifies that where an entity can demonstrate that removal of a barrier is not readily achievable, discrimination includes a failure to make such goods, services, facilities, privileges, advantages, and accommodations available through alternative methods if such methods are readily achievable.

With respect to the adoption of alternative methods, examples of "readily achievable" include: coming to the door to receive or return drycleaning; allowing a disabled patron to be served beverages at a table even though nondisabled persons having only drinks are required to drink at the inaccessible bar; providing assistance to retrieve items in an inaccessible location; and rotating movies between the first floor accessible theater and a comparable second floor inaccessible theater.

Section 302(b)(2)(A)(vi) of the legislation specifies that discrimination includes, with respect to a facility or part thereof that is altered by, on behalf of, or for the use of an establishment in a manner that affects or could affect the usability of the facility or part thereof, a failure to make the alterations in such a manner that, to the maximum extent feasible, the altered portion of the facility is readily accessible to and usable by individuals with disabilities.

Where the entity is undertaking major structural alterations that affect or could affect the usability of the existing facility, the entity must also make the alterations in such manner that, to the maximum extent feasible, the path of travel to the altered area, and the bathrooms, telephones, and drinking fountains serving the remodeled area, are readily accessible to and usable by individuals with disabilities.

The phrase "major structural alterations" will be defined by the Attorney General. The Committee intends that the term "structural" means elements that are a permanent or fixed part of the building, such as walls, suspended ceilings, floors, or doorways.

The term "major structural alterations" refers to structural alterations or additions that affect the primary functional areas of a building, e.g., the entrance, a passageway to an area in the building housing a primary function, or the areas of primary functions themselves. For example, structural alteration to a utility room in an office building would not be considered "major." On the other hand, structural alteration to the customer service lobby of a bank would be considered major because it houses a major or primary function of the bank building.

The legislation includes an exception regarding the installation of elevators, which specifies that the obligation to make a facility readily accessible to and usable by individuals with disabilities shall not be construed to require the installation of an elevator for facilities that are less than three stories or that have less than 3,000 square feet per story unless the building is a shopping center, a shopping mall, or the professional office of a health care provider or unless the Attorney General determines that a particular category of such facilities requires the installation of elevators based on the usage of such facilities.

The Committee wishes to make it clear that the exception regarding elevators does not obviate or limit in any way the obligation to comply with the other accessibility requirements established by this legislation, including requirements applicable to floors which, pursuant to the exception, are not served by an elevator. And, in the event a facility which meets the criteria for the exception nonetheless has an elevator installed, then such elevator shall be required to meet accessibility standards.

The Committee intends that the term "facility" means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property or interest in such property, including the site where the building, property, structure or equipment is located. This definition is consistent with the definitions used under current Federal regulations and standards and thus includes both indoor areas and outdoor areas where human-constructed improvements, structures, equipment, or property have been added to the natural environment.

The phrase "readily accessible to and usable by individuals with disabilities" is a term of art which is explained in the section of the report concerning new construction.

The Department of Justice may then proceed to file suits in Federal district court. As with section 504, there is also a private right of action for persons with disabilities. Again, consistent with section 504, it is not our intent that persons with disabilities need to exhaust Federal administrative remedies before exercising the private right of action.

Effective date

In accordance with section 206 of the legislation, title II of the bill shall become effective 18 months after the date of enactment except that the provisions of the bill applicable to the purchase of new fixed route vehicles shall become effective on the date of enactment of this Act.

TITLE III—PUBLIC ACCOMMODATIONS AND SERVICES OPERATED BY PRIVATE ENTITIES

Section 504 of the Rehabilitation Act of 1973 prohibits Federal agencies and recipients of Federal financial assistance from discriminating against persons with disabilities. The purpose of title III of the legislation is to extend these general prohibitions against discrimination to privately operated public accommodations and to bring individuals with disabilities into the economic and social mainstream of American life. Title III fulfills these purposes in a clear, balanced, and reasonable manner.

Title III is not intended to govern any terms or conditions of employment by providers of public accommodations or potential places of employment; employment practices are governed by title I of this legislation.

Title III also prohibits discrimination in public transportation services provided by private entities.

Scope of coverage of public accommodations

Section 301(3) of the legislation sets forth the definition of the term "public accommodation." The following privately operated entities are considered public accommodations for purposes of title III, if the operations of such entities affect commerce:

(1) An inn, hotel, motel, or other similar place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) A restaurant, bar, or other establishment serving food or drink;

(3) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment;

(4) An auditorium, convention center, or lecture hall;

(5) A bakery, grocery store, clothing store, hardware store, shopping center, or other similar retail sales establishment;

(6) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other similar service establishment;

(7) A terminal used for public transportation;

(8) A museum, library, gallery, and other similar place of public display or collection;

(9) A park or zoo;

(10) A nursery, elementary, secondary, undergraduate, or postgraduate private school;

(11) A day care center, senior citizen center, homeless shelter, food bank, adoption program, or other similar social service center; and

(12) A gymnasium, health spa, bowling alley, golf course, or other similar place of exercise or recreation.

The twelve categories of entities included in the definition of the term "public accommodation" are exhaustive. However, within each of these categories, the legislation only lists a few examples and then, in most cases, adds the phrase "other similar" entities. The Committee intends that the "other similar" terminology should be construed liberally consistent with the intent of the legislation that people with disabilities should have equal access to the array of establishments that are available to others who do not currently have disabilities.

For example, the legislation lists "golf course" as an example under the category of "place of exercise or recreation." This does not mean that only driving ranges constitute "other similar establishments." Tennis courts, basketball courts, dance halls, playgrounds, and aerobics facilities, to name a few other entities are also included in this category. Other entities covered under this category include video arcades, swimming pools, beaches, camping areas, fishing and boating facilities, and amusement parks.

Similarly, although not expressly mentioned, bookstores, video stores, stationary stores, pet stores, computer stores, and other stores that offer merchandise for sale or rent are included as retail sales establishments.

The phrase "privately operated" is included to make it clear that establishments operated by Federal, State, and local governments are not covered by this title. Of course an establishment operated by a private entity which is otherwise covered by this title that also receives Federal, State, or local funds is still covered by this title.

Only nonresidential entities or portions of entities are covered by this title. For example, in a large hotel that has a residential apartment wing, the apartment wing would be covered by the Fair Housing Act, but not this title. The nonresidential accommodations in the rest of the hotel would be covered by this title. Although included in the definition of public accommodations, homeless shelters are subject to the provisions of this title only to the extent that they are not covered by the Fair Housing Act, as amended in 1988.

Private schools, including elementary and secondary schools, are covered by this title. The Committee does not intend, however, that compliance with this legislation requires a private school to provide a free appropriate education or develop an individualized education program in accordance with regulations implementing section 504 of the Rehabilitation Act of 1973 (34 CFR Part 104) and regulations implementing part B of the Education of the Handicapped Act (34

CFR Part 300). Of course, if a private school is under contract with a public entity to provide a free appropriate public education, it must provide such education in accordance with section 504 and part B.

The term "commerce" is defined in section 301(1) of the legislation to mean travel, trade, traffic, commerce, transportation, or communication among the several States, or between any foreign country or any territory or possession and any State or between points in the same state but through another state or foreign country.

Prohibition of discrimination by public accommodations

Section 302(a) of the legislation specifies that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation.

"Full and equal enjoyment" does not encompass the notion that persons with disabilities must achieve the identical result or level of achievement of nondisabled persons, but **does mean that persons with disabilities must be afforded equal opportunity to obtain the same result.**

Section 302(b)(1) of the legislation specifies general forms of discrimination prohibited by this title. These provisions are consistent with the general prohibitions which were included in title I of S. 933, as originally introduced. As explained previously in the report, the general prohibitions title has been deleted by the Substitute.

Sections 302(b)(1)(A) (i), (ii), and (iii) of the legislation specify that it shall be discriminatory:

> To subject an individual or class of individuals on the basis of disability or disabilities of such individual or class, directly, or through contractural, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or beanefit from the goods, services, facilities, privileges, advantages, and accommodations of an entity;
>
> To afford such an opportunity that is not equal to that afforded other individuals; or
>
> To provide such an opportunity that is different or separate from that provided to other individuals, unless such action is necessary to provide the individual or class of individuals with an opportunity that is as effective as that provided to others.

Section 302(b)(1)(B) of the legislation specifies that goods, services, privileges, advantages, accommodations, and services shall be afforded to an individual with a disability in the most integrated setting appropriate to the needs of the individual.

Section 302(b)(1)(C) of the legislation specifies that notwithstanding the existence of separate or different programs or activities provided in accordance with this section, an individual with a disability shall not be denied the opportunity to participate in such programs or activities that are not separate or different.

Taken together, these provisions are intended to prohibit exclusion and segregation of individuals with disabilities and the denial of equal opportunities enjoyed by others based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes above individuals with disabilities. Consistent with these standards,

covered entities are required to make d
plicable to individuals and not on the b
what a class individuals with disabilities

The Committee wishes to emphasize tl
not be construed to jeopardize in any wa
separate private schools providing speci
categories of children with disabilities, sl
recreational programs, and other similar

At the same time, the Committee wish
uals with disabilities cannot be denied
pate in programs that are not separate
portant and over-arching principle of tl
rate, special, or different programs are d
tion by persons with disabilities possible.
tended to restrict the participation of dis
are appropriate to them.

For example, a blind person may wish
a special museum tour that allows pers
an exhibit and instead tour the exhibit
museum's recorded tour. It is not the int
the blind person to avail him or hersel
Committee intends that modified particip
abilities be a choice but not a requiremen

In addition, it would not be a violatio
lishment to offer recreational programs
dren with mobility impairments. Howev
of this title if the entity then excluded
recreational services made available to n
quired children with disabilities to att
grams.

Section 302(b)(1)(D) of the legislation s
or entity shall not, directly, or through
rangements, utilize standards or criteria
tion that have the effect of discriminatin
or that perpetuate the discrimination of
common administrative control. This pr
tion 102(b)(3) of the bill, which was di
report.

Section 302(b)(1)(E) of the legislation sp
criminatory to exclude or otherwise de
privileges, advantages, and accommodati
to an individual or entity because of the
dividual with whom the individual or ent
lationship or association. This provisions
102(b)(4) of the legislation, which was di
report.

Section 302(b)(2) of the legislation inclu
the general prohibition against discrimin
the general prohibitions set out in secti
tion. The Committee wishes to emphasi
sions contained in title III, including th
limitation, control over the more gene
302(a) and section 302(b)(1) to the extent
flict.

For example, for a hotel "readily accessible to and usable by" includes, but is not limited to, providing full access to the public use and common use portions of the hotel; requiring all doors and doorways designed to allow passage into and within all hotel rooms and bathrooms to be sufficiently wide to allow passage by individuals who use wheelchairs; making a percentage of each class of hotel rooms fully accessible (e.g., including grab bars in bath and at the toilet, accessible counters in bathrooms); audio loops in meeting areas; signage, emergency flashing lights or alarms; braille or raised letter words and numbers on elevators; and handrails on stairs and ramps.

Of course, if a person with a disability needing a fully accessible room makes an advance registration without informing the hotel of the need for such a room arrives on the date of the reservation and no fully accessible room is available, the hote has not violated the Act. Moreover, a hotel is not required to forego renting fully accessible rooms to nondisabled persons if to do so would cause the hotel to lose a rental.

In a physician's office, "readily accessible to and usable by" would include ready access to the waiting areas, a bathroom, and a percentage of the examining rooms.

Historically, particularized guidance and specifications regarding the meaning of the phrase "readily accessible to and usable by" for various type of facilities have been provided by MGRAD, UFAS, and the ANSI standards. Under this legislation, such specificity will be provided by the expanded MGRAD standards to be issued by the Architectural and Transportation Barriers Compliance Board and by the regulations issued by the Attorney General, both of which are discussed subsequently in this report.

It is the expectation of the Committee that the regulations issued by the executive branch could utilize appropriate portions of MGRAD.

A. It is also the Committee's intent that the regulations will include language providing that departures from particular technical and scoping requirements, as revised, will be permitted so long as the alternative methods used will provide substantially equivalent or greater access to and utilization of the facility. Allowing these departures will provide covered entities with necessary flexibility to design for special circumstances and will facilitate the application of new technologies.

