NO. 66677-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

FRANCESCA GIUSTI,

Appellant,

v.

CSK AUTO, INC., an Arizona Corporation doing business in Washington as SCHUCK'S AUTO SUPPLY, and KEY BANK NATIONAL ASSOCIATION, a bank incorporated in the District of Columbia,

,

Respondents.

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

Page

Table of Authorities iv

A. INTRODUCTION 1

B. ASSIGNMENTS OF ERROR 1

C. STATEMENT OF THE CASE 2

1. Statement of Facts 2

2. Procedural History 4

D. STANDARD OF REVIEW 7

E. ARGUMENT 8

(1) Respondents owe a High Standard of Care to Business Invitees like Appellant 8

(2) Applicable Seattle Building Codes to defendant's building and ramp in question. 13

a. Seattle Building Code 1950s 14

b. Seattle Building Code 1970s 16

c. Seattle Building Code 1998 17

d. Seattle Building Code 2003 17

3). Violations of the Seattle Building Codes was evidence of negligence and Appellant should have able to present them to the jury. 18

4) The Americans with Disability Regulations were also applicable 21

5) The Evolving Safety Regulations and Building Codes were Notice to Respondents of Potential Hazards. 23

G. CONCLUSION 26

TABLE OF AUTHORITIES

Page

Cases

Baltzelle v. Doces Sixth Ave., Inc., 5 Wn.App. 771, 773-774, 490 P.2d 1331 (Div. 1 1977). 15

Barrett v. Lucky Seven Saloon, 159 Wn.2d 259, 96 P.3d 386 (2004)..... 11

Bell v. State, 147 Wash.2d 166, 176, 52 P.3d 503 (2002). 12

Blancher v. Bank of California, 4 Wn.2d 1, 286 P.2d 92 (1955); 15

Carlyle v. Safeway Stores, Inc., 78 Wn. App. 272, 275 (1995)..... 27

DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 372 P.2d 193 (1962 15

Egede-Nissan v. Crystal Mountain, 93 Wn.2d 127, 606 P.2d 1214 (1980);..... 14, 24

Faye v. Allied Stores Corp. 42 Wn.2d 512, 262 P.2d 189 (1953). 19

Fredrickson v. Bertolino's Tacoma, Inc., 131 Wn.App. 183, 188-89, 127 P.3d 5 (2005)..... 13

Gaeta v. Seattle City Light, 54 Wn.App. 603, at 609, 774 P.2d 1255, *review denied*, 113 Wn.2d 1020 (1989)..... 15

Hansen v. Friend, 188 Wn.2d 476, 824 P.2d 483 (1992),..... 24

Hartman v. Port of Seattle, 63 Wn.2d 897, 389 P.2d 669 (1964)..... 14

Hemmen v. Clark's Restaurant Enterprises, 72 Wn.2d 690, 434 P.2d 729 (1967);..... 14

Hue v. Farmboy Spray Co., 127 Wash.2d 67, 92, 896 P.2d 682 (1995) .. 12

Iwai v. State of Washington, 129 Wn.2d 84, 96, 915 P.2d 1089 (1996)..... 27, 28

Jackson v. City of Seattle, 158 Wn.App. 647, 244 P.3d 425, 428 (Div. I 2010..... 18

James v. Burchett, 15 Wn.2d 119, 128, 129 P.2d 790 (1942); 17

Johnson v. State, 77 Wn. App. 934, 904 P.2d 299 (1995)..... 14,. 24

Melville v. State, 115 Wn.2d 34, 36-37, 793 P.2d 952 *(En Banc* 1990)... 18

Memel v. Reimer, 85 Wn.2d 685, 689, 538 P.2d 517 (1975)..... 14

Pettit v. Dwoskin, 68 P.2d 1088 (Div. 1)
review denied 151 Wn.2d 1011 (2003)..... 17, 27

Pimental v. Roundup Co., 100 Wn.2d 39, 44, 666 P.2d 888 (1983..... 28

Reuter v. Rhodes Inv. Co., 71 Wn.2d 31, 425 P.2d 929 (Wash. 1967)..... 20

Simpson v. Doe, 39 Wn.2d 934, 239 P.2d 1051 (1952)..... 16

Smith v. B&I Sales Co., 74 Wn.2d 151, 443 P.2d 819 (1968 16

State v. Griffin, 100 Wash.2d 417, 420, 670 P.2d 265 (1983))..... 12

State v. Williams, 132 Wash.2d 248, 259-60, 937 P.2d 1052 (1997) 12

Stone v. City of Seattle, 64 Wn.2d 166, 170, 391 P.2d 179 (1964)..... 17

Strong v. Seattle Stevedore Co., 1 Wn.App. 898, 900-01,
466 P.2d 545 (Div. 2 1970)..... 14

Tincani v. Inland Emplire Zoological Soc'y, 1
24 Wn.2d 121, 127-28, 875 P.2d 621 (1994)..... 12, 13

Tyler v. F.W. Woolworth Co., 181 Wash 125, 41 P.2d 1093 (1935 15

Wardhaugh v. Weisfield's Inc., 43 Wn.2d 865, 264 P.2d 879 (1953); 15, 24

Younce v. Ferguson, 106 Wn.2d 658, 666-67, 724 P.2d 991 (1986)..... 13, 14

Zenkina v. Sisters of Providence in Wash., Inc., 83 Wn.App. 556, 560-61,
922 P.2d 171 (Div. 1 1996)..... 13

Statutes

28 CFR 36 26

42 U.S.C. 12101 26

City of Seattle Ordinance 72200 18

City of Seattle Ordinance No. 119079 21
RCW 5.40.050. 27

Other Authorities

ICC A117.1 22
Restatement (Second) of Torts § 286 (1965 17
RESTATEMENT (SECOND) OF TORTS, at 286 (1965). 24
Restatement of the Law 2d, Torts (1965), Section 286 17
Section 286 of the Restatement of Torts (Second) 26
WPI 60.03 23

A. INTRODUCTION

This appeal arises out of personal injury case in which Appellant Francesca Giusti fell while patronizing one of Respondent's stores, located in northwest Seattle. Appellant was leaving the store and fell at the end of a ramp or sidewalk where there was an unmarked curb-cut. It was not known when the ramp in question was built. The court granted defendant's motion in limine to exclude all regulations that ordinances that were in effect during the existence of the ramp and curb cut in question.

B. ASSIGNMENTS OF ERROR

The following issue pertains to all of the assignments of error:

1. Oral Order Granting Defendants' Motion in Limine No: 6 to exclude evidence of Negligence in the form of Ordinances and Standards on or about December 7, 2010, which excluded all evidence of Ordinances or Building Codes concerning the ramp at issue where plaintiff was injured;
2. Denial of Plaintiff's Proposed Jury Instruction No 11 regarding violation of Building Codes or Ordinances as evidence of negligence.

C. STATEMENT OF THE CASE

1. Statement of Facts

On March 14, 2006, Appellant Francesca Giusti went to Respondent's store located at 5220 15th Avenue NW, in the Ballard area of Seattle to purchase a headlight. CP 90.

This store that Appellant entered was constructed in 1951. CP 32. It appears that it has been an auto parts store from the beginning, and was likely run by Schuck's Auto Supply which had already been in existence for several decades. CP 32, CP 200. Jules and Eddie Trump combine three companies, Checker, Schuck's, and Kragen chains to form CSK Auto, then known as Northern Automotive in 1987.[1] CSK Auto, Inc. has in turn been acquired by O'Reilly Auto Parts on July 11, 2008.[2]

After purchasing the headlight, an employee of Respondent offered to accompany Appellant to her car in the store's parking lot to show her how to install the headlight. CP 92. As she left, following the employee, she walked out the door of the store and down the 16 foot long concrete ramp. CP 92, 131. The outside edges of the ramp were painted yellow but there are no markings or paint to indicate the changes of slope, including cross-slopes, at the end of the ramp. CP 119.

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[1] (http://www.fundinguniverse.com/ company-histories /CSK-Auto-Corporation-Company-History.html).

[2] (http://images.oreillyauto.com/uploads/pdf/cskPressRelease.pdf).

Francesca Giusti walked down on the right side of the ramp looking out at the parking lot. CP 92. As Ms. Giusti approached the bottom of the ramp, her left foot encountered an unexpected, abrupt change of slope of the unmarked curb cut at the end of the ramp. Near the bottom of the ramp, she put her right foot on the flat portion to the right of the curb cut. She then put her left foot on the curb cut. She was not expecting her left foot to drop down lower than her right foot so she fell hard to the left. Francesca Giusti fell hard to her left, scraping her right knee, and her glasses and cell phone flew and broke on the parking lot pavement. CP 38. Ms. Giusti has maintained that the employee told her not to be embarrassed because he himself had fallen on that curb cut. CP 38. Ms. Guisti's right knee was scraped and bleeding, but most significantly, her foot suffered a fracture on her fifth metatarsal bone which healed in an misaligned position and resulted in complications of deep vein thrombosis and an altered gait that aggravated pre-existing spinal conditions, requiring monthly treatments to date. CP 298-300.

Plaintiff's experts, Tom Baird and Joellen Gill inspected and measured the ramp and the curb cut with its un-marked cross-slopes on December 1, 2009. CP 131-32 and CP 121. Both testified via declaration that the slopes violated a multiple of City of Seattle building codes dating from the 1940 or 50s. CP 46, 131-133 and CP 121. The date that the

ramp was constructed is unknown, though it is believed to have been already been in existence by 1979. CP 11.

2. Procedural History

Appellant's complaint was filed on March 12, 2009. The parties exchanged discovery. Defendant Keybank was dismissed per stipulation as a party on September 29, 2009. Defendants filed a motion for Summary Judgment on October 15, 2010 which was responded to by Appellant and heard and denied by the trial court on November 12, 2010. On November 12, 2010, Respondents moved to quash the perpetuation depositions of two of Appellant's physicians which was also denied by the trial court on December 1, 2010. On November 23, 2010, Respondents moved to Bifurcate the trial which was also denied.

Throughout, respondent conceded that Appellant was a business invitee. CP 285. The building at issue was constructed in 1951. CP 32. It is unknown when the ramp with its unmarked curb cut was constructed though through testimony, one of the defendant's employees was able to attest that it had been present since at least 1979. CP 11.

At the trial held before Judge Suzanne Barnett in King County Superior Court which started on December 6, 2010, the parties argued defendant's motion in limine to exclude evidence of Seattle Building Code even though it was the applicable code to the ramp at issue where plaintiff

was injured. The court granted the defendant's Motion in Limine No. 6 to exclude evidence in the form of City of Seattle Ordinances and Standards:

> THE COURT: I still think if we have information – this is the building code that was in effect at the time. So if there is information concerning requirements in the code that clearly are not met – I presume Ms. Gill is going to testify that minimum standards are, you know – and if a building preexists code, then there still would be certain standards that they would have to meet. But I think her testimony as well as the testimony of any other witness would be in conformity with my interpretation. And that is that is not retroactive application of the code.
>
> . .
>
> RP 5-8

THE COURT: If she, if you yes. She may testify about how she comes to the conclusion of what is safe. If that is by reference to the International Building Code or Uniform Building Code, fine. But not the Seattle Building Code.