The phrase "structurally impracticable" is a narrow exception that will apply only in rare and unusual circumstances where unique characteristics of terrain make accessibility unusually difficult. Such limitations for topographical problems are analogous to an acknowledged limitation in the application of the accessibility requirements of the Fair Housing Amendments Act of 1988. In the House Committee Report accompanying the Act, the House Committee on the Judiciary noted:

> certain natural terrain may pose unique building problems. For example, in areas which flood frequently, such as waterfronts or marshlands, housing traditionally may be built on stilts. The Committee does not intend to require that the accessibility requirements of this Act over-

ride the need to protect the physical ir
ily housing that may be built on such s

By incorporating the phrase "structura
ADA explicitly recognizes an exception an
integrity" exception for peculiarities of ter
ly in statutory language and expressly i
Report accompanying the Fair Housing
under the Fair Housing Amendments Act,
narrow exception to the requirement of ac
only where unique characteristics of terrai
tion of accessibility features and would des
ty of a facility is it acceptable to deviate fr
ments. Buildings that must be built on stil
tion in marshlands or over water are one
which the structurally impracticable excep

Neither under the ADA nor the Fair H
should an exception to accessibility require
ations in which a facility is located in "hi
of land upon which there are steep grades
accessibility can be achieved without destr
rity of a structure, and ought to be require
new facilities.

In those are circumstances in which it is
ble to achieve full compliance with ac
under the ADA, public accommodations
and constructed to incorporate accessibilit
that they are structurally practicable. T
ments should not be viewed as an all-or-not
circumstances.

If it is structurally impracticable for a f
be readily accessible to and usable by peop
those portions which can be made accessib
ing cannot comply with the full range of a
because of structural impracticability, the
quired to incorporate those features which
cable. And if it is structurally impracticab
facility accessible to persons who have pa
ities, it is still appropriate to require it t
persons with other types of disabilities.

If, for example, a facility which is of
cannot be made accessible to persons who
it is structurally impracticable to do so, thi
require it to be accessible for individuals w
pairments or other kinds of disabilities.

The new construction provision incluc
"are potential places of employment" as we
tions. The Committee decided to include
that unnecessary barriers to employment
ties that are constructed in the future. Sinc
allow to incorporate accessibility features i
Committee concluded that there is no rati
employers to continue to construct inaccessibl

ndards applicable to facilities and vehicles covered
on 302.
s included in regulations issued under subsections (a)
ll be consistent with the minimum guidelines and re-
issued by the Architectural and Transportation Bar-
iance Board in accordance with section 504.

for private clubs and religious organizations

)7 of the legislation specifies that the provisions of title
pply to private clubs or establishments exempted from
ider title II of the Civil Rights Act of 1964 or to reli-
izations or to entities controlled by religious organiza-
s of worship and schools controlled by religious organi-
among those organizations and entities which fall
exemption.
ence to "entities controlled by a religious organization"
after the provisions in title IX of the Education Amend-
)72. Thus, it is the Committee's intent that the term
by a religious organization" be interpreted consistently
tachment which accompanied the Assurance of Compli-
itle IX required by the U.S. Department of Education.
he Committee recognizes that unlike the title IX ex-
is provision applies to entities that are not educational
The term "religious organization" has the same mean-
term "religious organization" in the phrase "entitles
y a religious organization."
conducted by a religious organization or an entity con-
religious organization on its own property which are
members of that organization or entity are included in
ion.

)8 of the legislation sets forth the scheme for enforcing
rovided for in title III. Section 308(a)(1) provides a pri-
f action for any individual who is being or is about to
to discrimination on the basis of disability in violation
This subsection makes available to such an individual
s and procedures set forth in section 204a-3(a) of the
Act of 1964 (preventive relief, including an application
anent or temporary injunction, restraining order, or

)8(a)(2) of the legislation makes it clear that in the case
s of section 302(b)(2)(A)(iv) pertaining to removing bar-
ting facilities, section 302(b)(2)(A)(vi) pertaining to alter-
isting facilities, and section 303(a) pertaining to new
, injunctive relief shall include an order to alter facili-
such facilities readily accessible to and usable by indi-
disabilities as required by title III.
propriate, injunctive relief shall also include requiring
n of an auxiliary aid or service, modification of a policy,
of alternative methods, to the extent required by this

)8(b) of the legislation specifies the enforcement scheme
rney General. First, the Attorney General shall investi-

gate alleged violations of title III, which shall include undertaki
periodic reviews of compliance of covered entities.
If the Attorney General has reasonable cause to believe that a
person or group of persons is engaged in a pattern or practice
resistance to the full enjoyment of any of the rights granted
title III or that any person or group of persons has been denied a
of the rights granted by title III and such denial raises an issue
general public importance, the Attorney General may commence
civil action in any appropriate United States District Court.
In a civil action brought by the Attorney General, the court m
grant any equitable relief it considers to be appropriate, includi
granting temporary, preliminary, or permanent relief, providing
auxiliary aid or service, modification of policy or alternati
method, or making facilities readily accessible to and usable by i
dividuals with disabilities, to the extent required by title III.
In addition, a court may award such other relief as the court co
siders to be appropriate, including monetary damages to perso
aggrieved, when requested by the Attorney General. Thus, it is t
Committee's intent that the Attorney General shall have discreti
regarding the damages he or she seeks on behalf of persons
grieved. It is not the Committee's intent that this authority inclu
the authority to award punitive damages.
Furthermore, the court may vindicate the public interest by
sessing a civil penalty against the covered entity in an amount n
exceeding $50,000 for a first violation and not exceeding $100,0
for any subsequent violation.

Effective date

In accordance with section 309 of the legislation, title III of t
legislation shall become effective 18 months after the date of ena
ment of this legislation.

TITLE IV—TELECOMMUNICATIONS RELAY SERVICES

Title IV of the legislation, as reported, will help to further t
statutory goals of universal service as mandated in the Commu
cations Act of 1934. It will provide to hearing- and speech-impair
individuals telephone services that are functionally equivalent
those provided to hearing individuals.

Background

There are over 24 million hearing-impaired and 2.8 milli
speech-impaired individuals in the United States, yet inadequa
attention has been paid to their special needs with respect to
cessing the Nation's telephone system. Given the pervasiveness
the telephone for both commercial and personal matters, the
ability to utilize the telephone system fully has enormous imp
on an individual's ability to integrate effectively in today's socie
The Communications Act of 1934 mandates that communicatio
services be "[made] available, so far as possbile, to *all* the people
the United States. * * *". (Section 1, emphasis added). This goal
universal service has governed the development of the Natio
telephone system for over fifty years. The inability of over 26 m
lion Americans to access fully the Nation's telephone system po

COMMITTEE ON SMALL BUSINESS

HEARING ON
IMPLEMENTATION OF P.L. 100-656

2359-A RAYBURN HOUSE OFFICE BUILDING

NOVEMBER 16, 1989

2:00 P.M.

WITNESS LIST

Mr. Mitchell F. Crusto
Associate Deputy Administrator for Finance,
Investment and Procurement
U.S. Small Business Administration

Mr. Anthony Robinson
Executive Director
Minority Business Enterprise Legal Defense and
Education Fund

Mr. Albert Jacquez
President
Latin American Manufacturer's Association

Mr. Allan Burman
Deputy Administrator and Acting Administrator
Office of Federal Procurement Policy

Ms. Karen Williams
Attorney
Crowell and Moring
(former Administrator of the Office of
Federal Procurement Policy)

Mr. Kirk Fordice
Senior Vice President
Associated General Contractors of America

STATEMENT OF REP. JOHN J. LaFALCE, CHAIRMAN
COMMITTEE ON SMALL BUSINESS

HEARING ON IMPLEMENTATION OF P.L. 100-656
November 16, 1989

Last fall the Congress passed the Business Opportunity Development Reform Act of 1988, P.L. 100-656. This Act constituted the first major overhaul in 10 years of the Government's most important program to assist socially and economically disadvantaged businesses, the Capital Ownership Development or so-called "8(a)" Program.

This priority initiative was the result of years of effort in which the Committee worked with our counterparts in the Senate and with the Government Operations and Armed Services Committees, the Administration and representatives of the minority business community to fashion legislation to restore the integrity and improve the operation of this program which accounts for more than 60 percent of all Federal prime contracts to disadvantaged concerns.

The provisions of the reform legislation include: the introduction of competition into what has been an entirely sole-source contracting program; the extension of program participation terms to 9 years from the current maximum of 7 years; a mandated decrease in the time for processing applications for certification to participate in the 8(a) program from an average of 1 to 2 years to maximum of 90 days; increased management, technical and financial assistance for 8(a) firms; strong anti-fraud and abuse provisions, including increased fines and jail terms for "front companies"; improved goal setting procedures for Federal agencies dealing with small and small disadvantaged businesses; and the mandatory inclusion of liquidated damages clauses in contracts awarded to large businesses which contain small and small disadvantaged business subcontracting plans.

Due to the change in Administration in the midst of the process of promulgating regulations for the new program, and due to the numerous comments on the proposed regulations, SBA did not issue final regulations until August 21, 1989. The purpose of this hearing, therefore, is to hear from the Administration and from other interested parties about the manner in which the program has been implemented; to hear what further actions are planned by SBA; and to hear about any problems which have arisen as a result of the new law and regulations.

The Committee will also hear testimony regarding Title VII of the Business Opportunity Development Reform Act. Title VII established a Small Business Competitiveness Demonstration

program. This pilot program is to last for a four (4) year period, from January 1, 1989 through December 31, 1992. During the length of the program, which is overseen by the Office of Federal Procurement Policy (OFPP) but administered by the Small Business Administration, all small business set-asides in the designated test industries are to be suspended unless the small business share in a particular test industry falls below 40% over a 12-month period.

The industries covered by this pilot program are construction (except dredging), refuse systems and related services; architectural and engineering services (including surveying and mapping); and non-nuclear ship repair.

To testify on the implementation of the 8(a) reforms we have with us this morning:

Mr. Mitchell F. Crusto, SBA Associate Deputy Administrator for Finance, Investment and Procurement;

Mr. Anthony Robinson, Executive Director, Minority Business Enterprise Legal Defense and Education Fund; and

Mr. Albert Jacquez, President, Latin American Manufacturer's Association.

To testify on the Title VII Competitiveness Demonstration program we have:

Mr. Allan Burman, Deputy Administrator and Acting Administrator, Office of Federal Procurement Policy;

Ms. Karen Williams, former Administrator of the Office of Federal Procurement Policy and now an attorney at Crowell and Moring; and

Mr. Kirk Fordice, Senior Vice President, Associated General Contractors of America.

SBA

U.S. Small Business Administration Washington, DC 20416

TESTIMONY OF

MITCHELL F. CRUSTO

ASSOCIATE DEPUTY ADMINISTRATOR

FOR

FINANCE, INVESTMENT AND PROCUREMENT

U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

November 16, 1989

GOOD MORNING. I AM MITCHELL F. CRUSTO, ASSOCIATE DEPUTY ADMINISTRATOR FOR FINANCE, INVESTMENT AND PROCUREMENT OF THE U.S. SMALL BUSINESS ADMINISTRATION ("SBA"). ON BEHALF OF THE ADMINISTRATOR, SUSAN ENGELEITER, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THE HOUSE OF REPRESENTATIVES COMMITTEE ON SMALL BUSINESS TODAY TO REPORT ON THE IMPLEMENTATION OF THE BUSINESS DEVELOPMENT REFORM ACT OF 1988, ALSO CALLED THE "8(a) REFORM ACT". SINCE THIS IS MY FIRST APPEARANCE BEFORE THIS COMMITTEE, I WOULD LIKE TO BEGIN BY PROVIDING YOU WITH SOME BACKGROUND ON MYSELF AND MY POSITION AT SBA.

ON SEPTEMBER 18, 1989, I WAS APPOINTED BY ADMINISTRATOR ENGELEITER TO THE NEWLY-CREATED POSITION OF ASSOCIATE DEPUTY ADMINISTRATOR FOR FINANCE, INVESTMENT AND PROCUREMENT ("ADA/FIP"). ADMINISTRATOR ENGELEITER CREATED THE ADA/FIP POSITION WITHIN HER OFFICE IN ORDER TO PROVIDE TOP MANAGEMENT SUPPORT FOR AND TO IMPROVE COORDINATION ACROSS THE SBA PROGRAM LINES IN THE VERY IMPORTANT AREAS OF FINANCE AND INVESTMENT, PROCUREMENT ASSISTANCE AND THE MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM (THE "8(a) PROGRAM"). BEFORE COMING TO THE SBA, I WAS THE OWNER OF A SMALL INVESTMENT CONSULTING AND SECURITIES BROKERAGE FIRM. PRIOR TO THAT, I SERVED AS SENIOR VICE PRESIDENT AND GENERAL COUNSEL OF AN INVESTMENT BANKING FIRM. I HOLD AN UNDERGRADUATE DEGREE AND A

LAW DEGREE FROM YALE UNIVERSITY AND A LAW DEGREE FROM OXFORD UNIVERSITY. I BELIEVE MY EXPERIENCE WITH SMALL BUSINESSES AND SMALL BUSINESS ISSUES WILL HELP ME FULFILL THE ROLE ESTABLISHED BY THIS NEW POSITION.

AS YOU KNOW, IT WAS ONE YEAR AGO THIS WEEK THAT CONGRESS ENACTED THE 8(a) REFORM ACT. WITHIN THAT YEAR'S TIME THE NATION AND THE SBA HAS RECEIVED NEW LEADERSHIP: IN JANUARY, WE RECEIVED A NEW PRESIDENT, MR. BUSH, AND IN APRIL, WE RECEIVED A NEW ADMINISTRATOR, SUSAN ENGELEITER. ALSO IN APRIL, ERLINE PATRICK BECAME THE ACTING ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT (AA/MSB&COD), WHICH AT THAT TIME WAS AN APPOINTED POSITION. IN AUGUST, FOLLOWING AN INTENSIVE COMPETITION, ERLINE PATRICK WAS SELECTED FOR THE NEW CAREER POSITION OF AA/MSB&COD. WHILE THESE LEADERSHIP CHANGES WERE TAKING PLACE, THE SBA WAS MAKING HEADWAY TOWARD IMPLEMENTING THE 8(a) REFORMS.

LET ME TAKE A FEW MOMENTS TO PROVIDE YOU A CHRONOLOGY OF THE HIGHLIGHTS OF THE 8(a) REFORM ACT IMPLEMENTATION:

- ONCE AGAIN, IN NOVEMBER, 1988, CONGRESS ENACTED THE 8(a) REFORM LEGISLATION.
- IN DECEMBER, 1988, THE SBA HELD TWO PUBLIC HEARINGS, ONE IN SAN FRANCISCO AND ONE IN WASHINGTON, D.C., TO SOLICIT COMMENT ON WHAT SHOULD BE INCLUDED IN PROPOSED REGULATIONS IMPLEMENTING THE 8(a) REFORM ACT.

- IN MARCH OF THIS YEAR, THE SBA PUBLISHED PROPOSED REGULATIONS IMPLEMENTING THE 8(a) REFORM ACT AND REVISING EXISTING PROGRAM REGULATIONS AND POLICIES.
- IN MARCH AND APRIL, THE SBA RECEIVED OVER 330 LETTERS FROM THE PUBLIC COMMENTING ON THE PROPOSED 8(a) RULES.
- IN JUNE, THE TECHNICAL AMENDMENTS TO THE 8(a) REFORM ACT (PUBLIC LAW 101-37) BECAME LAW, AND, AMONG OTHER THINGS, EXTENDED THE DEADLINE ON THE FINAL REGULATIONS FROM JUNE TO AUGUST, 1989.
- FROM APRIL UNTIL AUGUST, THE SBA CONSIDERED THE MANY ISSUES RAISED BY THE PUBLIC COMMENT LETTERS AND DRAFTED THE FINAL REGULATIONS.
- ON AUGUST 21, 1989, THE SBA PUBLISHED FINAL REGULATIONS IMPLEMENTING THE 8(a) REFORM ACT. AT THAT TIME, WE BRIEFED MEMBERS AND STAFF OF THIS COMMITTEE ON THE FINAL REGULATIONS AND OTHER ASPECTS OF THE IMPLEMENTATION PROCESS.

WE HOPE TODAY TO PROVIDE YOU WITH AN OVERVIEW OF THE IMPLEMENTATION OF THE REFORM ACT AND TO BRIEF YOU ON WHAT HAS BEEN DONE AND WHAT REMAINS TO BE DONE. CONCURRENT WITH THE RULEMAKING EFFORT AND THE OTHER EVENTS I JUST SUMMARIZED, THE SBA WAS PROCEEDING TO IMPLEMENT THE 8(a) REFORM LEGISLATION BY ESTABLISHING A NUMBER OF MANAGEMENT TASKS.

OUR FIRST MANAGEMENT TASK WAS TO ESTABLISH A TIMETABLE FOR IMPLEMENTATION. WE DID SO IMMEDIATELY AFTER PASSAGE OF THE LEGISLATION. DUE TO THE SWEEPING NATURE OF THE REFORM LEGISLATION AND THE EXTENSIVE AND SOMETIMES CONTROVERSIAL NATURE OF THE 8(a) PROGRAM, IT HAS BEEN NECESSARY FOR US TO REVISE THE ORIGINAL TIMETABLE PERIODICALLY AS SOME PHASES OF IMPLEMENTATION HAVE REQUIRED MORE TIME THAN WAS FIRST SCHEDULED. FOR EXAMPLE, AS I ALREADY MENTIONED, DURING THE COMMENT PERIOD OF THE PROPOSED REGULATIONS, THE SBA RECEIVED OVER 330 COMMENT LETTERS. IN ORDER TO GIVE CAREFUL CONSIDERATION TO THESE COMMENTS, SBA EMPLOYEES DEVOTED SEVERAL MONTHS TO ANALYZING THE COMMENTS AND TO MAKING APPROPRIATE CHANGES TO THE REGULATIONS.

OUR SECOND MANAGEMENT TASK WAS TO MAINTAIN ONGOING PROGRAM DELIVERY, WHILE PREPARING FOR CHANGES IN THE PROGRAM. SHORTLY AFTER ENACTMENT OF THE LEGISLATION, WE DISSEMINATED INTERIM INSTRUCTIONS AIMED AT ENSURING SMOOTH CONTINUED 8(a) PROGRAM OPERATIONS THROUGHOUT THE IMPLEMENTATION OF THE REFORM ACT. AS A RESULT OF THOSE EFFORTS, DETAILED INSTRUCTIONS FOR IMPLEMENTING THE KEY PROVISIONS OF THE LAW AND REGULATIONS WERE PROVIDED TO SBA'S FIELD STAFF. THESE INSTRUCTIONS ENABLED SBA TO OPERATE THE 8(a) PROGRAM WITH MINIMAL DISRUPTION THROUGHOUT THE PAST YEAR WHILE WHILE SIMULTANEOUSLY ATTENDING TO THE TASKS OF COMPLETING THE REGULATIONS AND THE FOUR OTHER IMPLEMENTATION TRACKS.

OUR THIRD MANAGEMENT TASK WAS TO BEGIN ACTUAL IMPLEMENTATION. ONE GOAL WAS TO DEVELOP INSTRUCTIONS FOR OUR REGIONAL AND DISTRICT OFFICES RELATING TO THE MAJOR 8(a) PROGRAM COMPONENTS OF THE LEGISLATION: ELIGIBILITY, BUSINESS DEVELOPMENT AND CONTRACTING.

IN ORDER TO CAPITALIZE ON THE TALENTS AND EXPERTISE OF OUR FIELD STAFF WHO ARE IN DAILY CONTACT WITH THE BUSINESS COMMUNITY, WE CREATED TASK FORCES FOR EACH OF THE PROGRAM COMPONENTS. THESE TASK FORCES INCLUDED SENIOR STAFF MEMBERS FROM VIRTUALLY EVERY SBA REGION. THESE TASK FORCES PARTICIPATED IN THE DEVELOPMENT OF FORMS AND POLICY GUIDANCE NECESSARY TO IMPLEMENT THE STATUTE.

IN ADDITION, REPRESENTATIVES OF THE TASK FORCES WERE AND ARE DRAFTING REVISED STANDARD OPERATING PROCEDURES FOR EACH OF THE MAJOR COMPONENTS OF THE LEGISLATION. THESE PROCEDURES FOLLOW FROM THE REGULATIONS AND ARE ANTICIPATED TO BE IN PLACE IN EARLY 1990.

OUR FOURTH MANAGEMENT TASK WAS TO COMPLY WITH THE REQUIREMENTS OF THE NEW LAW BY MAKING SIGNIFICANT CHANGES IN THE ORGANIZATIONAL STRUCTURE AND STAFFING OF THE AGENCY. AS I MENTIONED A FEW MINUTES AGO, IN ACCORDANCE WITH THE REQUIREMENT OF THE REFORM ACT, THE POSITION OF ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP BECAME A CAREER POSITION. IN ANTICIPATION OF THIS CHANGE, EARLY IN THE SPRING

THE SBA BEGAN A RECRUITMENT EFFORT TO LOCATE A HIGHLY QUALIFIED CANDIDATE FOR THIS KEY AGENCY POSITION. AFTER A CAREFUL REVIEW OF MANY EXCEPTIONAL APPLICANTS, IN AUGUST THE ADMINISTRATOR SELECTED ERLINE PATRICK TO BE THE FIRST CAREER AA/MSB&COD.

MS. PATRICK COMES TO SBA WITH A WEALTH OF KNOWLEDGE AND EXPERIENCE. MOST RECENTLY SHE SERVED ON THE PROFESSIONAL STAFF OF THE SENATE SMALL BUSINESS COMMITTEE WHERE SHE WAS CLOSELY INVOLVED IN THE 8(a) REFORM LEGISLATION. PRIOR TO THAT MS. PATRICK WORKED IN TWO SMALL BUSINESSES, ONE ENGAGED IN CONSTRUCTION AND THE OTHER IN HIGH-TECH. MS. PATRICK ALSO SERVED AS A PUBLIC SCHOOL ADMINISTRATOR FOR MORE THAN 13 YEARS.

THE ADMINISTRATOR HAS ALSO APPROVED A REORGANIZATION PLAN THAT PROVIDES FOR 10 CENTRAL OFFICE DUTY STATIONS OF THE DIVISION OF PROGRAM CERTIFICATION AND ELIGIBILITY. THESE OFFICES, KNOWN AS C-O-Ds, ARE LOCATED IN EACH OF SBA'S REGIONAL OFFICES. A TOTAL OF 32 EMPLOYEES WILL STAFF THE C.O.D.s, AND THE SBA IS NOW IN THE PROCESS OF HIRING THESE INDIVIDUALS THROUGH THE STANDARD FEDERAL GOVERNMENT COMPETITIVE PROCEDURES. THAT HIRING EFFORT REPRESENTS A MASSIVE RECRUITMENT EXERCISE WHICH INVOLVED THE RECEIPT OF MORE THAN 400 APPLICATIONS WHICH HAD TO BE SCREENED, EVALUATED AND RANKED. FOLLOWING THAT PROCESS, THE SBA BEGAN THE DIFFICULT, BUT CRITICAL TASK, OF INTERVIEWING THE MOST HIGHLY QUALIFIED CANDIDATES. THIS PROCESS IS STILL ONGOING AND IS NEARING FINAL SELECTION AND COMPLETION.

THE SBA ALSO DEVELOPED A PLAN FOR THE APPROPRIATE ALLOCATION OF ADDITIONAL PERSONNEL SLOTS FOR BUSINESS OPPORTUNITY SPECIALIST ("BOS") POSITIONS IN OUR VARIOUS FIELD OFFICES. THIS TASK WAS DRIVEN BY OUR DESIRE TO CONFORM TO THE EXPRESSED INTENT OF CONGRESS THAT THE SBA ATTEMPT TO ACHIEVE A RATIO OF APPROXIMATELY ONE BOS TO EACH TWENTY 8(a) PARTICIPANT FIRMS. THE STAFFING OF THESE POSITIONS, ALSO USING FEDERAL COMPETITIVE PROCEDURES, IS NOW UNDERWAY.

A FIFTH MANAGEMENT TASK INVOLVED ESTABLISHING A TRAINING PROGRAM TO EDUCATE BOTH NEW AND EXISTING MINORITY SMALL BUSINESS STAFF ON THE CHANGES IN THE LEGISLATION AND IN THE NEW REGULATIONS. TRAINING, WE BELIEVE, IS AN INTEGRAL PART OF ASSEMBLING A GOOD TEAM. IN ANTICIPATION OF THE REFORM LEGISLATION, BEGINNING IN JULY 1988, THE SBA INCREASED ITS TRAINING EFFORTS OF THE MSB&COD FIELD STAFF.