RP 14

. . .

THE COURT: She is not going to talk about codes qua codes or violations qua violations. What she is going to testify about is how she formed her opinion about what is safe. What are the minimum safety standards.

RP 15

. . .

THE COURT: Again, okay. Her testimony can be these are the factors she considers when she tries to determine if a certain situation is safe or not safe. If one of those is the standards in the building codes International or Uniform, so be it.

RP 15

. . . .

THE COURT: But that does not mean she can testify that this ramp violates a building code. She can simply say these are the safety standards and you can say, is this ramp, in this opinion, is this ramp safe. She can say yes or no.

RP 15-16

Notably, Appellant's expert had prepared a chart showing the City of Seattle building codes that pertained to ramps and curb cuts such as the one at Respondent's store since the early 1950s to the date of Appellant's injury which was not admitted. CP 221 and 447.

. . .

MS. RUTHERFORD: If I am understanding you correctly there will be no jury instruction. I think that is what it is coming down to is a jury instruction – you are denying our request for like a jury instruction saying there was a violation of the building code. Am I correct, Your Honor?

THE COURT: Yes.

RP 16

During the trial, the jurors asked several times what specific building codes applied to the ramp at issue. CP 332, 334, 471, 472, and 473. Since the witnesses could not comment on the applicable building code as per the prior order, the answers to those questions were not given. CP 332, 334, 471, 472, and 473.

The jury entered a verdict in favor of defendant. CP 474-475. The Judgment dated January 10, 2011 and filed with the Clerk on January 14, 2011. The Notice of Appeal in this case was filed on February 10, 2011.

D. STANDARD OF REVIEW

The courts reviews de novo the alleged errors of law in a trial court's instructions to the jury. *Barrett v. Lucky Seven Saloon,* 159 Wn.2d 259, 96 P.3d 386 (2004) *citing Hue v. Farmboy Spray Co.,* 127 Wash.2d 67,

92, 896 P.2d 682 (1995). Instructions are inadequate if they prevent a party from arguing its theory of the case, mislead the jury, or misstate the applicable law. *Bell v. State,* 147 Wash.2d 166, 176, 52 P.3d 503 (2002). Failure to permit instructions on a party's theory of the case, where there is evidence supporting the theory, is reversible error. *State v. Williams,* 132 Wash.2d 248, 259-60, 937 P.2d 1052 (1997) citing *State v. Griffin,* 100 Wash.2d 417, 420, 670 P.2d 265 (1983). As with a trial court's instruction misstating the applicable law, a court's omission of a proposed statement of the governing law will be "reversible error where it prejudices a party." *Hue,* 127 Wash.2d at 92, 896 P.2d 682. If a party proposes an instruction setting forth the language of a statute, the instruction will be "appropriate only if the statute is applicable, reasonably clear, and not misleading." *Bell,* 147 Wn.2d at 177, 52 P.3d 503.

E. ARGUMENT

(1) Respondents owe a High Standard of Care to Business Invitees like Appellant

Appellant needed to establish the elements of her negligence claim: (1) duty, (2) breach of duty, (3) resulting injury, and (4) proximate cause between the breach and the injury. *Tincani v. Inland Emplire Zoological Soc'y,* 124 Wn.2d 121, 127-28, 875 P.2d 621 (1994). A property owner or the party in control of the property owes a legal duty to a person entering the property.

That legal duty depends on whether the person is a trespasser, licensee or invitee. *Younce v. Fergunson,* 106 Wn.2d 661-6, 724 P.2d 991 (Div. 2 1986). The status of invitees, licensee and trespassers determines the duty of care. *Fredrickson v. Bertolino's Tacoma, Inc.*, 131 Wn.App. 183, 188-89, 127 P.3d 5 (2005); *Tincani v. Inland Empire Zoological Soc'y*, 124 Wn.2d 121, 875 P.2d 621 (1994); *Van Dinter v. Kennewick*, 121 Wn.2d 38, 41, 846 P.2d 522 (1993); *Younce v. Ferguson, 106* Wn.2d 658, 666-67, 724 P.2d 991 (1986). An invitee is a business visitor who enters on to land for a purpose related to the business of the landowner. *Zenkina v. Sisters of Providence in Wash., Inc.*, 83 Wn.App. 556, 560-61, 922 P.2d 171 (Div. 1 1996). A business invitee like Appellant is owed a high standard of care by the Respondent CSK Auto which was deriving a financial benefit from her and the purchasing public.

> "An owner of premises owes to a .... Public invitee a duty to exercise ordinary care for his or her safety. This includes the exercise of ordinary care to maintain in a reasonably safe condition those portions of the premises that the invitee is expressly or impliedly invited to use or might reasonably be expected to use."

WPI 120.06.

Though not the owner of the property, Respondent CSK Auto Inc., is the possessor of the property and is responsible for all the maintenance on the building. CP 202. Under Restatement (Second) of Torts § 328E, a

possessor of property, is treated the same as the owner with the same obligations and duties to invitees. *Strong v. Seattle Stevedore Co.,* 1 Wn.App. 898, 900-01, 466 P.2d 545 (Div. 2 1970). A for-profit company that invites members of the public to enter onto its premises, should be and is held to a higher standard than, for example, a social host whose guests must accept the premises in the same condition as the host. Possessors of land like Respondent have the affirmative duty owed to invitees to ascertain dangerous conditions *and* to take corrective measures to make safe and protect the personal safety of invitees. *Tincani*, 124 Wn.2d at 134 (quoting *Memel v. Reimer*, 85 Wn.2d 685, 689, 538 P.2d 517 (1975)); *Younce*, 106 Wn.2d at 668–69; *Egede-Nissan v. Crystal Mountain*, 93 Wn.2d 127, 606 P.2d 1214 (1980); and *Johnson v. State,* 77 Wn. App. 934, 904 P.2d 299 (1995).

Respondent as the owner and proprietor of a store and in full control of the property, had the duty to exercise reasonable care to keep those portions of the premises used by their customers in a reasonably safe condition, or to warn the customer, business-invitees of the dangerous condition known or which should have been known to the owner and which is not known or reasonably discoverable by the invitee. *Hemmen v. Clark's Restaurant Enterprises,* 72 Wn.2d 690, 434 P.2d 729 (1967); *Hartman v. Port of Seattle,* 63 Wn.2d 897, 389 P.2d 669 (1964); *Blancher v. Bank of*

California, 4 Wn.2d 1, 286 P.2d 92 (1955); *Wardhaugh v. Weisfield's Inc.,* 43 Wn.2d 865, 264 P.2d 879 (1953); *Baltzelle v. Doces Sixth Ave., Inc.,* 5 Wn.App. 771, 773-774, 490 P.2d 1331 (Div. 1 1977). Included in this general duty is the obligation to use ordinary care to keep the approaches, entrances and exits in a reasonably safe condition for use of customers who are entering or leaving the business. *DeHeer v. Seattle Post-Intelligencer,* 60 Wn.2d 122, 372 P.2d 193 (1962); *Tyler v. F.W. Woolworth Co.,* 181 Wash 125, 41 P.2d 1093 (1935); *Baltzelle,* 490 P.2d at 1333.

The common law defines dangerous conditions, as conditions that pose an unreasonable risk of harm. *Gaeta v. Seattle City Light*, 54 Wn.App. 603, at 609, 774 P.2d 1255, *review denied*, 113 Wn.2d 1020 (1989). The portion of the walkway ramp on which Plaintiff tripped and fell included a sloped curb cut which as described and measured by expert Tom Baird:

> The ramp is 8" 1 ¼" wide at the top and 16' 2" long. The ramp is concrete and has a raised curb on the right and left side. It is flush with the walkway at the top near the entrance door to the store. There is a curb cut at the bottom of the ramp where it meets the asphalt parking lot. The curb adjacent to the cut is 3' ½" high on each side.
>
> The ramp generally slopes 3.5% (2 degrees) from the top towards the parking lot. The slope of the ramp changes dramatically 36" from the bottom end of the ramp. At that point it slopes 12.9% (7.3 degrees) to where it meets the parking lot. The cross slope of the sides is 16.8% (5.5 degrees) towards the middle of the ramp at the curb where

> the ramp meets the parking lot. Half way up the 12.9% slope of the last 36" of the ramp the cross slope is 9.6%. The abrupt change in slope of the ramp in the direction of pedestrian travel from 3.5% to 12.9% along with 9.6 % to 16.8% cross slope of the sides make this ramp hazardous and dangerous and presents risk of injury to pedestrians using it. CP 131-32.

It was also Ms. Gill's opinion that excessively steep slopes, such as the curb cut at Respondent's store that was over three times the maximum permissible value (i.e., 12° vs. 3.8°), created an unreasonably dangerous condition. It was not only foreseeable, but anticipated that people, mostly business invitees will not be looking at their feet as they exit the store and walk down the ramp in question. In this case, it is foreseeable that patrons utilizing this ramp at the Respondent's store will fail to detect the abrupt variation in the slope. CP 121, 124.

The ramp in question is not marked in any way to show the change in slope. CP 118, 119. Appellant was walking normally, looking ahead and had no reason to expect a change in the slope. CP 111. She also could not see the change in slope as it was unmarked, or visually differentiated in any way. When there is no reason to anticipate a hazard, ordinary care does not require one who is walking in a place provided to keep his or her eyes riveted to the floor immediately in front of his or her feet. *Smith v. B&I Sales Co.*, 74 Wn.2d 151, 443 P.2d 819 (1968); *Simpson v. Doe*, 39 Wn.2d 934, 239 P.2d 1051 (1952). Respondents have argued that walkway is actually a sidewalk. CP 14. Nonetheless,

Washington courts have consistently held that pedestrians may assume the sidewalk is safe for travel. *James v. Burchett*, 15 Wn.2nd 119 (1942). WPIC 140.03. Appellant had a right to assume that whoever owned the entrance way, including the ramp and porch, would keep it in a safe condition for travel for their customers. *James v. Burchett*, 15 Wn.2d 119, 128, 129 P.2d 790 (1942); *Stone v. City of Seattle,* 64 Wn.2d 166, 170, 391 P.2d 179 (1964).

The ramp in question has been there a very long time. Respondent has had complete control over the premises for decades. CP 202. The steep cross-slopes at the end of the ramp in question violates building codes since the 1940s. CP 46-47, 57, 221 and 447.