DURING FISCAL YEAR 1989, THE TRAINING CURRICULUM WAS EXPANDED. AND AS OF THIS TIME, MORE THAN 95 PERCENT OF ALL MSB&COD FIELD EMPLOYEES HAVE RECEIVED TRAINING IN AREAS SUCH AS FINANCIAL ANALYSIS TRAINING, PROCUREMENT TRAINING, AND TRAINING ON THE NEW BUSINESS PLAN FORM, AND SO ON.

THE SBA WILL CONTINUE TO EMPHASIZE TRAINING FOR THE MSB&COD STAFF. IN ADDITION, INCLUDED IN THE IMPLEMENTATION OF THE C.O.D.s IS FIELD STAFF TRAINING ON THE NEW REGULATIONS AND PROCESSES. THIS TRAINING WILL INITIALLY BE TARGETED FOR THOSE

EMPLOYEES MOST CLOSELY INVOLVED IN THE 8(a) APPLICATION PROCESS. THIS IS AN EXTENSIVE TASK AND WILL BE ONGOING FOR SOME TIME.

LET'S NOW FOCUS ON SOME OF THE SPECIFIC REFORMS AND HOW THOSE WERE IMPLEMENTED. FIRST, AS YOU KNOW, THE 8(a) REFORM ACT ALSO REQUIRED THE USE OF COMPETITIVE PROCEDURES IN 8(a) PROCUREMENTS WITH AN ANTICIPATED VALUE ABOVE $5 MILLION, INCLUDING OPTIONS, FOR REQUIREMENTS WITH MANUFACTURING SIC CODES AND $3 MILLION, INCLUDING OPTIONS, FOR ALL OTHER REQUIREMENTS. THESE PROVISIONS HAVE BEEN IMPLEMENTED BY SBA'S FINAL REGULATIONS OF AUGUST 21, 1989 AND FINAL FEDERAL ACQUISITION REGULATIONS PUBLISHED ON OCTOBER 31, 1989. IN DEVELOPING THE REGULATIONS, THE SBA WORKED CLOSELY WITH THE DEFENSE ACQUISITION REGULATION COUNCIL AND CIVILIAN AGENCY ACQUISITION COUNCIL TO INSURE THAT THE RULES WERE CONSISTENT WITH EACH OTHER. TO DATE, THERE HAVE BEEN THREE NATIONAL BUY OFFERS ACCEPTED FOR COMPETITION. WE ARE AWARE OF AT LEAST TWO LOCAL BUY OFFERS MADE FOR COMPETITIVE 8(a) ACQUISITIONS.

SECOND, IN ACCORDANCE WITH THE INTENT OF THE 8(a) REFORM ACT TO MAKE THE 8(a) ADMISSION PROCESS SHORTER AND SIMPLER, THE SBA HAS SHORTENED THE APPLICATION FORM AND IS STREAMLINING THE APPLICATION PROCESS. THE PREVIOUS TWO-STAGE APPLICATION PROCESS IS BEING REPLACED BY A SINGLE STAGE PROCESS. THE APPLICATION PACKAGE WILL NOW INCLUDE ONLY FORMS REQUIRED TO DETERMINE ISSUES OF PROGRAM ELIGIBILITY. THE "BUSINESS PLAN"

FORM WHICH WAS PREVIOUSLY PART OF THE APPLICATION PROCESS HAS ALSO BEEN REVISED. IN KEEPING WITH THE BUSINESS DEVELOPMENT OBJECTIVES OF THE LEGISLATION, THE "BUSINESS PLAN" FORM WILL BE REQUIRED OF A FIRM ONLY AFTER IT HAS BEEN APPROVED FOR PROGRAM PARTICIPATION. THE PLAN WILL BE USED, IN PART, TO ESTABLISH A FIRM'S LONG AND SHORT-TERM BUSINESS DEVELOPMENT GOALS. THESE FORMS WERE APPROVED BY THE OFFICE AND MANAGEMENT AND BUDGET ON NOVEMBER 7, 1989 AND ARE CURRENTLY BEING PRINTED AND DISTRIBUTED TO OUR FIELD STAFF.

THIRD, I AM PLEASED TO TELL YOU THAT THE 8(a) LOAN PROGRAM IS ALREADY IN PLACE. REGULATIONS FOR IMPLEMENTING THIS REQUIREMENT OF THE LAW WERE PUBLISHED IN FINAL FORM ON SEPTEMBER 5, 1989. THE SBA'S OFFICE OF FINANCE AND INVESTMENT IS CHARGED WITH ADMINISTERING THIS PROGRAM IN COOPERATION WITH THE OFFICE OF MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT. SINCE BOTH OFFICES REPORT TO ME, I SHALL INSIST THAT DELIVERY OF THE 8(a) LOAN PROGRAM IS GIVEN THE ATTENTION IT DESERVES.

FOURTH, THE 8(a) REFORM ACT ALSO REQUIRES THE AGENCY TO MAKE A SUSTAINED AND SUBSTANTIAL OUTREACH EFFORT TOWARD BUSINESSES LOCATED IN AREAS OF UNDEREMPLOYMENT AND TO BROADEN THE SCOPE OF THE USE OF THE PROGRAM BOTH BY GEOGRAPHICAL DISTRIBUTION AND INDUSTRIAL CATEGORIES. DURING THE PAST SEVERAL MONTHS, AGENCY MSB&COD REPRESENTATIVES HAVE MET WITH A LARGE NUMBER OF MINORITY ORGANIZATIONS AND INSTITUTIONS

THROUGHOUT THE COUNTRY TO DESCRIBE THE 8(a) PROGRAM AND ITS OBJECTIVES FOR THE MINORITY COMMUNITY. MORE TRADITIONAL METHODS OF OUTREACH -- NEWSLETTERS, FORUMS, AND CONFERENCE PARTICIPATION -- HAVE ALSO BEEN INCREASED TO RESPOND TO THE STATUTORY MANDATE.

FINALLY, THE SBA HAS BEEN WORKING ON ISSUES WHICH HAVE ARISEN SINCE THE PUBLICATION OF OUR FINAL REGULATIONS. FOR EXAMPLE, SEVERAL INDIAN TRIBES AND THEIR REPRESENTATIVES HAVE BROUGHT TO OUR ATTENTION A NUMBER OF PROGRAM ISSUES THAT ARE OF PARTICULAR CONCERN TO TRIBALLY-OWNED ENTITIES. RECENTLY, THE ADMINISTRATOR MET WITH A NUMBER OF CONGRESSIONAL AND TRIBAL REPRESENTATIVES TO DISCUSS THESE CRITICAL ISSUES AND COMMITTED THE RESOURCES OF THE AGENCY TO INCREASING THE PARTICIPATION OF TRIBALLY-OWNED BUSINESSES IN ALL OF THE AGENCY'S PROGRAMS.

IN SUMMARY, THIS IS WHERE THE IMPLEMENTATION PROCESS STANDS TODAY: THE FINAL REGULATIONS HAVE BEEN PUBLISHED; PROCEDURAL NOTICES ARE IN EFFECT WHICH PROVIDE INTERIM DIRECTION TO OUR FIELD OFFICES; THE APPLICATION AND BUSINESS PLAN FORMS HAVE BEEN COMPLETED AND APPROVED BY THE OFFICE OF MANAGEMENT AND BUDGET; THE STANDARD OPERATING PROCEDURES ARE IN FINAL DRAFT FORM; SPACE HAS BEEN IDENTIFIED IN OUR FIELD OFFICES TO ACCOMMODATE THE CENTRAL OFFICE DUTY STATION PERSONNEL; SELECTION OF THAT NEW STAFF IS ALMOST COMPLETED; TRAINING FOR THE CENTRAL OFFICE DUTY STATION PERSONNEL IS SCHEDULED TO BE COMPLETED BY MID-DECEMBER; AND THE NEW

APPLICATION PROCESS SHOULD BE OPERATIONAL NO LATER THAN JANUARY 1ST. MR. CHAIRMAN, SPEAKING ON BEHALF OF THE ADMINISTRATOR, I AM PROUD OF WHAT THE AGENCY HAS BEEN ABLE TO DO IN THIS SHORT TIMEFRAME TO IMPLEMENT THE 8(a) REFORM ACT, AND I AM HAPPY TO PROVIDE THIS REPORT TO YOU AND TO THE COMMITTEE.

THIS CONCLUDES MY FORMAL TESTIMONY. I SHALL BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

TESTIMONY OF

ANTHONY W. ROBINSON, PRESIDENT

MINORITY BUSINESS ENTERPRISE
LEGAL DEFENSE AND EDUCATION FUND, INC.

BEFORE THE

ONE HUNDRED FIRST
CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

THURSDAY, NOVEMBER 16, 1989

INTRODUCTION

My name is Anthony W. Robinson. I am President of the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF). The Fund is a non-profit organization established in 1980 by former Maryland Congressman Parren J. Mitchell, to serve as a national advocate and legal representative for the minority business community. The Fund provides legal representation in matters which have broad national or regional implications and which may affect the class interests of minority businesses. The Fund's mission is to enhance, defend, and expand minority business opportunities and growth.

My interest in testifying today arises from concerns we have relative to the Small Business Administration's (SBA) implementation of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656) and its intended reforms of the SBA's Minority Small Business Capital Ownership Development Program, commonly referred to as the "8(a) Program".

In the interest of time, my remarks will be brief and focus on only three issues:

THE TWO YEAR RULE

The first issue concerns the codification of the SBA's requirement that a firm be in business for at least two years before it is eligible to seek certification. The requirement has been imposed purportedly to ensure that applicants possess the potential for success.

Our objection to the rule is grounded in its lack of legal foundation. Neither the language nor legislative history of the Act expresses or exhibits any directive, intention, or desire on the part of the Congress that such limitation be imposed upon certification eligibility. Thus, in the first instance, the rule is solely the creation of the SBA -- having no justifying legal authority.

Moreover, the Fund finds this limitation on eligibility to be unduly onerous in that it excludes from participation firms whose continued existence may, in large part, be enhanced or assured by obtaining 8(a) certification and the business opportunities it provides. That is to say, the operation of the rule denies participation to firms at a point in time when the companies may need it the most.

Further, the application of the rule is too rigid and does not take into consideration the circumstances of recently acquired businesses, start-ups and new concerns which have new and unique product lines.

The SBA has posited that in extraordinary circumstances, an applicant concern which has not been in business for two years may be eligible to participate in the 8(a) program providing all of the following conditions are met:

a. The disadvantaged person upon whom eligibility is based has outstanding business experience, abilities, and educational background directly related to the applicant concern's primary business activity.

b. The applicant concern is adequately capitalized by sources other than those available through the 8(a) program.

c. The disadvantaged person(s) upon whom eligibility is based has demonstrated management skills.

d. The applicant concern's existence as a business entity cannot be contingent upon acceptance into the 8(a) program.

I would ask the Committee to consider the plight of entrepreneurs who have just recently started or acquired a business concern different from that which he or she may have operated in the past, or whose product line is new and innovative. In each case, the applicant may not be able to satisfy the first condition of the exception. The applicant may have no demonstrable "outstanding business experience, ability and educational background directly related to the applicant concern's primary business activity".

THE ADVENT OF COMPETITIVE BIDDING

The Fund is concerned that the new regulations requiring competition among 8(a) firms on all contracts above $3 million ($5 million in manufacturing) will have an adverse effect upon contract opportunities otherwise available to 8(a) firms.

Initially, the Minority Small Business and Capital Ownership Development Program was intended and designed to improve federal procurement opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals.

In the past, federal contract officers found the 8(a) program's sole-sourcing capability to be a useful and convenient mode of procurement, particularly where the agencies' competitive purchasing procedures were perceived to be cumbersome,

impractical and/or time-consuming.

The advent of competitive bidding among 8(a) firms has now made the program less attractive to contract officers because the incentive for its use (i.e., the ease of sole-sourcing) has been removed. Moreover, under the new regulations the SBA determines who wins the bid. If procurement officers shall now be required to comply with his or her agency's procurement guidelines as well the supervision of the SBA, a deterrent and disincentive to 8(a) utilization has been created.

As presently structured, competition may serve to decrease contract opportunities for 8(a) firms.

Accordingly, we strenuously urge the Committee to consider streamlining the competitive process so as to minimize any and all barriers and hindrances affecting 8(a) utilization. In this regard, effectuating different selection procedures might be appropriate, including the removal of the SBA as the selecting agent. It is hoped that such streamlining will, once again, render the program an attractive and meaningful procurement modality for agency procurement officials.