Additionally, construction codes have changed making buildings more safe for users. While Respondent is not required to update its buildings to bring them up to code, the failure to do so is evidence of negligence. *Pettit v Dwoskin*, 116 Wash.App. 466, 68 P.3d 1088 (Div. 1, 2003); Restatement of the Law 2d, Torts (1965), Section 286, Comments *f.* and *g.* with Illustrations. (Bracketed commentary added).

(2) Applicable Seattle Building Codes to defendant's building and ramp in question.

In deciding when violation of a statute or administrative regulation shall be considered in determining liability, this court has relied upon the Restatement (Second) of Torts § 286 (1965)." *Melville v. State,* 115 Wn.2d

34, 36-37, 793 P.2d 952 *(En Banc* 1990). Section 286 gives a four factor test:

> The court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part
>
> (a) to protect a class of persons which includes the one whose interest is invaded, and
> (b) to protect the particular interest which is invaded, and
> (c) to protect that interest against the kind of harm which has resulted, and
> (d) to protect that interest against the particular hazard from which the harm results.

Jackson v. City of Seattle, 158 Wn.App. 647, 244 P.3d 425, 428 (Div. I 2010).

a. Seattle Building Code 1950s

The Seattle Building code that was adopted on November 1, 1942 was in effect with amendments when Respondent's building was constructed in 1951 City of Seattle Ordinance 72200. Notably, Section 102 states that the Seattle Building Code applies to:

> design, construction, . . . use, occupancy, etc. in interpreting and applying the provisions of this Code, such provisions shall in every instance be held to be the minimum requirements adopted for the promotion of public health, safety, comfort and welfare. It shall apply equally to both public and private property and shall be binding on upon all owners, lessees, agents, . . . and other person having charge of the design, construction, erection, . . . repair . . . maintenance, use, occupancy, . . . of the structures or equipment to which this Code applies.
> See Appendix

The City of Seattle Building Code of this era was discussed in *Faye v. Allied Stores Corp.* 42 Wn.2d 512, 262 P.2d 189 (1953). The stated purpose of the City of Seattle Building Code that remained unchanged for decades is:

> **101.5 Purpose.** The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, occupancy, location and maintenance of all buildings and structures within the City and certain equipment specifically regulated herein. The purpose of this code is to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this code. (Seattle Building Code 2006)

In *Faye* a customer fell on a wet stair that lacked a handrail. The department store was built in 1928; the ordinance requiring handrails went into effect in 1942; and Ms. Faye was injured thereafter. The defense vigorously argued that the 1942 ordinances be not considered as they were enacted after the building was constructed, but the court disagreed stating that the standards were minimum requirement for *all* buildings within the City of Seattle for the express purpose to promote the health, safety, and welfare of the general public. *Id.* at 516.

Subsequent to *Faye*, the law changed so that violations of statutes or ordinances were not negligence *per se* but rather evidence of negligence. *Faye* was refined in *Reuter v. Rhodes Inv. Co.*, 71 Wn.2d 31, 425 P.2d 929 (Wash. 1967) where the court stated "While the violation of a positive ordinance is negligence, such negligence will not render a defendant liable for damages unless such violation proximately contributed to or proximately caused the injury." *Reuter* at 516. Plaintiff should have been allowed to present to the jury the various standards and codes that have been in effect through the life of defendant's building and ramp.

Additionally, since 1940 the Uniform Building Code has limited the slope of any ramp to a maximum of 7.1 degrees or a slope of 1 in six. If there is slope of one and eight, then there needs to be a handrail. CP 46. While most of the ramp is in compliance, the area of the curb cut is not. The portion of the ramp at issue measured 6.7 degrees to 12 degrees. CP 426.

b. Seattle Building Code 1970s

The Uniform Building Code has limited exit ramps such as the one at issue to a maximum slope of 4.8 degrees since 1979. Notably the slope of the section of the ramp where Appellant fell was measured to be 12.9

percent (7.3 degrees) and the cross slopes was 16.8 percent or 5.5 degrees. CP 132.

c. Seattle Building Code 1998

The City of Seattle adopted much of the 1997 Uniform Building Code by Ordinance No. 119079. The Uniform Building Code has limited exit ramps such as the one at issue to a maximum slope of 3.8 degrees since 1979. Notably the slope of the section of the ramp where Appellant fell was measured to be 12.9 percent or 7.3 degrees and the cross slopes was 16.8 percent or 5.5 degrees.

d. Seattle Building Code 2003

At the time of Appellant's injury, the City of Seattle had adopted most of the 2003 International Building Code. The stated purpose of the code was the "provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, occupancy, location and maintenance of all buildings and structures within the City . . The purpose of this code is to provide for and promote the health, safety and welfare of the general public."

Section 102.1 defines "unsafe buildings" to include all buildings or structures and all premises immediately surrounding such buildings or

structures, whether erected before or after the effective date of the code, "that . . . are otherwise dangerous to human life, or that in relation to existing occupancy constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, . . obsolescence."

Seattle Building Code also defines a ramp as "A walking surface that has a running slope steeper than one unit vertical in 20 units horizontal. Section 1002, Definitions Chapter 10. The maximum slope of a ramp used as a means of egress under the building code is 8.3%. The maximum cross slope allowed is 2%. Curb ramps were to comply with ICC A117.1. *See Appendix* CP 133 In this case the unmarked curb cut had a slope of 12.9% and cross slope that varied from 9.6 percent to 16.8 percent. CP 133-34.

3). Violations of the Seattle Building Codes was evidence of negligence and Appellant should have able to present them to the jury.

As the City of Seattle's Building code changed along with the safety standards, it was certainly notice to the defendants.

Defendant CSK Auto sought to exclude all safety standards and ordinances that were not in effect when the ramp was built. CP 11. However, defendant could not state when this ramp was constructed. CP 11. The evidence given by defendant is that no one knows when the ramp

was constructed but that it had been there was a very long time, perhaps when the building was built in 1951. It was certainly there in 1979 when the Defendant's District Manager James Murray started with the company. CP 11. Nonetheless, the ordinances are relevant throughout the life of the building.

Notably, Appellant did not seek to introduce the evidence of standards and ordinances for the proposition of negligence *per se*, but rather as evidence of common law negligence. WPI 60.03; RCW 5.40.050; PROSSER AND KEATON ON TORTS (5th ed. 1984) § 36, p. 231. In fact it has been held that it was reversible error not to give a proposed instruction regarding an applicable building code. *Trueax v. Ernst Home Center, Inc.*, 70 Wn.App. 381, 853 P.2d 491 (Div. III 1993).

The public safety is not only affected by directly by building codes alone but by industry standards. Building codes are a bare minimum for reasons of safety and even state those in their preambles. See Appendix. It is a basic risk management doctrine to keep abreast of the development and for the reasons the standards and ordinances. CP 123, 125. Respondent is a for-profit corporation and Appellant Francesca Giusti was a business invitee and was owed a high standard of care. An owner is required to take reasonable precautions against reasonable foreseeable deceptive conditions on his premises to prevent injury to patrons.

Wardhaugh v. Weisfield's, Inc., 43 Wash.2d 865,264 P.2d 870 (1953). A business can certainly chose whether or not to bring its premises up to code. However, it is willingly putting its patrons at risk for it has the affirmative duty to either make safe or warn the invitees against all potentially dangerous conditions. *See Edege-Nissan v. Crystal Mountain,* 93 Wn.2d 127 (1980); and *Johnson v. State,* 77 Wash. App. 934 (1995).

The Washington State Supreme court adopted Restatement (Second) of Torts test to determine when a statute may be used to determine a reasonable person's standard of conduct. *Hansen v. Friend,* 188 Wn.2d 476, 824 P.2d 483 (1992), RESTATEMENT (SECOND) OF TORTS, at 286 (1965). The statute can apply only if all of the following are true. The statute must (1) protects a class of person (2) against invasion of a particular interest (3) which results in a specific kind of harm (4) through a particular hazard. In this case, Appellant Guisti as a business invitee was harmed by defendant's hidden change in slope in its ramp. The standards and ordinances that plaintiff sought to introduce were evidence of negligence, though not evidence of negligence per se. Through her experts, Appellant presented evidence as to general industry standards and the purpose of the standards. However, missing was the crucial and applicable City of Seattle Building Codes which were requested repeatedly by the jury.

4) The Americans with Disability Regulations were also applicable

The ramp should also comply with the Americans with Disability Act (thereafter ADA). Even though Appellant is not considered disabled within the meaning of the ADA, the premises still needed to maintain in a reasonable safe manner and to warn business invitees of latent or concealed defects of which Respondent either has knowledge or should have knowledge. CITATION. Buildings that are open to the public must accommodate and provide access to disabled persons. 42 U.S.C. §§ 12101—12213. The purpose of curb cuts to provide accessibility for physically disabled persons. Federal Highway Administration , Chapter 7 of HEP Guidebook. [3]

ADA requirements regarding curb ramps are: a maximum slope of 8.3 percent. The maximum slope of a flared side is 10 percent. The maximum allowable cross slope of a ramp is 2 percent. Where Appellant fell, the slope exceeded the ADA maximum of 8.3 percent while cross slope vary between 9.6 percent and 16.8 percent which greatly exceed the ADA maximum of 2 percent. CP 132.

Even though Appellant is not disabled, curb ramps are used regularly by non-disabled persons. For example, they are used by non-disabled persons to assist a wheelchair bound relative or friend, or to help provide steadiness and support in a caregiving capacity. Moreover, it is

[3] (http://www.fhwa.dot.gov/environment/sidewalk2/sidewalks207.htm).

common experience for non-disabled persons to use curb ramps as they move around in their daily lives, including going into an auto parts store such as Respondent. In this case, the primary access to the entrance of the Respondent's store is up that ramp because area immediately around door is surrounded by a railing on three sides, so that ramp is a convenient and common access into the store. CP 194-195.

While the existence of a curb cut may be due to the ADA, building it safely requires the consideration of a far broader class of foreseeable users. Comment *g* to the Section 286 of the Restatement of Torts (Second) states

> The fact that a legislative enactment requires a particular act to be done for the protection of the interest of a particular class of individuals does not preclude the possibility that the failure to do such an act may be negligence at common law toward other classes of person. It also does not preclude the possibility that, in a proper case, the requirements of the statute may be considered as evidence bearing on the reasonableness of the actor's conduct. (See Section 288B, comment *d.)*

ADA regulations are retroactive as places of public accommodation must be made accessible for disabled person. 42 U.S.C. 12101 and 28 CFR 36. Specifically, the slope of the ramp exceeds the maximum slope allowed by the ADA. While violation of a statute, code or administrative rule does not necessarily establish strict liability in negligence or negligence per se, it is evidence of negligence and Appellant

should be allowed to present that evidence to a jury.

Appellant asked for information regarding the ramp through formal discovery. It was not provided and when Respondent sought to admit evidence that Appellant had requested but had failed to provide it, the Court found that Respondents had responded to the Appellant's requests in bad faith. CP 54-65. Nonetheless, the failure to discover and correct the hidden change of slope of the curb cut, shows that Respondent did not adequately inspect the ramp/sidewalk through the decades of its possession. Permitting the violation of an ADA regulation to be admitted as evidence of negligence, even where it does not constitute strict liability or negligence per se, is the current and clearly-sated law of Washington. *Pettit v. Dwoskin,* 68 P.2d 1088 (Div. 1) *review denied* 151 Wn.2d 1011 (2003). RCW 5.40.050.

In fact the City of Seattle has adopted its own standards regarding curb cuts. Unlike the ramp at issue, there are patterns cut into the different slopes, to distinguish and alert the traveler of the different angles and steepness that exist. See Appendix.

5) The Evolving Safety Regulations and Building Codes were Notice to Respondents of Potential Hazards.

The ramp has existed at least since 1979, twenty-seven years prior to fall by Appellant. Usually, an invitee is required to show that a possessor of had actual or constructive notice of the unsafe condition.

Iwai v. State of Washington, 129 Wn.2d 84, 96, 915 P.2d 1089 (1996). However, an exception exists "if the landowner caused the hazardous condition, then a plaintiff's duty to establish notice is also waived." *Id.* at 102, *citing Carlyle v. Safeway Stores, Inc.,* 78 Wn. App. 272, 275 (1995), *citing Pimentel*, 100 Wn.2d at 49. Respondent had constructive notice since the unsafe condition has existed long enough that with the exercise of ordinary care, the hazard should have been discovered and removed. *Iwai*, 129 Wn.2d at 96, *Pimental v. Roundup Co.,* 100 Wn.2d 39, 44, 666 P.2d 888 (1983). If the ramp was constructed along with the building in 1951, then it would have existed for fifty-five years before Appellant was injured, which is more than sufficient time to discovery and make the ramp safe for its paying customers.

The *Iwai* Court adopted The Restatement (Second) of Torts Sec. 343

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he
>
> (a) Knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and

(c) fails to exercise reasonable care to protect them against the danger.

Iwai 129 Wn.2d at 96

There is no evidence that Respondents reviewed the design of the premises to bring them up to ADA or other safety standards . CP201, 203-204. Nor did the employees take injuries seriously. Even though Appellant was injured in front of an employee, no report was made until she called the manager the day after. CP 178. Joellen Gill, a human factors and safety expert, testified that it was standard practices for premises to be periodically reviewed for falling and other hazards to see if they met current safety standards. CP 123, 125. Apart from making sure that the building was maintained, no such review of design occurred. CP 201, 203-204. No one from corporate headquarters come out and inspected the facility for compliance with safety standards. CP 203-206. The entrance to Respondents store has been unchanged for at least 30 years. CP 106, 201. Appellant was also entitled to a jury instruction that Respondents had constructive notice of the hidden safety hazard of the ramp.

G. CONCLUSION

Safety standards and building codes exist for the primary purpose to provide a safe environment. By doing nothing and claiming that no ordinance or regulation applied, Respondent is gambling with the health of its customers. Additionally, the absence of the applicable building codes invited the jury to speculate.

Up until the 1920s, the leading cause of accidental deaths in the United States was falls. CP 426. Since then, very consistently, falls have been the second most common cause of accidental deaths after automobile crashes. To illustrate the gravity of the situation, Appellant's expert Joell Gill, a human factor's expert noted that the elderly population (70 years of age or older) average one such fall a year and that nearly 25 percent of them ultimately die from their injuries. CP 426. To address this distressing statistic, a number of design guidelines and standards have been adopted that have specific sections dedicated to controlling fall hazards. Amongst them are the, the Life Safety Code, the ADA, American Society of Testing and Materials, Uniform Building Code and International Building Codes. CP 426. Since the 1990s, the City of Seattle has adopted Uniform Building Code and then International Building Codes for the stated purpose to protect the health and welfare of

the general public. Appellant should have been able to present the City of Seattle Building Codes and ADA regulations which directly impacted the ramp at issue.

DATED this 1st day of August, 2011.

RESPECTFULLY SUBMITTED,

Crystal Grace Rutherford
WSBA No. 14405
6218 Seaview Avenue NW
Seattle, WA 98107
(206) 715-9137

APPENDIX

APPENDIX

MEMORANDA

BUILDING CODE
OF THE CITY OF SEATTLE

EFFECTIVE NOVEMBER 1, 1942

ORDINANCE NO. 72200

AMENDED ORD. NO. 72926

AMENDED ORD. NO. 73648

AN ORDINANCE relating to buildings and other structures, regulating the design, construction, erection, shoring, underpinning, enlargement, alteration, repair, moving, removal, demolition, maintenance, use, occupancy, light, ventilation and sanitation thereof and the support of ground adjacent to fills and excavations, providing penalties and repealing Ordinance No. 31578 and all ordinances and parts thereof in conflict herewith.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

ABBREVIATIONS AND MEANINGS

Am.—Amended. Cf.—Conferred (This refers to former amendments to sections of this code which have been superseded by the last amendment). Rd.—Repealed.

PART I.
ADMINISTRATION AND DEFINITIONS

Short Title

Section 101. This ordinance shall be designated the Building Code of the City of Seattle.

Scope of Code

Section 102. The Building Code shall apply to design, construction, erection, shoring, underpinning, enlargement, alteration, repair, moving, removal, demolition, maintenance, use, occupancy, light, ventilation and sanitation of all buildings, piers, wharves, retaining walls, fire escapes, fire extinguishing equipment either in or upon a building, billboards, flag poles, chimneys, towers, tanks and similar structures. In interpreting and applying the provisions of this Code, such provisions shall in every instance be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort or welfare. It shall apply equally to both public and private property and shall be binding upon all owners, lessees, agents, architects, engineers, contractors, foremen and other persons having charge of the design, construction, erection, shoring, underpinning, enlargement, alteration, repair, moving, removal, demolition, maintenance, use, occupancy, light, ventilation and sanitation of the structures or equipment to which this Code applies.

Existing Permits Not Invalidated

Section 103. This ordinance shall not invalidate any permit lawfully issured by the Superintendent of Buildings, provided said permit has not expired.

If any section, paragraph, sub-division, clause, sentence, or provision of this ordinance shall be judged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, clause, sentence, or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Prosecutions Under Prior Ordinance

Section 104. This ordinance shall not be construed as affecting any prosecution or proceeding for violation of the provisions of any

Required smokeproof-stairways shall conform with requirements elsewhere herein specified.

At least one-half (½) of the required stairways shall lead to a street, alley or court directly or by way of a fire-resistive passageway as elsewhere prescribed. Stairways shall be enclosed, except that in fireproof and steel joist buildings, stairways other than smokeproof stairways which exit through a lobby or foyer may have the enclosure omitted in the first story provided the second story enclosure is separated from such lobby or foyer.

Where stairways or elevators discharge through a lobby, foyer or corridor, storage rooms, and stores and shops of combustible occupancy shall be cut off from the lobby, foyer or corridor by fire-resistive walls or partitions with self-closing or automatic fire doors or fixed fire windows protecting all openings, or such rooms shall be protected by approved automatic sprinklers. No concessions or displays shall be permitted in such lobby, foyer or corridor which will impede or endanger egress from the stairway.

Office Buildings—Means of Egress

Section 622. Means of egress in office buildings shall be so arranged that in stories used for office purposes it will not be necessary to travel more than one hundred fifty (150) feet in fireproof or steel joist buildings or more than one hundred twenty-five (125) feet in non-fireproof buildings, from the exit doorway of any room to reach the nearest exitway. Exitways shall be as remote from each other as practicable. In non-fireproof office buildings, means of egress shall be so arranged that there are no pockets or dead ends over twenty-five (25) feet long.

Except as otherwise provided herein, at least two (2) means of egress shall be provided on every floor of every office building or portion thereof.

Any office building not over two (2) stories high above the lowest abutting street or alley grade and not over three thousand (3,000) square feet in area shall have at least one (1) stairway.

In any office building not over two (2) stories high above the lowest abutting street or alley grade and over three thousand (3,000) but not over seven thousand (7,000) square feet in area, and in any office building more than two (2) such stories high and not over seven thousand (7,000) square feet in area, one (1) of the required stairways may be thirty (30) inches wide.

Required smokeproof-stairways shall conform with requirements elsewhere prescribed.

There shall be not less than one (1) unit of stair width to each five thousand (5,000) square feet of area of any upper floor of any office building; provided, that in fireproof office buildings having all required stairways constructed as spokeproof-stairways, one (1) unit of stair width shall be permitted for each six thousand (6,000) square feet or fraction thereof of such area.

In office buildings required by floor area to have but two (2) stairways, any additional stairway required by maximum distance of travel or dead end requirements may be thirty (30) inches wide, provided that such stairway is not made a required smokeproof-stairway.

Where required stairways or other exitways discharge through a lobby or foyer, any rooms communicating with such lobby or foyer shall be cut off from the lobby or foyer by fire-resistive walls or partitions with automatic or self-closing fire doors or fixed fire windows protecting all openings, except where such rooms are completely protected by automatic sprinklers; provided, that in fireproof office buildings, when the occupancy of such rooms or of show windows is such as to minimize the fire hazard to a degree approved by the Superintendent of Buildings, the openings need not be protected nor the sprinklers installed.

Stores—Means of Egress

Section 623. Means of egress from stores shall be so arranged that it will not be necessary to travel, from any part of a store to the nearest means of egress, more than one hundred fifty (150) feet in buildings completely protected by an automatic sprinkler system, or more than one hundred (100) feet in buildings not sprinklered. Means of egress shall be as remote from each other as practicable and shall be so arranged that there are no pockets or dead ends of appreciable size in which occupants may be trapped.

Except as otherwise provided herein, at least two (2) means of egress shall be provided on every floor of a store building; provided, that ground floor stores having a capacity of not more than one hundred (100) persons need not have more than one (1) means of egress.

Any store building not over two (2) stories high above the lowest abutting street or alley grade and not over three thousand (3,000) square feet in second floor area may have but one (1) stairway.

Any store building not over two (2) stories high above the lowest abutting street or alley grade and over three thousand (3,000) but not over five thousand (5,000) square feet in area, and any store building more than two (2) stories high and not over five thousand (5,000) square feet in area shall have at least two (2) stairways; provided, that one (1) of these need not have a width of over thirty (30) inches.

Required smokeproof-stairways shall conform with the requirements elsewhere prescribed.

There shall not be less total width of stairways than one (1) unit of stair width for each four thousand (4,000) square feet of second floor area in store buildings.

In store buildings completely protected with approved automatic sprinklers, fifty (50) per cent of the required stairways may discharge through the main street level floor.