CREATION OF THE POSITION OF ASSOCIATE DEPUTY ADMINISTRATOR FOR FINANCE, INVESTMENT AND PROCUREMENT

The Fund has been informed that as part of the SBA's reorganizational efforts, it is the intention of that agency to create a new position to be known as Associate Deputy Administrator for Finance, Investment and Procurement. It is also our understanding that the position will have direct

supervisory authority over 3 program offices, including that of the Minority Small Business and Capital Ownership Development (MSB/COD).

To the extent the newly-created position provides supervisory control over the Associate Administrator of MSB/COD, the position's scope of authority is inconsistent with, and in derogation of, both the letter and spirit of the Small Business Act.

Section 4(b)(1) of the Small Business Act provides, in pertinent part, as follows:

> "One of the Associate Administrators shall be designated at the time of this appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee and shall be responsible to the Administrator for the formulation and executive of the policies and programs under sections 7(j) and 8(a) of this Act which provide assistance to minority small business concerns." (emphasis added)

Thus, by operation of law, the Associate Administrator of MSB/COD is the only position that is placed under the direct responsibility and supervision of the Administrator. Clearly then, the intent of the provision was to place the Office of MSD/COD at the highest levels within the SBA and to give its head direct access to the Administrator.

The intention of the Congress has not been changed, subsequent amendment of Section 4(b) notwithstanding. In 1988, the Congress retained this language even though other amendments to Section 4(b) were made. (See Section 401 of P.L. 100-656)

The retention of the language cannot be deemed by the SBA to be a mere oversight on the part of Congress. The retention of

that language exhibits an intention on the part of the Congress to maintain at least that portion of the SBA's present organizational structure.

The interposing of the new Deputy position is therefore contrary to the interest and will of the Congress. The Administrator may be free to distance herself from the remaining offices of Finance & Investment and Procurement Assistance. But direct access to her office by the Associate Administrator of MSB/COD is mandated by law; and therefore must be maintained.

Respectfully submitted,

Anthony W. Robinson, President
Minority Business Enterprise Legal
Defense and Education Fund, Inc.

Testimony of

Albert S. Jacquez
President
Latin American Manufacturers Association

before the

U.S. House of Representatives

Committee on Small Business

on

Implementation of P.L. 100-656

November 16, 1989

Washington, D.C.

INTRODUCTION

Good afternoon Mr. Chairman. I am honored that you have asked me to testify before your Committee today. I want to commend you and your colleagues on the Committee for holding this important oversight hearing. The sweeping changes mandated by P.L. 100-656 must be closely monitored to ensure that the business development goals of the legislation are achieved and that any unanticipated or unnecessary problems involving implementation are prevented.

LAMA played a lead role in organizing and coordinating a coalition of minority business groups to help ensure that the concerns of the minority business community were given serious consideration in the development of the 8(a) reform legislation. On the whole, Congress was responsive to many of our concerns and we believe that the Business Opportunity Development Reform Act of 1988, P.L. 100-656, represents a balanced and fair compromise.

Before I move on to the subject of today's hearing, I would like to briefly describe the purpose of the Latin American Manufacturers Association (LAMA) and tell you about our membership.

ASSOCIATION BACKGROUND

The LAMA is a national trade association promoting Hispanic enterprise, industry, and technology. Founded in 1973, LAMA's primary focus has been to open new markets for Hispanic business in both the public and private sectors. Over the years, LAMA has assisted in the award of over $500 million in contracts to Hispanic businesses nationwide.

LAMA is currently the only national Hispanic trade association involved in manufacturing and high technology requirements for the defense, aerospace, and related industries. Over the years, LAMA's technical assistance activity has included offering marketing training seminars for minority business owners, direct marketing assistance, and working with hundreds of prime suppliers, military installations, commercial corporations, and state and local governments across the country.

LAMA's involvement with the Small Business Administration's Section 8(a) program has been extensive. We have provided technical assistance for the SBA on 8(a) marketing techniques, the application process and on the requirements of P.L. 100-656. In fact, LAMA has conducted seminars on both the proposed 8(a) regulations and on the final regulations issued August 21. We have also prepared an 8(a) Handbook on P.L. 100-656 and a Marketing Guide for 8(a) program participants.

LAMA further serves as a national advocate for Hispanic business by supporting public policy affecting minority enterprise. LAMA is the only national Hispanic trade association with a ten-year track record of advocacy before the Federal government and the United States Congress on policy issues affecting minority enterprise. LAMA has testified on many occasions before congressional committees and Federal commissions, including the House and Senate Committees on Small Business and the U.S. Commission on Civil Rights, on matters affecting minority and small business.

LAMA supported the passage of Public Law 95-507 and advocated effectively against the negative features of Senator Morgan's 8(a) graduation proposals. More recently, LAMA advocated for the establishment a 5% minority business goal in Department of Defense procurements. We have also been actively involved in monitoring the implementation the Department of Defense's 5% minority business goal program, and supported legislation recently passed by Congress to extend the program for three additional years.

As a member of the slow-pay coalition, LAMA has been an advocate for legislation to ensure that small businesses doing work for the Federal government receive timely payment. Numerous position papers regarding matters affecting minority enterprise have been developed. LAMA has also worked closely with the Small Business Administration (SBA) as an advocate for increased Hispanic participation in the 8(a) program and for a more equitable allocation of other SBA resources.

In pursuit of strengthened relationships with other trade associations, LAMA has worked with organizations such as the National Association of Minority Contractors, (NAMC), the Minority Business Enterprise Legal Defense and Education Fund (MBELDEF), the American Association of MESBICS, NFIB, Small Business United, and the National Small Business Association.

LAMA MEMBERSHIP

LAMA currently represents over 500 members covering the spectrum from manufacturing and high technology to service and construction firms. The majority of the companies associated with LAMA are highly technical firms with a wide range of manufacturing and high tech capabilities including: castings, forgings, sheet metal fabrication, stampings, tool and die design, structural steel fabrication, metal coating and finishing, electronics, plastic molding, chemicals, wood and paper products, engineering, information sciences and telecommunications.

Through on-site visits, LAMA has gathered first-hand knowledge of the capabilities of hundreds of Hispanic manufacturing and technical firms throughout the United States. The Association currently has a data bank of over 700 of these firms and has raw data on over 4,500 similar companies.

ISSUES IN IMPLEMENTATION

Public Law 100-656 made major changes to the SBA's Section 8(a) Program. The new law presents both a danger and opportunity for Hispanic business owners. Some of the positive aspects of the law include: an increased term of participation in the program; increased developmental assistance for particpants; a streamlined application process; and strengthened subcontracting requirements, in the form of "liquidated damages" or penalties for large prime contractors that fail to make a good faith effort to meet small and minority business subcontracting goals.

There are also many potentially damaging provisions contained in the law, including the new competition requirements, contract support limitations, and and limits on a participant's personal net worth. LAMA strongly supports efforts to eliminate fraud and abuse, and agrees that fostering competitive viability should be a primary goal of any business development program. However, we believe that minority business development may be undermined by the competition requirements, particularly if the process is not streamlined.

The negotiated contracting method allows a firm to develop the necessary management, technical and financial infrastructure to achieve competitive viability. It provides a firm with a track record of performance on federal contract requirements on which it may not have had the opportunity to bid in full and open competition. In addition, one of the primary advantages of negotiated contracts is the speed with which requirements can be performed. If the 8(a) competition process is too slow or cumbersome, government contract officials may decide to utilize other, more efficient procurement methods.

Lack of Information

While it is too soon to adequately determine the impact of the new law on minority business development, early indications are disturbing. Many of the key provisions of the law have yet to be implemented and the reaction by government procurement officials to the SBA's final 8(a) regulations has been less than supportive.

There has been an almost total lack of information and guidance on the new law from the SBA. Confusion about the requirements of the law remains high, key provisions of the law have yet to be implemented and some of the basic forms required for program application and participation have yet to be disseminated. In short, the implementation of the law is chaotic.

Competition Requirements

This situation is particularly true for the competition requirements, which have been in effect since October 1, 1989. A number of government procurement officials have already complained that the process under which 8(a) competitions will be conducted is too complicated and unnecessarily lengthy. It is unclear whether government procurement officials will decline to utilize the 8(a) program for future procurements. However, if the past three months are any indication, the future of the 8(a) program does not appear bright, particularly where larger, more sophisticated contracts are involved.

To my knowledge, only one 8(a) contract has been competed and I doubt that any have been advertised in Commerce Business Daily (CBD), as required by regulation. While this pattern may only be an anomaly, it does suggest a reluctance to utilize the 8(a) program where competition is required.

SIC Codes

Another area of concern involves SIC Code designations and the implementation of Section 303(g), which prohbits the SBA from "inhibiting the logical business progression by a participating small business concern." As you know, this provision of the law was sponsored by Congressman Kweisi Mfume in response to reports that the SBA was arbitrarily inhibiting business development by restricting participants from performing under new SIC codes. Early indications suggest that the SBA is still preventing participants from developing logically by unnecessarily restricting additions of new SIC codes; a direct contravention of the law and its intent.

In addition, complaints have arisen about the manner in which SIC code designations are assigned. SIC code designations for particular contracts have been approved in the early stages of the procurement process, only to be assigned another classification by the SBA later in the process. This creates confusion and costs the program participant and the government time and money.

Summary

In summary, it is still too early to adequately assess the impact of the new law on the minority business community. At this time, however, it appears that a more concerted and sustained effort by the SBA to provide information and guidance is required. The Business Opportunity Development Reform Act of 1988 is a complicated and sometimes conflicting law. It is imperative that the public be thoroughly informed about the many changes the law mandates.

Again, I want to thank you for giving me the opportunity to testify this afternoon. I would be pleased to answer any questions you may have.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

NOT FOR RELEASE UNTIL
DELIVERY NOVEMBER 16, 1989

STATEMENT

OF

ALLAN V. BURMAN

DEPUTY ADMINISTRATOR AND ACTING

ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY

BEFORE THE

HOUSE COMMITTEE ON SMALL BUSINESS

NOVEMBER 16, 1989

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to discuss the Office of Federal Procurement Policy's (OFPP's) implementation of the Small Business Competitiveness Demonstration Program, Title VII of P.L. 100-656, the Business Opportunity Development Reform Act of 1988 ("the Act"). As requested by the Committee, I will also address the promulgation of the liquidated damages clause required by section 304 of the Act.

BACKGROUND

The Act made significant revisions to the Capital Ownership Development Program administered by the Small Business Administration and to Section 8(a) of the Small Business Act. In addition, the Act established the Small Business Competitiveness Demonstration Program (Program), which is being conducted under the test authority of section 15 of the OFPP Act (41 U.S.C. 413). The Small Business Administration (SBA) is designated as executive agent for conducting the test.

The Program is a response to the concern that a disproportionately large number of contracts in certain industries were being set aside for small businesses. At the same time, opportunities for small businesses were not being made available in other unrelated industries where small business participation rates were historically low.

The purposes of the Program are threefold: 1) to determine if small businesses can successfully compete on an unrestricted basis for Federal contracts; 2) to determine if the use of targeted goaling and management techniques can expand small business participation in areas where Federal contracting opportunities historically have been low, despite adequate numbers of qualified small businesses in the economy, and 3) to demonstrate whether the expanded use of full and open competition adversely affects small business participation in certain industry categories.

The Program establishes a four-year test covering ten agencies. Under the test, small business set-asides are eliminated in four industries: 1) construction, 2) refuse systems and related services, 3) architectural and engineering services, including surveying and mapping, and 4) nonnuclear ship repair. The Program also provides a significant protection for small businesses in these industries by requiring that an agency reinstitute small business set-asides for any covered industry which fails to achieve a 40 percent small business award goal. Once the 40 percent goal is attained, set-asides must once again be eliminated.

In addition, the Program establishes a 15 percent award goal for emerging small businesses. These are small businesses whose size is no greater than 50 percent of the size standard that applies to the procurement. To further the attainment of this goal, all contract opportunities valued at $25,000 or less are reserved for competition among emerging small businesses. This reserve amount is to be adjusted semiannually by OFPP if the 15% goal is not being attained in a covered industry.

Each agency covered by the Program also is required, in conjunction with SBA, to select ten industries to target for increased small business participation. These industries must be ones that historically have low rates of small business participation. SBA is monitoring this portion of

the Program.

DEMONSTRATION PROGRAM TEST PLAN

With the enactment of P.L.100-656, OFPP and SBA worked with the agencies covered by the Program to formulate the required policy directive and test plan.