In every store building more than three (3) stories high in which the number of required stairways is four (4) or more, at least one-half (½) the required stairways shall be smokeproof-stairways.

Stairways from basement stores shall conform to the requirements for upper floors, except that such basements in department stores and other stores with similar crowded condition shall be provided with not less total width of stairway than one (1) unit of stair width for each two thousand (2,000) square feet of basement area.

Street floor doorways shall be provided having the number of units of width at least as many as the aggregate number of units of width of stairways required for upper floors and basements, plus one (1) unit of doorway width for each three thousand (3,000) square feet of street floor area; provided, that in stores such as furniture or hardware stores in which the density of human occupancy is very light, the street floor provisions may be one (1) unit of doorway width for each four thousand (4,000) square feet of street floor area.

Factories, Workshops—Means of Egress

Section 624. In factories and workshops, the maximum distance of travel from any point to the nearest means of egress shall not exceed one hundred (100) feet; provided, that if every portion of such building is protected by automatic sprinklers, or if the contents are almost entirely of incombustible materials, such maximum distance may be one hundred fifty (150) feet; and provided further, that no portion of any factory or workshops with an occupancy of high fire hazard shall be farther, along the line of travel, from the nearest means of egress than seventy-five (75) feet. High fire hazard occupancies are defined as those having contents which are liable to burn with extreme rapidity or from which poisonous fumes or explosions are to be feared in the event of fire, such as dry cleaning, feed and floor mills, cotton

INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS
UNIFORM BUILDING CODE

Ordinance No. .....

An ordinance regulating the erection, construction, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment, use, height, area, and maintenance of buildings or structures in the City of

.....

providing for the issuance of permits and collection of fees therefor; declaring and establishing Fire Districts; providing penalties for the violation thereof, and repealing all ordinances and parts of ordinances in conflict therewith.

Be it ordained by the .....
of the City of ..... as follows:

PART I

ADMINISTRATIVE

Chapter 1
TITLE AND SCOPE

Title

Sec. 101. This ordinance shall be known as the "Building Code," may be cited as such, and will be referred to herein as "this Code."

Purpose

Sec. 102. The purpose of this Code is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, location and maintenance of all buildings and structures within the city and certain equipment specifically regulated herein.

Scope

Sec. 103. The provisions of this Code shall apply to the construction, alteration, moving, demolition, repair, and use of any building or structure within the city, except work located primarily in a public way, public utility towers and poles, mechanical equipment not specifically regulated in this Code, and hydraulic flood control structures.

Additions, alterations, repairs, and changes of use or occupancy in all buildings and structures shall comply with the provisions for new buildings and structures except as otherwise provided in Sections 104, 306, and 502 of this Code.

Where, in any specific case, different sections of this Code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

Wherever in this Code reference is made to the Appendix, the provisions in the Appendix shall not apply unless specifically adopted.

Application to Existing Buildings

Sec. 104. (a) **General.** Buildings or structures to which additions, alterations, or repairs are made shall comply with all the requirements for new buildings or structures except as specifically provided in this Section.

For construction in Fire Zones see Chapter 16.

(b) **Additions, Alterations, and Repairs: More than 50 Percent.** When additions, alterations, or repairs within any 12-month period exceed 50 percent of the value of an existing building or structure, such building or structure shall be made to conform to the requirements for new buildings or structures.

stairway serving a building over two stories in height shall be protected by a self-closing fire assembly having a three-fourths-hour fire-resistive rating.

EXCEPTION: Openings may be unprotected when two separated exterior stairways serve an exterior exit balcony.

(l) **Stairway Construction—Interior.** Interior stairways shall be constructed as specified in Part V of this Code.

Where there is enclosed usable space under stairs the walls and soffits of the enclosed space shall be protected on the enclosed side as required for one-hour fire-resistive construction. See Section 3308.

All required interior stairways which extend to the top floor in any building four or more stories in height shall have provided at the highest point of the stair shaft an approved hatch openable to the exterior not less than 16 square feet in area with a minimum dimension of 2 feet.

EXCEPTION: The hatch shall not be required on smoke-proof enclosures or on stairways that extend to the roof with an opening onto that roof.

(m) **Stairway Construction—Exterior.** Exterior stairways shall be of noncombustible material except that on Type III buildings not exceeding two stories in height, located in Fire Zones No. 2 and No. 3, and on Type V buildings, they may be of wood not less than 2 inches in nominal thickness.

Exterior stairways shall not project into yards where protection of openings is required.

Where there is enclosed usable space under stairs, the walls and soffits of the enclosed space shall be protected on the enclosed side as required for one-hour fire-resistive construction.

(n) **Stairway to Roof.** In every building four or more stories in height, one stairway shall extend to the roof surface, unless the roof has a slope greater than four in 12.

(o) **Headroom.** Every required stairway shall have a headroom clearance of not less than 6 feet 6 inches. Such clearances shall be established by measuring vertically from a plane parallel and tangent to the stairway tread nosing to the soffit above at all points.

Ramps

Sec. 3306. (a) **General.** Ramps used as exits shall conform to the provisions of this Section.

(b) **Width.** The width of ramps shall be as required for stairways.

(c) **Slope.** Ramps required by Table No. 33-A shall not exceed a slope of one vertical to 10 horizontal. The slope of other ramps shall not exceed one vertical to 8 horizontal.

(d) **Landings.** Ramps having slopes greater than one vertical to 15 horizontal shall have landings at the top and bottom and at least one intermediate landing shall be provided for each 5 feet of rise. Top landings and intermediate landings shall have a dimension measured in the direction of ramp run of not less than 5 feet. Landings at the

bottom of ramps shall have a dimension in the direction of ramp run of not less than 6 feet.

Doors in any position shall not reduce the minimum dimension of the landing to less than 42 inches and shall not reduce the required width by more than 3½ inches when fully open.

(e) **Handrails.** Ramps having slopes exceeding one vertical to 15 horizontal shall have handrails as required for stairways, except that intermediate handrails shall not be required.

(f) **Construction.** Ramps shall be constructed as required for stairways.

(g) **Surface.** The surface of ramps shall be roughened or shall be of nonslip materials.

Horizontal Exit

Sec. 3307. (a) **Used as a Required Exit.** If conforming to the provisions of this Chapter, a horizontal exit may be considered as a required exit.

(b) **Openings.** All openings in a wall which provides a horizontal exit shall be protected by a fire assembly having a fire-resistance rating of not less than one and one-half hours. Such fire assembly shall be maintained self-closing or shall be automatic closing as provided in Section 4306 (b).

(c) **Discharge Areas.** A horizontal exit shall lead into a floor area having capacity for an occupant load not less than the occupant load served by such exit. The capacity shall be determined by allowing 3 square feet of net clear floor area per ambulatory occupant and 20 square feet per nonambulatory occupant. The area into which the horizontal exit leads shall be provided with exits other than additional horizontal exits as required by Section 3302.

Exit Enclosures

Sec. 3308. (a) **General.** Every interior stairway, ramp, or escalator shall be enclosed as specified in this Section.

EXCEPTIONS: 1. In other than Group D Occupancies, an enclosure will not be required for a stairway, ramp, or escalator serving only one adjacent floor and not connected with corridors or stairways serving other floors. For enclosure of escalators serving Groups F and G Occupancies, see Chapter 17.

2. Stairs in Group I Occupancies and stairs within individual apartments in Group H Occupancies need not be enclosed.

(b) **Enclosure Construction.** Enclosure walls shall be of not less than two-hour fire-resistive construction in buildings more than four stories in height and shall be of not less than one-hour fire-resistive construction elsewhere.

(c) **Openings into Enclosures.** There shall be no openings into exit enclosures except exit doorways and openings in exterior walls. All exit doors in an exit enclosure shall be protected by a fire assembly having a fire-protection rating of not less than one hour where one-hour shaft

CHAPTER 10
MEANS OF EGRESS

User Note: See Preface page iv ("marginal markings") for Chapter 10 reorganization information.

SECTION 1001
ADMINISTRATION

1001.1 General. Buildings or portions thereof shall be provided with a means of egress system as required by this chapter. The provisions of this chapter shall control the design, construction and arrangement of means of egress components required to provide an approved means of egress from structures and portions thereof.

1001.2 Minimum requirements. It shall be unlawful to alter a building or structure in a manner that will reduce the number of exits or the capacity of the means of egress to less than required by this code.

[F] 1001.3 Maintenance. Means of egress shall be maintained in accordance with the *International Fire Code*.

SECTION 1002
DEFINITIONS

1002.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

ACCESSIBLE MEANS OF EGRESS. A continuous and unobstructed way of egress travel from any point in a building or facility that provides an accessible route to an area of refuge, a horizontal exit or a public way.

AISLE ACCESSWAY. That portion of an exit access that leads to an aisle.

ALTERNATING TREAD DEVICE. A device that has a series of steps between 50 and 70 degrees (0.87 and 1.22 rad) from horizontal, usually attached to a center support rail in an alternating manner so that the user does not have both feet on the same level at the same time.

AREA OF REFUGE. An area where persons unable to use stairways can remain temporarily to await instructions or assistance during emergency evacuation.

BLEACHERS. Tiered seating facilities.

COMMON PATH OF EGRESS TRAVEL. That portion of exit access which the occupants are required to traverse before two separate and distinct paths of egress travel to two exits are available. Paths that merge are common paths of travel. Common paths of egress travel shall be included within the permitted travel distance.

CORRIDOR. An enclosed exit access component that defines and provides a path of egress travel to an exit.

DOOR, BALANCED. A door equipped with double-pivoted hardware so designed as to cause a semicounterbalanced swing action when opening.

EGRESS COURT. A court or yard which provides access to a public way for one or more exits.

EMERGENCY ESCAPE AND RESCUE OPENING. An operable window, door or other similar device that provides for a means of escape and access for rescue in the event of an emergency.

EXIT. That portion of a means of egress system which is separated from other interior spaces of a building or structure by fire-resistance-rated construction and opening protectives as required to provide a protected path of egress travel between the exit access and the exit discharge. Exits include exterior exit doors at ground level, exit enclosures, exit passageways, exterior exit stairs, exterior exit ramps and horizontal exits.

EXIT, HORIZONTAL. A path of egress travel from one building to an area in another building on approximately the same level, or a path of egress travel through or around a wall or partition to an area on approximately the same level in the same building, which affords safety from fire and smoke from the area of incidence and areas communicating therewith.

EXIT ACCESS. That portion of a means of egress system that leads from any occupied portion of a building or structure to an exit.

EXIT DISCHARGE. That portion of a means of egress system between the termination of an exit and a public way.

EXIT DISCHARGE, LEVEL OF. The horizontal plane located at the point at which an exit terminates and an exit discharge begins.

EXIT ENCLOSURE. An exit component that is separated from other interior spaces of a building or structure by fire-resistance-rated construction and opening protectives, and provides for a protected path of egress travel in a vertical or horizontal direction to the exit discharge or the public way.

EXIT PASSAGEWAY. An exit component that is separated from all other interior spaces of a building or structure by fire-resistance-rated construction and opening protectives, and provides for a protected path of egress travel in a horizontal direction to the exit discharge or the public way.

FIRE EXIT HARDWARE. Panic hardware that is listed for use on fire door assemblies.

FLOOR AREA, GROSS. The floor area within the inside perimeter of the exterior walls of the building under consideration, exclusive of vent shafts and courts, without deduction for corridors, stairways, closets, the thickness of interior walls, columns or other features. The floor area of a building, or portion thereof, not provided with surrounding exterior walls shall be the usable area under the horizontal projection of the roof or floor above. The gross floor area shall not include shafts with no openings or interior courts.

FLOOR AREA, NET. The actual occupied area not including unoccupied accessory areas such as corridors, stairways, toilet rooms, mechanical rooms and closets.

3404.1.3 New fire escapes. New fire escapes for existing buildings shall be permitted only where exterior stairs cannot be utilized due to lot lines limiting stair size or due to the sidewalks, alleys or roads at grade level. New fire escapes shall not incorporate ladders or access by windows.

3404.1.4 Limitations. Fire escapes shall comply with this section and shall not constitute more than 50 percent of the required number of exits nor more than 50 percent of the required exit capacity.

3404.2 Location. Where located on the front of the building and where projecting beyond the building line, the lowest landing shall not be less than 7 feet (2134 mm) or more than 12 feet (3658 mm) above grade, and shall be equipped with a counterbalanced stairway to the street. In alleyways and thoroughfares less than 30 feet (9144 mm) wide, the clearance under the lowest landing shall not be less than 12 feet (3658 mm).

3404.3 Construction. The fire escape shall be designed to support a live load of 100 pounds per square foot (4788 Pa) and shall be constructed of steel or other approved noncombustible materials. Fire escapes constructed of wood not less than nominal 2 inches (51 mm) thick are permitted on buildings of Type 5 construction. Walkways and railings located over or supported by combustible roofs in buildings of Type 3 and 4 construction are permitted to be of wood not less than nominal 2 inches (51 mm) thick.

3404.4 Dimensions. Stairs shall be at least 22 inches (559 mm) wide with risers not more than, and treads not less than, 8 inches (203 mm) and landings at the foot of stairs not less than 40 inches (1016 mm) wide by 36 inches (914 mm) long, located not more than 8 inches (203 mm) below the door.

3404.5 Opening protectives. Doors and windows along the fire escape shall be protected with 3/4-hour opening protectives.

[EB] SECTION 3405 GLASS REPLACEMENT

3405.1 Conformance. The installation or replacement of glass shall be as required for new installations.

[EB] SECTION 3406 CHANGE OF OCCUPANCY

3406.1 Conformance. No change shall be made in the use or occupancy of any building that would place the building in a different division of the same group of occupancy or in a different group of occupancies, unless such building is made to comply with the requirements of this code for such division or group of occupancy. Subject to the approval of the building official, the use or occupancy of existing buildings shall be permitted to be changed and the building is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

3406.2 Certificate of occupancy. A certificate of occupancy shall be issued where it has been determined that the requirements for the new occupancy classification have been met.

3406.3 Stairways. Existing stairways in an existing structure shall not be required to comply with the requirements of a new stairway as outlined in Section 1009 where the existing space and construction will not allow a reduction in pitch or slope.

[EB] SECTION 3407 HISTORIC BUILDINGS

3407.1 Historic buildings. The provisions of this code relating to the construction, repair, alteration, addition, restoration and movement of structures, and change of occupancy shall not be mandatory for historic buildings where such buildings are judged by the building official to not constitute a distinct life safety hazard.

3407.2 Flood hazard areas. Within flood hazard areas established in accordance with Section 1612.3, where the work proposed constitutes substantial improvement as defined in Section 1612.2, the building shall be brought into conformance with Section 1612.

Exception: Historic buildings that are:

a. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places; or
b. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or
c. Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

[EB] SECTION 3408 MOVED STRUCTURES

3408.1 Conformance. Structures moved into or within the jurisdiction shall comply with the provisions of this code for new structures.

[EB] SECTION 3409 ACCESSIBILITY FOR EXISTING BUILDINGS

3409.1 Scope. The provisions of Sections 3409.1 through 3409.8 apply to maintenance, change of occupancy, additions and alterations to existing buildings, including those identified as historic buildings.

Exception: Type B dwelling or sleeping units required by Section 1107 are not required to be provided in existing buildings and facilities.

3409.2 Maintenance of facilities. A building, facility or element that is constructed or altered to be accessible shall be maintained accessible during occupancy.

3409.3 Change of occupancy. Existing buildings, or portions thereof, that undergo a change of group or occupancy shall have all of the following accessible features:

1. At least one accessible building entrance.

unisex facility shall be located on the same floor and in the same area as the existing facilities.

3409.7.10 Dressing, fitting and locker rooms. Where it is technically infeasible to provide accessible dressing, fitting or locker rooms at the same location as similar types of rooms, one accessible room on the same level shall be provided. Where separate-sex facilities are provided, accessible rooms for each sex shall be provided. Separate-sex facilities are not required where only unisex rooms are provided.

3409.7.11 Check-out aisles. Where check-out aisles are altered, at least one of each check-out aisle serving each function shall be made accessible until the number of accessible check-out aisles complies with Section 1109.12.2.

3409.7.12 Thresholds. The maximum height of thresholds at doorways shall be $^3/_4$ inch (19.1 mm). Such thresholds shall have beveled edges on each side.

3409.8 Historic buildings. These provisions shall apply to buildings and facilities designated as historic structures that undergo alterations or a change of occupancy, unless technically infeasible. Where compliance with the requirements for accessible routes, ramps, entrances or toilet facilities would threaten or destroy the historic significance of the building or facility, as determined by the authority having jurisdiction, the alternative requirements of Sections 3409.8.1 through 3409.8.5 for that element shall be permitted.

3409.8.1 Site arrival points. At least one accessible route from a site arrival point to an accessible entrance shall be provided.

3409.8.2 Multilevel buildings and facilities. An accessible route from an accessible entrance to public spaces on the level of the accessible entrance shall be provided.

3409.8.3 Entrances. At least one main entrance shall be accessible.

Exceptions:

1. If a main entrance cannot be made accessible, an accessible nonpublic entrance that is unlocked while the building is occupied shall be provided; or
2. If a main entrance cannot be made accessible, a locked accessible entrance with a notification system or remote monitoring shall be provided.

Signs complying with Section 1110 shall be provided at the primary entrance and the accessible entrance.

3409.8.4 Toilet and bathing facilities. Where toilet rooms are provided, at least one accessible toilet room complying with Section 1109.2.1 shall be provided.

3409.8.5 Ramps. The slope of a ramp run of 24 inches (610 mm) maximum shall not be steeper than one unit vertical in eight units horizontal (12-percent slope).

[EB] SECTION 3410 COMPLIANCE ALTERNATIVES

3410.1 Compliance. The provisions of this section are intended to maintain or increase the current degree of public safety, health and general welfare in existing buildings while permitting repair, alteration, addition and change of occupancy without requiring full compliance with Chapters 2 through 33, or Sections 3401.3, and 3403 through 3407, except where compliance with other provisions of this code is specifically required in this section.

3410.2 Applicability. Structures existing prior to [DATE TO BE INSERTED BY THE JURISDICTION. NOTE: IT IS RECOMMENDED THAT THIS DATE COINCIDE WITH THE EFFECTIVE DATE OF BUILDING CODES WITHIN THE JURISDICTION], in which there is work involving additions, alterations or changes of occupancy shall be made to conform to the requirements of this section or the provisions of Sections 3403 through 3407. The provisions in Sections 3410.2.1 through 3410.2.5 shall apply to existing occupancies that will continue to be, or are proposed to be, in Groups A, B, E, F, M, R, S and U. These provisions shall not apply to buildings with occupancies in Group H or I.

3410.2.1 Change in occupancy. Where an existing building is changed to a new occupancy classification and this section is applicable, the provisions of this section for the new occupancy shall be used to determine compliance with this code.

3410.2.2 Partial change in occupancy. Where a portion of the building is changed to a new occupancy classification, and that portion is separated from the remainder of the building with fire barrier wall assemblies having a fire-resistance rating as required by Table 302.3.2 for the separate occupancies, or with approved compliance alternatives, the portion changed shall be made to conform to the provisions of this section.

Where a portion of the building is changed to a new occupancy classification, and that portion is not separated from the remainder of the building with fire separation assemblies having a fire-resistance rating as required by Table 302.3.2 for the separate occupancies, or with approved compliance alternatives, the provisions of this section which apply to each occupancy shall apply to the entire building. Where there are conflicting provisions, those requirements which secure the greater public safety shall apply to the entire building or structure.

3410.2.3 Additions. Additions to existing buildings shall comply with the requirements of this code for new construction. The combined height and area of the existing building and the new addition shall not exceed the height and area allowed by Chapter 5. Where a fire wall that complies with Section 705 is provided between the addition and the existing building, the addition shall be considered a separate building.

3410.2.4 Alterations and repairs. An existing building or portion thereof, which does not comply with the requirements of this code for new construction, shall not be altered or repaired in such a manner that results in the building being less safe or sanitary than such building is currently. If, in the alteration or repair, the current level of safety or sanitation is to be reduced, the portion altered or repaired shall conform to the requirements of Chapters 2 through 12 and Chapters 14 through 33.

Seattle Building Code - Mozilla Firefox

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http://www2.iccsafe.org/states/Seattle2006/seattle_building/building_frameset.htm

Seattle Building Code

2006 Seattle Building Code

Building Chapters

Title Page
Copyright
Preface
Table of Contents
Chapter 1 - Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior

PREFACE

Introduction

Internationally, code officials recognize the need for a modern, up-to-date building code addressing the design and installation of building systems through requirements emphasizing performance. The *International Building Code*®, in this 2006 edition, is designed to meet these needs through model code regulations that safeguard the public health and safety in all communities, large and small.

This comprehensive building code establishes minimum regulations for building systems using prescriptive and performance-related provisions. It is founded on broad-based principles that make possible the use of new materials and new building designs. This 2006 edition is fully compatible with all the *International Codes*® (I-Codes®) published by the International Code Council (ICC)®, including the *International Code Council Electrical Code Administrative Provisions*, *International Energy Conservation Code*®, *International Existing Building Code*®, *International Fire Code*®, *International Fuel Gas Code*®, *International Mechanical Code*®, ICC *Performance Code*®, *International Plumbing Code*®, *International Private Sewage Disposal Code*®, *International Property Maintenance Code*®, *International Residential Code*®, *International Wildland-Urban Interface Code*™ and *International Zoning Code*®.