OFPP and SBA issued an interim Policy Directive and Test Plan on December 22, 1988, to implement the Program. Comments on the interim Policy Directive and Test Plan were generally favorable. After carefully considering all of the comments, and making several changes in response to them, we issued the final Test Plan and Policy Directive on August 31, 1989.

The Test Plan closely follows the statutory requirements for the Program, filling in details where required. For example, the Test Plan requires that agencies monitor their goal attainment for each industry based on the individual standard industrial classification codes or product and service codes that comprise the industry. If an agency's small business participation rate for an individual code within the industry falls below 35 percent, set-asides for that code must be reinstituted even if overall goal attainment for the industry is 40 percent or more. This is to ensure that an effort is made to achieve goals evenly across all the codes within the industry.

The Test Plan also requires the covered agencies to consult with SBA in selecting the ten industry categories to

be targeted for increased small business participation. Although the industries chosen by each agency differ, there is some degree of overlap. Attachment 1 contains a listing of the targeted industry categories selected by each agency.

The Test Plan requires the covered agencies to report to OFPP and SBA on their goal attainment no later than 60 days after the end of each fiscal quarter. Included in the Test Plan is a format that agencies may use for these quarterly reports, as well as instructions for reporting to the Federal Procurement Data System (FPDS). Also included are appropriate clauses for use in solicitations and contracts.

As a result of comments we received on the interim Policy Directive and Test Plan, we added a provision that OFPP and SBA will provide annual reports to the public summarizing the results of the Program. In addition, we clarified several aspects of the Test Plan, including the instructions for providing size information in the Small Business Concern Representation clause and the scope of the monitoring requirements.

We did not, however, accept all of the comments we received. For example, a number of comments suggested expanding the test to include additional agencies such as Interior, Commerce, State and Justice. Interior was added by P.L. 101-37, the Business Opportunity Development Reform Act Technical Corrections Act, while we were evaluating these comments.

Our analysis showed that with the addition of Interior, the ten agencies already covered by the Program accounted for over 90 percent of the Federal contract awards in each of the industries included in the Program. The inclusion of any one of the remaining agencies would not result in an appreciable expansion of coverage for any of the industries. Therefore, we concluded that the amount of procurement awarded by the other agencies was not sufficient to warrant their addition to the Program.

STATUS OF DEMONSTRATION PROGRAM

As I mentioned, the Department of the Interior was added to the Program as a participating agency by P.L. 101-37, June 15, 1989. We met with Interior representatives to discuss their implementation of the Program, and were assured that they would do their best to comply as soon as possible. We understand that notices have been sent out to all Bureaus and Offices apprising them of Program requirements. In addition, Interior has recently completed a training program in seven cities for all Bureaus and Offices, and is also preparing a training video for future use.

With respect to the nine agencies who were originally designated as Program participants, most are experiencing at least some degree of difficulty in meeting the reporting requirements of the Program. These difficulties are primarily due to the short timeframe for Program implementation that was imposed by the Act. Both training

and changes to data systems require lead time that the covered agencies simply did not have. We believe, however, that all of the agencies are making reasonable efforts to fully comply with all Program requirements.

The third quarter of the Program ended on September 30, and quarterly reports will not be due until December 1, 1989. The reports covering the first two quarters of the Program show somewhat mixed results, although it appears that most agencies have been able to attain their goals for most industries. However, four agencies failed to meet the 40 percent goal for architectural and engineering (A/E) services, and one agency missed the goal for refuse systems and related services.

With respect to the emerging small business goals, it appears that most agencies are able to meet them. Exceptions are NASA for A/E services, VA for refuse systems and related services, and DOE for SIC Group 17 (Special Trade Contractors) in Construction.

I have included, as Attachment 2, a summary report of agency performance through June 30. I must caution, however, that since the data available at this time are of questionable quality, it is premature to draw meaningful conclusions about overall Program performance. As agencies gain more experience with the Program, we expect that the quality of the data will improve significantly.

EFFORTS TO IMPROVE REPORTING

We have been monitoring agency reporting procedures in an effort to resolve apparent problems as they arise. We compare the data reported to us with the data reported to the FPDS and bring discrepancies to the agency's attention. This enables the agency to pinpoint problem areas and make corrections where necessary. In addition, we have identified specific reporting problems in several agencies and are working to ensure that they are corrected.

We also met with all of the participating agencies in September to bring common problems to their attention and to identify areas that were possible sources of confusion. As a result, we issued a memorandum to agency procurement executives clarifying some requirements that had been misunderstood. These included the need for agencies to state in their quarterly reports the industries for which either small business set-asides or unrestricted competition are being reinstituted, so that we can insure that agencies are complying with Program requirements.

We will continue to work with the participating agencies as necessary to ensure compliance with reporting requirements. We believe that many of the problems that arose during the first two quarters have been resolved. However, we recognize that the Program is a rather complex one to implement and will require continued monitoring on our part.

DREDGING PROGRAM

The Act also requires the Secretary of the Army to conduct a program for expanding small and emerging small business participation in the dredging industry. It requires the establishment of specified enhanced goals for both categories of small businesses during Fiscal Years 1989-1992. As part of this program, contracting opportunities must be reserved for emerging small businesses if their estimated award value falls below an amount specified by OFPP upon the recommendation of the Secretary of the Army. This amount is to be reviewed by the Secretary and adjusted by OFPP as necessary on a semiannual basis.

The Army issued an interim rule implementing these requirements on April 18, 1989. The emerging small business reserve amount is now set at $600,000. The Army currently is reviewing the program statistics for the past fiscal year and will decide whether to recommend an adjustment based on the results of that review.

SUBCONTRACT REPORTING

An additional requirement established by the Act is for OFPP to devise and implement a simplified system to test the collection, reporting and monitoring of data on subcontract awards to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged businesses. This system is required to cover services in the industries covered by the Demonstration

Program as well as products or services from industry categories selected for participation in the small business expansion program. The purpose of this test is to capture the full range of small business and small disadvantaged business subcontracting at all tiers to determine the extent of participation by such firms in the Federal procurement market.

We are working on a proposed OFPP Policy Letter and test plan to implement this requirement. We have met with both industry and agency representatives to discuss how best to implement such a reporting system. We also are working with members of the Defense Acquisition Regulatory Council on this matter, since they have jurisdiction over Part 19 of the FAR.

We hope to issue the proposed Policy Letter and test plan shortly.

LIQUIDATED DAMAGES

Another provision of the Act that affects small businesses and their share of Federal contracts is section 304. Section 304 amended the Small Business Act by requiring the establishment of a Federal Acquisition Regulation (FAR) clause that stipulates the payment of liquidated damages in the event the contractor fails to make a good faith effort to achieve the goals of its subcontracting plan. Under the Small Business Act, offerors for certain contracts are required to establish plans for letting subcontracts to small and small disadvantaged businesses for goods and

services needed by the offeror in completing the contract. The major requirements of such a plan are: 1) a description of the efforts the contractor would undertake to ensure that small and small disadvantaged concerns have an opportunity to compete for subcontracts; and 2) dollar goals for subcontracting to small and small disadvantaged concerns.

This provision addresses the belief that maximum practicable utilization of small and small disadvantaged business concerns as subcontractors in government contracts is a matter of national interest with both social and economic implications. Moreover, failure of a contractor to comply with the terms of the subcontracting goals, which are part of the contract, deprives the Government of the full benefit of its bargain. However, in fairness to the contractor, subcontracting goals must be realistic and tailored to the individual contract and the amount of available subcontracting. With these objectives in mind an implementing rule was developed.

INTERIM RULE

On July 21, 1989, DOD, GSA, and NASA promulgated an interim final rule implementing the liquidated damages provisions. Under this rule, a prime contractor is required to pay liquidated damages upon a finding of lack of good faith effort to meet its small business subcontracting goals. The amount of liquidated damages assessed against the contractor would be the actual dollar amount by which the

contractor failed to achieve each subcontract goal. The contractor, however, is given an opportunity to demonstrate a good faith effort prior to the contracting officer's (CO) final decision. The CO's final decision would be subject to the Contracts Disputes Act. The assessment of liquidated damages may be in addition to any other remedies the Government may have under the contract.

Generally, there was agreement among the agencies concerning the revisions; two key areas of discussion, however, concerned the standard that would be used to determine a lack of good faith and the amount of liquidated damages that would be assessed a contractor. Since agreement could not be reached on these issues, and specifically on the amount of liquidated damages, the agencies sought OFPP's assistance in resolving the dispute.

Section 6(b) of the OFPP Act (41 U.S.C. 405(b)) gives the OFPP Administrator authority to prescribe government-wide regulations in any instance where the agencies are unable to agree. By letter dated July 10, 1989, I informed the agencies that the interim rule should provide for the payment of liquidated damages equal to the dollar amount by which the contractor fails to achieve the subcontracting goals specified in the approved subcontracting plan where the contractor willfully or intentionally fails to execute the plan.

The rule makes clear that contractors will have the opportunity to negotiate reasonable goals and a plan for meeting them. Contractors, therefore, have an opportunity to minimize the risk of disputes by negotiating a well-defined plan and identifying steps that, if taken, will avoid a finding of lack of good faith, even if planned goals are not met. However, if a contractor, having negotiated practical goals and reasonable steps for achieving them, willfully or intentionally fails to execute the plan, it is reasonable and appropriate to require the contractor to pay liquidated damages in the full amount by which actual subcontracting falls short of the goals. I believe that this approach is fair to contractors, encourages well-planned subcontracting activities, and achieves Congressional intent.

The liquidated damages rule became effective for all contracts awarded on or after August 15, 1989 and had a comment period that closed September 19, 1989. Over 40 comments have been received in reference to the rule and are being evaluated by FAR staff. We expect a final rule to be promulgated in the near future.

With respect to the impact of the rule on the small business community, we do not have enough experience with the rule to make any judgments on its impact or effectiveness. We, however, will work with the agencies to monitor its application to prime contractors in an attempt to assess its impact.

CONCLUSION

In summary, I believe the participating agencies are progressing in their implementation of the Small Business Demonstration Program. There are problems remaining, but that is to be expected given the short timeframe the agencies had to meet the rather detailed and complex Program requirements. We will continue to work with the participating agencies to resolve these remaining problems as well as any other concerns that arise.

That concludes my prepared remarks, Mr. Chairman. I will be happy to answer any questions you or other Committee members may have.

TARGETED INDUSTRY CATEGORIES

Department of Agriculture

FPDS Code	Potential SIC Code(s)	Description
J070	7378	Maintenance & Repair of ADPE
N070	7373/7379	Installation of ADPE
B544	8731/8999	Technology Studies
T099	2741/2759/ 7336/7389	Other Photo/Mapping/Printing Svs.
U006	8331/8249/8299	Vocational/Technical Training
W036	3555/3823/7359	Leasing Special Industrial Machinery
6810	2813/2819/2836 2869/2879/2891	Chemical Products
7021	3571/5734	ADP Central Processing Units
8105	2299/2673/2674	Bags and Sacks
8405	2329/2385	Outerwear-Men's

Department of Defense

	2834	Pharmaceutical Preparations
	3483	Ammunition, Exc. for Small Arms
	3489	Ordnance & Accessories, NEC
	3511	Turbines and Turbine Generator Sets
	3724	Aircraft Engines & Engine Parts
	3761	Guided Missiles & Space Vehicles
	3769	Space Vehicle Equipment, NEC
	3795	Tanks & Tank Components
	3812	Search and Navigation Equipment
	4899	Communication Services, NEC

Department of Energy

AG13	8731	R&D Energy-Coal-Advanced Development
AZ11	8731	Other Research & Development
AG83	8731	Conservation of Energy Advanced Development
AG93	8731	R&D/Other Energy-Advanced Dev.
R415	8731	Technology Sharing/Utilization Svs.
F108	4959	Hazardous Substance Removal Support
R405	8742	Operations Research Services
R419	8732	Educational Services
7042	3823	Mini & Micro Computer Control Devices
6625	3825	Electrical Electronic Measuring Instruments

FPDS Code	Potential SIC Codes	Description
Department of Health and Human Services		
G004	8742	Counseling/Training/Social Rehabilitation Services
J074	7699	Maintenance, Repair and Rebuilding of Equipment
K099	7699	Modification of Eqipment (Misc)
Q201	8099/8742	General Health Care Services
R406	8742	Policy Review/Development Svs.
R497	7299	Personal Services
6505	2833/2834/2835/2836	Drugs and Biologics
7045	3572/3577/3579	ADP Supplies
7110	5021	Office Furniture
7510	5112	Office Supplies
Department of Transportation		
W070	7377	Lease/Rental General Purposes ADP
R414	8748	System Engineering Services Only
J028/J010	7699	Maintenance Engine/Turbine and Maintenance, Repair, Rebuilding of Weapons
5840/AT30	3812	Radar Equipment and Navigation & Navigational Aids R&D
5820	3663	Radio/TV Communication Equipment (except airborne)
7020	3571	ADP, CPU, Analog, Digital, Hybrid
1929	3732	Rescue Vessels
7035	3577	ADP Accessorial Equipment
R305/R302	7371	ADP Teleprocessing and System Development & Programming Servs.
X119		Lease/Rental Facilities
Environmental Protection Agency		
R301	7376	ADP Facilities Mgmt. Svs.
R399	7379	Other ADP Services
F999	7389	Other Environmental Services, Studies & Analytical Support
AZ11	8733	Other Research & Development
AH31	8733	Water Pollution Research & Dev.
F103	8733	Water Quality Support Svs.
F099	8734	Other Natural Resources Mgmt. Svs.
F101	8734	Air Quality Support Svs.
R799	8741	Other Mgmt. Support Svs.
R421	8742	Other Business Consultant Svs.

FPDS Code	Potential SIC Code(s)	Description
General Services Administration		
J099	7629/7349/7699	Maintenance & Repair of Misc. Equip.
R302	7371/7372	ADP Systems & Development & Programmin
R306	7371/7379/7372	Software Development/ADP Systems Analy
R399	7371/7372/7373/7374	ADP Services
R699	7374/7372	Administrative Support Svs.
R707	7375/7374/7376	Contract Procurement & Acquisition Support Services
6840	7342/2879	Pest Control Agents & Disinfectant
7520	2541/3579	Office Devices & Accessories
7610	2731/2752/2759	Books and Pamphlets
9310	2621/2657/2652/2631	Paper and Paper Board
National Aeronautics and Space Administration		
	3571	Electronic Computers
	3577	Computer Peripheral Equipment, NEC
	3661	Telephone & Telegraph Apparatus
	3663	Radio & TV Communications Equipment
	3721	Aircraft
	3761	Guided Missiles & Space Vehicles
	3764	Space Propulsion Units and Parts
	3769	Space Vehicle Equipment, NEC
	3812	Search and Navigation Equipment
	3827	Optical Instruments & Lenses
	7371	Computer Programming Services
	7373	Computer Integrated Systems Design
	7379	Computer Related Services, NEC
Department of Veterans Affairs		
AN90	8733	Medical Research
D307	7373	Automated Information System Design and Integration Services
D314	7371	ADP Acquisition Support Services
T099	7334	Other Photographic Mapping & Printing
W070	7377/7372	Lease of General Purpose ADPE, Softwar
W074	7359	Lease of Office Machines & Visible Record Equipment
J036	7699	Maintenance of Special Industry Machin
6532	3842	Protective Clothing: 1. Removal of Hazardous Materials 2. Against Infectious Disease 3. Gloves, Patient Exam 4. Gloves, Surgical
6770	7872	Film, Processed

Attachment 2

Small Business Participation Under the
Small Business Competitiveness Demonstration Program
For the Designated Industry Groups
Fiscal Year 1989
January 1 - June 30, 1989
(Based on Agency Reports to OFPP)

Designated Group	VA		NASA		DOT		DOE		GSA		DOA		DOD		HHS		EPA	
	SB	ESB	SB	ESB	SB	ESB	SB	ESB	SB	ESB	SB	ESB	SB	ESB	SB	ESB	SB	ESB
Construction																		
Group 15	100%	33%	100%	95%	89%	27%	78%	32%	88%	67%	100%	90%	99%	76%	-	-	-	-
Group 16	100%	15%	100%	100%	77%	44%	-	-	62%	40%	85%	71%	99%	35%	-	-	-	-
Group 17	100%	56%	100%	19%	85%	62%	99%	3%	98%	85%	92%	48%	93%	77%	-	-	100%*	-
Refuse	100%	5%	-	-	100%	100%	-	-	21%	21%	100%	93%	-	-	-	-	-	-
A&E	100%	64%	5%	0%	47%	22%	8%	0%	-	-	89%	62%	20%	16%	-	-	2%	-
Non-Nuclear Ship Repair	-	-	-	-	90%	72%	-	-	-	-	-	-	-	-	-	-	-	-

Footnotes:
SB - Small Business
ESB - Emerging Small Business
(-) No Activity Reported

*Aggregate percentage for all construction

TESTIMONY OF KAREN HASTIE WILLIAMS
FORMER ADMINISTRATOR OFPP

BEFORE

THE HOUSE COMMITTEE ON SMALL BUSINESS

ON THE IMPLEMENTATION OF

BUSINESS OPPORTUNITY DEVELOPMENT REFORM ACT OF 1988 (P.L.100-656)

TITLE VII: SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

NOVEMBER 16, 1989

TESTIMONY OF KAREN HASTIE WILLIAMS

Mr. Chairman, my name is Karen Hastie Williams. I am pleased to have been invited to testify before the House Small Business Committee as it conducts oversight hearings on the implementation of the Minority Business Opportunity Reform Act of 1988. By way of background, I am currently a partner in the Washington law firm of Crowell & Moring where I specialize in public contract law matters. Among my professional associations I have worked closely with the ABA's Public Contract Law Section of which I am currently an officer and the National Contract Management Association on whose Board of Advisors I serve.

Prior to joining the firm I served as the Administrator of the Office of Federal Procurement Policy in the Office of Management and Budget. I have also had the privilege of working with the Congress during my tenure as Chief Counsel of the Senate Committee on the Budget under the able leadership of then Senator Edmund S. Muskie.

BACKGROUND

With this background in procurement law issues in both public and private sectors, I was invited by your Senate colleague, Senator Dixon, to testify last April before the Senate Small Business Committee on options for a test program to enhance small business participation within certain industries in the Federal marketplace. That hearing developed the foundation of the competitiveness pilot program that is now Title VII of the Minority Business Opportunity Act, the Small Business Competitiveness Demonstration Program. It is the implementation of that Title through agency regulations and procedures that I will address today.

Mr. Chairman, you and your colleagues on the Committee are to be commended for early review of the implementation of Title VII. This oversight responsibility is one of great importance to assure that the intent of Congress is carried out. Failure to oversee on a timely basis the effectiveness and workability of a program leaves the Congress open to criticism that it ignores any accountability or interest in programs after they are enacted.

While such practices might exist in other committees, your Small Business Committee certainly deserves no such criticism. Indeed, nothing could be further from the truth in this case, as the Chairman has already demonstrated by convening this hearing.

I share the Committee's commitment to assure effective implementation of this creative pilot initiative. If additional direction to the agencies is needed, now is the time to provide it.

TITLE VII in Perspective

Before looking at the data and track record for key agencies and their implementation plans, I would like to say a few words to put the program in context. Since the 1950's, Congress has been committed to the fundamental premise that small business should receive a fair proportion of the procurement dollars that are spent by the Federal government.

While there has been general agreement with this proposition in the business community, concern had been expressed in recent years that the combined impact of the small business set-aside program and the so-called "Rule of Two" was to award a disproportionate number of set-aside contracts to small business in certain industries in which a concentration of small businesses exist. The Senate Small Business Committee heard testimony from impacted industries, including construction, architects and engineers, and refuse systems operators who stressed the need for the Congress to focus on the participation level and not simply set-aside contracts for small businesses in the Federal marketplace.

Armed with this data and after further research, Senator Dixon proposed his test program focused on particular industries. The premise of the program was to demonstrate whether in those industries dominated by small business that the marketplace forces would serve to establish a fair distribution of contracts to small businesses without the need for artificial aids such as the Rule of Two and set-asides. In addition, the program was intended to evaluate the degree of competitiveness within these industries and in the absence of the artificial statutory and regulatory constraints, the natural market forces would be permitted to operate.

Moreover, the Congress recognized the sensitivity and special considerations behind the Sections 8(a) and 120F programs. As of yet, it did not alter the applicable protections on this market. Also, minority firms continue to be eligible for the demonstration program which has the potential to increase participation by minorities and increase competition among minority firms.

With additional refinements arising in the legislative process and constructive suggestions from industry, from the agencies and from key members of the House and Senate, the final form of the Small Business Competitiveness Demonstration Program became law as Title VII of the Act in October, 1988. Among the key features of the law were the following:

- o establishment of the level of "fair proportion" at 40% on an industry by industry basis within each agency
- o exclusive reserve of all contracts under $25,000 for small businesses in the bottom half of the size standard
- o requirement for identification of 10 under-represented industries as targets for enhanced marketing efforts
- o study of subcontract allocation to small businesses of Federal procurement dollars

In the marketplace context, the Congress clearly understood that opportunities existed for creative procurement strategies in the underrepresented sector. Moreover, the safety net for the truly small, emerging companies was provided with the establishment of a reserve for all contracts under $25,000 focused on companies in the bottom half of the size standard for that particular procurement. Mr. Chairman, you are to be commended for your contribution to the context of the program in light of its potential adverse impact on the emerging growth companies. Such companies owe thanks to this Committee for its foresight and leadership on these issues.

IMPLEMENTING REGULATIONS

The OFPP worked diligently to develop government-wide guidance to assist the agencies in implementation of the pilot

program. In a cooperative manner, the agencies worked with OFPP to establish clear guidelines on the scope and measurement of performance under the pilot program but at the same time to permit flexibility in agency identification of underrepresented industries that would meet the particularized needs of that agency.

With this detailed guidance which was incorporated into the Federal Acquisition Regulation, the agencies could then begin the process of communicating to contracting officers, small business specialists, and potential customers how the demonstration program would work. For each agency to which the program applied the Head of the Agency was directed to procure products and services within express product and service codes(PSC) and to monitor the level of acquisitions by industry on a quarterly basis.

Moreover, each agency, after consultation with the Administrator of the Small Business Administration, was responsible for identifying 10 underrepresented industries in terms of percentage of contracts awarded and to spell out an aggressive program for increasing their contract awards at the agency. The SBA cooperated extremely well with the operating agencies in providing economic data as to the industries with significant potential for expansion of participation.

IMPLEMENTATION STATUS

To date each of the identified agencies has made some progress with respect to implementation of the program. Depending on the size of the agency and the scope of its requirements related to the demonstration program, the results to date have been mixed.

While I will address the data in a moment, Mr. Chairman, I believe that it is essential that this Committee view the information it receives today in a broader context. The data received to date is only preliminary because the program moved off to a slow start. At this early stage of implementation, it seems to me that the appropriate perspective on this significant change in the procurement process is to look at the procedures and systems that have been put into place within each agency, and analyze the industry trends developing from the early data submitted. There is too little data available at this early stage to attempt to dissect the individual PSC numbers, and make premature judgments on the program's success. Certainly, there is insufficient data available to support a decision by any participating agency to reinstate set-aside procedures. Even if a particular agency's small business participation percentage may be declining, more data is necessary before reinstatement action would be appropriate.

Mr. Chairman, I believe that my friend and soon-to-be successor at OFPP, Dr. Burman, will address the issue of policies and procedures in place at the agencies. I would like to discuss the trend lines that I see from the data provided to me from the Federal Procurement Data Center. I hope that my suggestions will be useful 1) to the Congress--in order to better understand how the program is working -- 2) to the agencies to obtain the benefit from the experiences of other agencies, and 3) to potential contractors to provide a clear message about the procurements that are eligible for this program.

DATA ANALYSIS

From a review of the data submitted to the Federal Procurement Data Center (FPDC) it appears that many of the agencies have been slow to accumulate their data and report that data in the manner required by Title VII. Without an accurate breakdown of each industry by agency, it is difficult to evaluate the effort being made by each agency to comply with the demonstration program requirements.

The gaps in the data are disappointing. They suggest that a better job might be done by OFPP, SBA and industry in communicating with the contracting officers and technical specialists about the need to submit accurate reports on the nature of the businesses to which awards are being made under the demonstration program. With encouragement from the public and private sectors

alike, I believe that the agencies will respond better. The Defense Department and the Military Services in particular might be encouraged by OFPP and the SBA to make a greater effort to collect and report their data properly.