The *International Building Code* provisions provide many benefits, among which is the model code development process that offers an international forum for building professionals to discuss performance and prescriptive code requirements. This forum provides an excellent arena to debate proposed revisions. This model code also encourages international consistency in the application of provisions.

Development

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File Edit View History Bookmarks Yahoo! Tools Help
http://www2.iccsafe.org/states/Seattle2006/seattle_building/building_frameset.htm
Seattle Building Code

2006 Seattle Building Code

Copyright
Preface
Table of Contents
Chapter 1 - Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior Finishes
Chapter 9 - Fire Protection Systems
Chapter 10 - Means Of Egress
Chapter 11 - Accessibility

shall comply with the provisions for new buildings and structures, except as otherwise provided in Chapter 34 of this code.

> **Note:** If a structure is constructed and maintained in compliance with standards and procedures of the *Seattle Residential Code* currently in effect, as well as the *Seattle Building, Mechanical, Fire, Electrical* and *Plumbing Codes* currently in effect, the *Seattle Housing and Building Maintenance Code*, SMC 22.200-22.208 does not apply.

101.4 Purpose. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, occupancy, location and maintenance of all buildings and structures within the City and certain equipment specifically regulated herein. The purpose of this code is to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this code.

101.5 Internal consistency. Where in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive governs. Where there is a conflict between a general requirement and a specific requirement, the specific requirement is applicable.

101.6 Referenced codes. The codes and standards referenced in this code are considered part of this code to the extent pre-

buildings, structures or premises" include all buildings or structures and all premises immediately surrounding such buildings or structures, whether erected before or after the effective date of this code, that are structurally unsound or unsafe or not provided with adequate egress, or that constitute a fire hazard, or are otherwise dangerous to human life, or that, in relation to existing occupancy constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, deterioration, instability, dilapidation, obsolescence, damage by fire or other causes or abandonment as specified in this code or any other effective ordinance.

102.2 Emergency orders. Whenever the building official finds that any building or structure, or portion thereof is in such a dangerous and unsafe condition as to constitute an imminent hazard to life or limb, the building official may issue an emergency order directing that the building or structure, or portion thereof be restored to a safe condition by a date certain. The order shall be posted on the premises or personally served on the owner of the building or premises and/or any person responsible for the condition and shall specify the time for compliance. The order may also require that the building or structure, or portion thereof, be vacated within a reasonable time to be specified in the order. In the case of extreme danger, the order may specify immediate vacation of the building or structure, or may authorize immediate disconnection of the utilities or energy source. No person may occupy a building or structure, or portion thereof, after the date on which the building is required to be vacated until the building or structure, or portion thereof, is restored to a safe condition as required by the order and this code. It is a violation for any person to fail to

[1] [W] preceding a section number indicates that the section incorporates a provision of the *Washington State Building Code*.

2006 Seattle Building Code

Building Chapters

Title Page
Copyright
Preface
Table of Contents
Chapter 1 - Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior Finishes

Chapter 32 for regulation of structures located on, over or under public property or a public right of way.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (town houses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the *International Residential Code*.

101.3 Additions, alterations, repairs and change of occupancy. Additions, alterations, repairs and changes of occupancy or character of occupancy in all buildings and structures shall comply with the provisions for new buildings and structures, except as otherwise provided in Chapter 34 of this code.

Note: If a structure is constructed and maintained in compliance with standards and procedures of the *Seattle Residential Code* currently in effect, as well as the *Seattle Building, Mechanical, Fire, Electrical* and *Plumbing Codes* currently in effect, the *Seattle Housing and Building Maintenance Code*, SMC 22.200-22.208 does not apply.

101.4 Purpose. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, quality of materials, occupancy, location and maintenance of all buildings and structures within the City and certain equipment specifically regulated herein. The purpose of this code is to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefitted by the terms of this code.

Indoor Air Quality Code (VIAQ), the provisions of the VIAQ govern.

101.9 Metric units. Wherever in this ordinance there is a conflict between metric units of measurement and English units, the English units govern.

SECTION 102
UNSAFE BUILDINGS, STRUCTURES OR PREMISES

102.1 Definition. For the purpose of this section, "unsafe buildings, structures or premises" include all buildings or structures and all premises immediately surrounding such buildings or structures, whether erected before or after the effective date of this code, that are structurally unsound or unsafe or not provided with adequate egress, or that constitute a fire hazard, or are otherwise dangerous to human life, or that, in relation to existing occupancy constitute a hazard to safety, health or public welfare by reason of inadequate maintenance, deterioration, instability, dilapidation, obsolescence, damage by fire or other causes or abandonment as specified in this code or any other effective ordinance.

102.2 Emergency orders. Whenever the building official finds that any building or structure, or portion thereof is in such a dangerous and unsafe condition as to constitute an imminent hazard to life or limb, the building official may issue an emergency order directing that the building or structure, or portion thereof be restored to a safe condition by a date certain. The order shall be posted on the premises or personally served on the owner of the building or premises and/or any person responsible for the condition and shall specify the time for compliance. The order may also require that the building or structure, or portion thereof, be vacated within a reasonable

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File Edit View History Bookmarks Yahoo! Tools Help
http://www2.iccsafe.org/states/Seattle2006/seattle_building/building_frameset.htm
Seattle Building Code

2006 Seattle Building Code

Copyright
Preface
Table of Contents
Chapter 1 - Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior Finishes
Chapter 9 - Fire Protection Systems
Chapter 10 - Means Of Egress

CHAPTER 10
MEANS OF EGRESS

SECTION 1001
ADMINISTRATION

1001.1 General. Buildings or portions thereof shall be provided with a means of egress system as required by this chapter. The provisions of this chapter shall control the design, construction and arrangement of means of egress components required to provide an approved means of egress from structures and portions thereof.

1001.2 Minimum requirements. It shall be unlawful to alter a building or structure in a manner that will reduce the number of exits or the capacity of the means of egress to less than required by this code.

[F] 1001.3 Maintenance. Means of egress shall be maintained in accordance with the *International Fire Code*.

SECTION 1002
DEFINITIONS

1002.1 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

EMERGENCY ESCAPE AND RESCUE OPENING. An operable window, door or other similar device that provides for a means of escape and access for rescue in the event of an emergency.

EXIT. That portion of a means of egress system which is separated from other interior spaces of a building or structure by fire-resistance-rated construction and opening protectives as required to provide a protected path of egress travel between the exit access and the exit discharge. Exits include exterior exit doors at ground level, exit enclosures, exit passageways, exterior exit stairs, exterior exit ramps and horizontal exits.

EXIT, HORIZONTAL. A path of egress travel from one building to an area in another building on approximately the same level, or a path of egress travel through or around a wall or partition to an area on approximately the same level in the same building, which affords safety from fire and smoke from the area of incidence and areas communicating therewith.

EXIT ACCESS. That portion of a means of egress system that leads from any occupied portion of a building or structure to an exit.

EXIT DISCHARGE. That portion of a means of egress sys-

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2006 Seattle Building Code

Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior Finishes
Chapter 9 - Fire Protection Systems
Chapter 10 - Means Of Egress
Chapter 11 -

PANIC HARDWARE. A door-latching assembly incorporating a device that releases the latch upon the application of a force in the direction of egress travel.

PUBLIC WAY. A street, alley or other parcel of land open to the outside air leading to a street, that has been deeded, dedicated or otherwise permanently appropriated to the public for public use and which has a clear width and height of not less than 10 feet (3048 mm).

RAMP. A walking surface that has a running slope steeper than one unit vertical in 20 units horizontal (5-percent slope).

SCISSOR STAIR. Two interlocking stairways providing two separate paths of egress located within one stairwell enclosure.

SMOKE-PROTECTED ASSEMBLY SEATING. Seating served by means of egress that is not subject to smoke accumulation within or under a structure.

STAIR. A change in elevation, consisting of one or more risers.

STAIRWAY. One or more flights of stairs, either exterior or interior, with the necessary landings and platforms connecting them, to form a continuous and uninterrupted passage from one level to another.

STAIRWAY, EXTERIOR. A stairway that is open on at least one side, except for required structural columns, beams, handrails and guards. The adjoining open areas shall be either yards, courts or public ways. The other sides of the exterior stairway need not be open.

5. Door height in accordance with Section 1008.1.1.

1003.3 Protruding objects. Protruding objects shall comply with the requirements of Sections 1003.3.1 through 1003.3.4.

1003.3.1 Headroom. Protruding objects are permitted to extend below the minimum ceiling height required by Section 1003.2 provided a minimum headroom of 80 inches (2032 mm) shall be provided for any walking surface, including walks, corridors, aisles and passageways. Not more than 50 percent of the ceiling area of a means of egress shall be reduced in height by protruding objects.

Exception: Door closers and stops shall not reduce headroom to less than 78 inches (1981 mm).

A barrier shall be provided where the vertical clearance is less than 80 inches (2032 mm) high. The leading edge of such a barrier shall be located 27 inches (686 mm) maximum above the floor.

1003.3.2 Free-standing objects. A free-standing object mounted on a post or pylon shall not overhang that post or pylon more than 4 inches (102 mm) where the lowest point of the leading edge is more than 27 inches (686 mm) and less than 80 inches (2032 mm) above the walking surface. Where a sign or other obstruction is mounted between posts or pylons and the clear distance between the posts or pylons is greater than 12 inches (305 mm), the lowest edge of such sign or obstruction shall be 27 inches (685 mm) maximum or 80 inches (2030 mm) minimum above the finished floor or ground.

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Seattle Building Code - Mozilla Firefox
File Edit View History Bookmarks Yahoo! Tools Help
http://www2.iccsafe.org/states/Seattle2006/seattle_building/building_frameset.htm
Seattle Building Code

2006 Seattle Building Code

Copyright
Preface
Table of Contents
Chapter 1 - Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior Finishes
Chapter 9 - Fire Protection Systems
Chapter 10 - Means Of Egress
Chapter 11 - Accessibility

kitchen are exempt from the requirements of Section 1009.

SECTION 1010
RAMPS

1010.1 Scope. The provisions of this section shall apply to ramps used as a component of a means of egress.

Exceptions:

1. Other than ramps that are part of the accessible routes providing access in accordance with Sections 1108.2 through 1108.2.3 and 1108.2.5, ramped aisles within assembly rooms or spaces shall conform with the provisions in Section 1025.11.
2. Curb ramps shall comply with ICC A117.1.
3. Vehicle ramps in parking garages for pedestrian exit access shall not be required to comply with Sections 1010.3 through 1010.9 when they are not an accessible route serving accessible parking spaces, other required accessible elements or part of an accessible means of egress.

1010.2 Slope. Ramps used as part of a means of egress shall have a running slope not steeper than one unit vertical in 12 units horizontal (8-percent slope). The slope of other pedestrian ramps shall not be steeper than one unit vertical in eight units horizontal (12.5-percent slope).