On the brighter side, the composite data from the FPDC illustrates that the trend in awards in some designated industry categories reflects marketplace conditions in which more than 40% of contract dollars are being awarded to small businesses without set-asides. The opportunity for dynamic interchange among the potential contractors and the Government require encouragement and support for those individuals and agencies that are cooperating with the program.

Looking at the data it appears that the greatest concentration of contract awards under the demonstration program is in those areas where the need is constant and the number of contract actions is large. By far, the largest number of reported actions are in the construction and waste systems industries. Much lower numbers have been reported for architectural and engineering services. It is not clear from the data whether the participating agencies have understood the requirement to waive their set-aside practices in favor of the demonstration program's procedures. The preliminary reports do reflect somewhat lower percentages of awards to small businesses than reported before the demonstration program became effective.

CONCLUSION

One of the most important results of the program is that it has focused needed attention on the concept of actual small business participation at all levels of federal procurement. Although developing and reporting the data uniformly has taken more time than was expected, at least the reporting mechanism is in place. I believe it would be premature for Congress to scold those agencies that do not yet have a full implementation process in place. However, it might be appropriate to remind those agencies that they themselves will enjoy economic benefits from increased competition created by the demonstration program. It also would be appropriate for the Congress to make an assessment of where the agencies have failed to implement the program properly and recommend appropriate mid-stream corrections.

Mr. Chairman, I appreciate the opportunity to testify before the Committee and would be pleased to respond to any questions that members may have.

Statement of
The Associated General Contractors of America
Presented to the

Committee on Small Business
of the
U.S. House of Representatives
on the Implementation of the
Minority Business Opportunity Reform Act of 1988, P.L. 100-656
November 16, 1989

AGC is:

- More than 32,500 firms including 8,000 of America's leading general contracting firms responsible for the employment of 3,500,000-plus employees;
- 102 chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities.

The Associated General Contractors of America
1957 E Street N.W., Washington, D.C. 20006-5199, (202) 393-2040, Fax (202) 347-4004

The Associated General Contractors of America is a construction trade association representing more than 32,500 firms, including 8,000 general contracting firms.

AGC appreciates this opportunity to testify on the implementation of the Small Business Competitiveness Demonstration Program. The Demonstration Program is of particular importance to the Associated General Contractors of America, which is composed predominantly of small, family-owned firms competing in local, geographic markets. Eighty-five percent of AGC's membership has gross receipts of less than $10 million annually; ninety percent qualify under the Small Business Administration's definition of a small business.

AGC expressed strong support for the Demonstration Program before this Committee when the Demonstration Program was considered last year. AGC stated at that time that small construction contractors can successfully compete, on an open and unrestricted basis, in the federal construction market. AGC believed then, as it does today, that awarding public construction contracts without restriction will enhance competition in the federal marketplace for the benefit of the entire construction industry and the government alike. Although AGC has a few concerns concerning the implementation of the Demonstration Program, we come here today to praise this program.

AGC's review of the Demonstration Program's test results to date supports the belief embodied in the legislation that small businesses can compete on an open and unrestricted basis in the federal construction market. AGC's review of the Demonstration Program's test results, as well as the Office of Federal Procurement Policy's (OFPP) more comprehensive analysis of test results, reveals that small

business is, in most cases, exceeding the program's 40 percent participation requirement. While AGC understands that set-asides may have been reinstituted within one or two agencies in other designated industry groups, AGC is not aware of the reinstitution of set-asides in construction by any awarding agency.

The test results to date indicate that, in the construction industry, for the award of federal construction contracts, small business is far exceeding the 40 percent participation requirement. In fact, data for the first quarter in which the Demonstration Program was in effect shows that in a number of agencies, and in almost all Standard Industrial Classification (SIC) codes, small businesses were awarded 100 percent of the construction procurements.

This data verifies what AGC has always known -- that the construction industry is primarily comprised of small businesses which are able to effectively compete on an open and unrestricted basis for federal construction contracts.

Recommendation For Streamlining Demonstration Program

AGC does have a recommendation to streamline the agencies' implementation of the program.

AGC continues to be concerned about how the awarding agencies will monitor and implement the re-institution of set-asides in the construction industry. The final policy directive issued by the Small Business Administration and OFPP on September 12, 1989 states that, "if goal attainment for any individual SIC code within one of the major groups comprising the construction industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual SIC code, even if overall goal attainment in the major groups is 40 percent or more."

AGC strongly believes that, with regard to construction, this aspect of the

Demonstration Program has been and will continue to be much too complicated for the agencies to administer because it fails to recognize the "multi-SIC code" nature of construction projects.

An example of how this problem is exacerbated in the construction industry illustrates the point. A federal agency advertises a solicitation for a project which includes some highway construction, several small bridges, and extensive utility relocation work. This project would involve, at a minimum, at least 3 different SIC codes -- 1611 - Highway and Street Construction, 1622 - Bridge Tunnel and Elevated Highway Construction, and 1623 - Water, Sewer, and Pipelines, Communication and Power Line Construction.

The agency is faced with determining the SIC code to classify the contract, and in this example, it would not be entirely clear which code is appropriate. Would the proper classification be 1611, 1622 or 1623?

Virtually every construction project is a "multi-code" project. There are, therefore, no assurances that agency award data will reflect actual small business participation in any particular SIC code. Therefore, small business set-asides may well be reinstituted by an agency in an SIC code which is actually receiving adequate small business participation.

AGC recommends that, <u>for construction</u>, agencies monitor the Demonstration Program on the basis of major industry <u>groups</u>: Major Group 15 - Building Construction, General Contractors and Operative Builders; Major Group 16 - Construction other than Building Construction, General Contractors; and Major Group 17 - Construction, Special Trade Contractors.

AGC believes such a change would greatly ease the agencies' task of

administering the Demonstration Program without diminishing their ability to achieve at least 40 percent small business participation across all of the SIC codes which comprise these industry groups.

AGC believes this recommendation would greatly assist participating agencies in complying with the Demonstration Program's reporting requirements. Under the Demonstration Program, each agency must collect data on all contracts awarded on a quarterly basis, which must be submitted to OFPP after the end of each quarter. The initial review by each participating agency was to be completed by June 30, 1989, based on data for January 1 to March 31 1989. The second quarterly review was to be based on data from January 1, 1989 to June 30, 1989, and the third quarterly review will be based on data from January 1, 1989 through September 30, 1989. Thereafter, each review is based on the aggregate of contract award data from the four preceding quarters.

AGC's own review of the first quarterly reports, in addition to conversations with officials at OFPP, reveals that a large percentage of the agencies were not able to comply with the reporting requirements, and some agencies are still not complying with the statutory reporting requirements. Admittedly, agencies were not provided with a great deal of time to prepare for the Demonstration Program's reporting requirements and some problems might logically be anticipated. Nonetheless, the Demonstration Program is fast approaching the end of the first year of a four year program. If the program is to genuinely test on a long term basis that small business set-asides are unnecessary because small businesses are receiving a fair share of federal contracts, the Demonstration Program must produce sufficient data to justify these conclusions. The complexity of the present reporting requirements, as evidenced

by reporting in construction on the basis of individual SIC codes, makes it virtually impossible for agencies to comply with the the Demonstration Program's reporting requirements.

Department Of Defense's Section 1207 Program

An unfortunate byproduct of the Department of Defense's implementation of the Demonstration Program has been the expansion of DOD's Section 1207 program, which seeks to achieve an overall five percent small disadvantaged business utilization level in the award of DOD contracts.

DOD's implementing guidance for the Demonstration Program, issued in the January 27, 1989 Federal Register, wrongly deleted the exception from small disadvantaged business (SDB) set-asides under Section 1207 for contracts which traditionally had been set aside by DOD for small businesses. In construction, this consisted of all contracts under $2 million in value.

Section 806 of DOD's Authorization Act for Fiscal Years 1988 and 1989 (P.L. 100-180) clearly exempted contracts previously procured under small business set-asides from being converted into Section 1207 SDB set-asides. In fact, DOD issued regulations on February 19, 1988 recognizing this by providing for an exception to SDB set-asides for construction contracts of less than $2 million.

The Demonstration Program has done nothing to alter the clear Congressional intent contained in P.L. 100-180, that non-disadvantaged small businesses be protected from initiatives authorized by Section 1207. Therefore, the Demonstration Program must be read in conjunction with Section 806 of P.L. 100-180, and the conclusion must be reached that Congress fully intended to preserve the status quo as far as SDB set-asides, and exceptions to SDB set-asides, were concerned.

By opening that class of contracts to SDB set-asides which had previously been set aside for small businesses, DOD is using the Small Business Competitiveness Demonstration Program to expand the Section 1207 SDB set-aside program. To the contrary, Congress has specifically stated in Title VII of P.L. 100-656 that the Demonstration Program "provision specifically preserved unchanged the various authorities to set aside contracting opportunities to assist disadvantaged small business concerns, including... Section 1207 of Public Law 99-661..."

AGC urges this committee to prevail upon DOD to restore the exceptions to Section 1207 SDB program set-asides contained in Section 219.502.72 (b) (1) (2), and (3) of its regulations.

Liquidated Damages

While not part of Title VII of the Minority Business Opportunity Reform Act of 1988, AGC would like to take this opportunity to comment on one other provision of the Act that has serious consequences for all prime contractors who perform work for the federal government -- Section 304 of the Act involving the assessment of liquidated damages.

Public Law 95-507 (enacted in 1978) imposed specific subcontracting requirements on federal contractors which did not qualify as small businesses. The statute required federal contracts and contract modifications in excess of $500,000 (or $1 million in the case of construction contracts) to include provisions for subcontracting with small business firms and small disadvantaged businesses (SDBs). The small business and SDB plans must include separate percentage subcontracting goals for each group.

The Business Opportunity Development Reform Act of 1988 has added that

large business prime contractors failing to make "good faith efforts" to meet their subcontracting goals must pay "liquidated damages."

The Department of Defense, General Services Administration, and NASA, on July 21, 1989, issued interim regulations implementing this liquidated damages provision. The interim regulations stated that:

- A failure to make a good faith effort is a willful or intentional failure to perform in accordance with the requirements of a subcontracting plan, or intentional action to frustrate the plan.
- Subcontracting goals should be set at a level that the parties reasonably expect to result from good faith efforts to use small businesses and SDBs. No goal should be negotiated upward if a higher goal will significantly increase the government's cost or seriously impede the attainment of acquisition objectives.
- Liquidated damages will be assessed against a prime contractor at the actual dollar amount by which the contractor failed to achieve each subcontracting goal.
- In determining whether a contractor failed to make a good faith effort to comply with its subcontracting plan, a contracting officer must look to the totality of the contractor's actions. A contractor's failure to meet its subcontracting goals will not, by itself, justify the conclusion that the contractor failed to make a good faith effort.
- A failure to make good faith effort involves: (1) a failure to attempt to identify, contact, solicit, or consider small businesses or SDBs; (2) a failure to designate a company official to administer the subcontracting program; (3) a failure to maintain records or otherwise demonstrate procedures adopted to

comply with the plan; or (4) the adoption of company policies or procedures which have as their objectives the frustration of the objectives of the plan.

- A contractor has the right to a hearing to demonstrate what good faith efforts have been made before a contracting officer issues a final decision with regard to liquidated damages. The contracting officer's final decision is appealable under the contract in accordance with the Contract Disputes Act.

On September 19, 1989, AGC submitted comments to the FAR Secretariat on these interim regulations. In summary, AGC's comments emphasized the following points:

- AGC supports the "good faith efforts" definition included in the regulations, but recommends that any willful or intentional action that would evidence a lack of good faith must be an action of the contractor and not a third party.
- The penalty provision turns subcontracting goals into quotas.
- The interim regulations create potential for abuse by contracting officers.
- The appeal process should provide a contractor a minimum of 30 days (or a longer period if necessary) to respond to a contracting officer's determination that a contractor has failed to make a good faith effort to comply with its subcontracting plan, rather than 10 days.
- A contractor should always be provided the option of discussing its good faith efforts with a contracting officer instead of the proposed regulations' discretionary provision which only allows such discussions "when appropriate."
- The interim regulations should be modified to state clearly that compliance with the six steps required to be taken for subcontracting plans under Section 8(d) (6) of the Small Business Act will satisfy a contractor's good faith efforts

requirement.

Conclusion

AGC appreciates this opportunity to comment on the Business Opportunity Development Reform Act of 1988, and, in particular, to express our strong support for Title VII of the Act, the Small Business Competitiveness Demonstration Program. AGC congratulates this Committee for all the positive work it has done to make the Demonstration Program a reality.