Exception: An aisle ramp slope in occupancies of Group A shall comply with Section 1025.11.

1010.3 Cross slope. The slope measured perpendicular to the direction of travel of a ramp shall not be steeper than one unit vertical in 48 units horizontal (2-percent slope).

any direction. Changes in level are not permitted.

1010.6.2 Width. The landing shall be at least as wide as the widest ramp run adjoining the landing.

1010.6.3 Length. The landing length shall be 60 inches (1525 mm) minimum.

Exceptions:

1. Landings in nonaccessible Group R-2 and R-3 individual dwelling units are permitted to be 36 inches (914 mm) minimum.
2. Where the ramp is not a part of an accessible route, the length of the landing shall not be required to be more than 48 inches (1220 mm) in the direction of travel.

1010.6.4 Change in direction. Where changes in direction of travel occur at landings provided between ramp runs, the landing shall be 60 inches by 60 inches (1524 mm by 1524 mm) minimum.

Exception: Landings in nonaccessible Group R-2 and R-3 individual dwelling units are permitted to be 36 inches by 36 inches (914 mm by 914 mm) minimum.

1010.6.5 Doorways. Where doorways are located adjacent to a ramp landing, maneuvering clearances required by ICC A117.1 are permitted to overlap the required landing area.

1010.7 Ramp construction. All ramps shall be built of materials consistent with the types permitted for the type of construction of the building, except that wood handrails shall be permitted for all types of construction. Ramps used as an exit shall conform to the applicable requirements of Sections 1020.1 through 1020.1.3 for exit enclosures.

1010.7.1 Ramp surface. The surface of ramps shall be of

2006 Seattle Building Code

Copyright
Preface
Table of Contents
Chapter 1 - Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior Finishes
Chapter 9 - Fire Protection Systems
Chapter 10 - Means Of Egress
Chapter 11 - Accessibility

required accessible elements or part of an accessible means of egress.

1010.2 Slope. Ramps used as part of a means of egress shall have a running slope not steeper than one unit vertical in 12 units horizontal (8-percent slope). The slope of other pedestrian ramps shall not be steeper than one unit vertical in eight units horizontal (12.5-percent slope).

Exception: An aisle ramp slope in occupancies of Group A shall comply with Section 1025.11.

1010.3 Cross slope. The slope measured perpendicular to the direction of travel of a ramp shall not be steeper than one unit vertical in 48 units horizontal (2-percent slope).

1010.4 Vertical rise. The rise for any ramp run shall be 30 inches (762 mm) maximum.

1010.5 Minimum dimensions. The minimum dimensions of means of egress ramps shall comply with Sections 1010.5.1 through 1010.5.3.

1010.5.1 Width. The minimum width of a means of egress ramp shall not be less than that required for corridors by Section 1017.2. The clear width of a ramp and the clear width between handrails, if provided, shall be 36 inches (914 mm) minimum.

1010.5.2 Headroom. The minimum headroom in all parts of the means of egress ramp shall not be less than 80 inches (2032 mm).

1010.5.3 Restrictions. Means of egress ramps shall not reduce in width in the direction of egress travel. Projections into the required ramp and landing width are prohibited.

Exception: Landings in nonaccessible Group R-2 and R-3 individual dwelling units are permitted to be 36 inches by 36 inches (914 mm by 914 mm) minimum.

1010.6.5 Doorways. Where doorways are located adjacent to a ramp landing, maneuvering clearances required by ICC A117.1 are permitted to overlap the required landing area.

1010.7 Ramp construction. All ramps shall be built of materials consistent with the types permitted for the type of construction of the building, except that wood handrails shall be permitted for all types of construction. Ramps used as an exit shall conform to the applicable requirements of Sections 1020.1 through 1020.1.3 for exit enclosures.

1010.7.1 Ramp surface. The surface of ramps shall be of slip-resistant materials that are securely attached.

1010.7.2 Outdoor conditions. Outdoor ramps and outdoor approaches to ramps shall be designed so that water will not accumulate on walking surfaces.

1010.8 Handrails. Ramps with a rise greater than 6 inches (152 mm) shall have handrails on both sides. Handrails shall comply with Section 1012.

1010.9 Edge protection. Edge protection complying with Section 1010.9.1 or 1010.9.2 shall be provided on each side of ramp runs and at each side of ramp landings.

Exceptions:

1. Edge protection is not required on ramps that are not required to have handrails, provided they have flared sides that comply with the ICC A117.1 curb ramp provisions.

2006 Seattle Building Code

Copyright
Preface
Table of Contents
Chapter 1 - Administration
Chapter 2 - Definitions
Chapter 3 - Use And Occupancy Classification
Chapter 4 - Special Detailed Requirements Based On Use And Occupancy
Chapter 5 - General Building Heights And Areas
Chapter 6 - Types Of Construction
Chapter 7 - Fire-Resistance-Rated Construction
Chapter 8 - Interior Finishes
Chapter 9 - Fire Protection Systems
Chapter 10 - Means Of Egress
Chapter 11 - Accessibility

Section 1104.

1003.4 Floor surface. Walking surfaces of the means of egress shall have a slip-resistant surface and be securely attached.

1003.5 Elevation change. Where changes in elevation of less than 12 inches (305 mm) exist in the means of egress, sloped surfaces shall be used. Where the slope is greater than one unit vertical in 20 units horizontal (5-percent slope), ramps complying with Section 1010 shall be used. Where the difference in elevation is 6 inches (152 mm) or less, the ramp shall be equipped with either handrails or floor finish materials that contrast with adjacent floor finish materials.

Exceptions:

1. A single step with a maximum riser height of 7 inches (178 mm) is permitted for buildings with occupancies in Groups F, H, R-2, R-3, S and U at exterior doors not required to be accessible by Chapter 11.
2. A stair with a single riser or with two risers and a tread is permitted at locations not required to be accessible by Chapter 11, provided that the risers and treads comply with Section 1009.3, the minimum depth of the tread is 13 inches (330 mm) and at least one handrail complying with Section 1012 is provided within 30 inches (762 mm) of the centerline of the normal path of egress travel on the stair.
3. A step is permitted in aisles serving seating that has a difference in elevation less than 12 inches (305 mm) at locations not required to be accessible by Chapter 11, provided that the risers and treads comply with Section 1025.11 and the aisle is provided with a handrail complying with Section 1025.13.

Any change in elevation in a corridor serving nonambulatory persons in a Group I-2 occupancy shall be by

for the primary space shall include the total occupant load of the primary space plus the number of occupants egressing through it from the accessory area.

1004.1.1 Areas without fixed seating. The number of occupants shall be computed at the rate of one occupant per unit of area as prescribed in Table 1004.1.1. For areas without fixed seating, the occupant load shall not be less than that number determined by dividing the floor area under consideration by the occupant per unit of area factor assigned to the occupancy as set forth in Table 1004.1.1. Where an intended use is not listed in Table 1004.1.1, the building official shall establish a use based on a listed use that most nearly resembles the intended use.

Exception: Where approved by the building official, the actual number of occupants for whom each occupied space, floor or building is designed, although less than those determined by calculation, shall be permitted to be used in the determination of the design occupant load.

1004.2 Increased occupant load. The occupant load permitted in any building, or portion thereof, is permitted to be increased from that number established for the occupancies in Table 1004.1.1, provided that all other requirements of the code are also met based on such modified number and the occupant load does not exceed one occupant per 7 square feet (0.65 m^2) of occupiable floor space. Where required by the building official, an approved aisle, seating or fixed equipment diagram substantiating any increase in occupant load shall be submitted. Where required by the building official, such diagram shall be posted.

1004.3 Posting of occupant load. Every room or space that is an assembly occupancy shall have the occupant load of the room or space posted in a conspicuous place, near the main exit or exit access doorway from the room or space. Posted signs

City of Seattle Standards for Curb Ramps

Year	Publication	Standard
1989	Seattle Standard Specification	8-14.3(7) Curb ramps to be installed in new sidewalk. Where curb ramps are to be constructed, the Contractor shall construct monolithic depressed curb and sidewalk as indicated on Standard Plan 422.a. Curb ramps shall be constructed separately from the sidewalk to produce a definite break line between the ramp and sidewalk . . . The inclined plane of the ramp shall have a coarse textured surface similar to the impression which is obtained through the use of a ¾ inch x 9-11 flattened expanded metal mesh screen pressed into the fresh concrete. 8-14.3(8) curb ramp in existing sidewalk (e) Installation of curb ramp as described in Section 8-14.3 (7)

Year	Publication	Standard
1991	City of Seattle Standard Plan	No. 422.1a 2. The cub ramp shall not be poured integral with the sidewalk or pavement and be isolated by through joint material on all sides. 4. Center ramp concrete shall have a course textured surface similar to the impression which is obtained through the use of a ¾ inch x 9-11 flattened expanded metal mesh screen pressed into the fresh concrete.
2000	City of Seattle Standard Specifications for Road, Bridge and Municipal Construction	8.14.3 (7) Type 1 curb ramps for new sidewalks Where curb ramps are to be constructed, the Contractor shall construct monolithic depressed curb and sidewalk as indicated on Standard Plan 422.a. Curb ramps shall be constructed separately from the sidewalk to produce a definite break line between the ramp and sidewalk . . . The inclined plane of the ramp shall have a coarse textured surface similar to the impression which is obtained through the use of a ¾ inch x 9-11 flattened expanded metal mesh screen pressed into the fresh concrete. 8.14.3 (8) Type 2 curb ramps for existing sidewalks 5. Installation of the curb ramps as described in Section 8-14.3(7)

Year	Publication	Standard
2009	Seattle Department of Transportation Director's Rule 5-2009	8.6.8 Curb Ramps 8.6.8.1 Restoring cub ramps: whenever a curb ramp is impacted by a utility cut or is removed, the ramp is to be replaced with a new ramp with detectable warnings that meet Standard Plan Nos. 422a and 422b. Standard plan 422a. Notes. 7. Curb ramps shall be isolated from all other concrete by through joints. 8. Ramps shall have a coarse textured surface obtained with a ¾" 9-11 flattened expanded metal mesh being pressed into the still fresh concrete. The long axis of the diamond pattern shall be aligned with the slope of the ramp. 14. Detectable warning surface shall be "City of Seattle Safety Yellow" and shall be located 6 inches off the curb face.

ICC/ANSI A117.1-1998

405 Ramps

405.1 General. Walking surfaces on accessible routes with a running slope steeper than 1:20 are ramps and shall comply with Section 405.

405.2 Slope. Ramp runs shall have a running slope not steeper than 1:12.

EXCEPTION: Ramps in or on existing buildings or facilities shall be permitted to have slopes steeper than 1:12 complying with Table 405.2 where such slopes are necessitated by space limitations.

405.8 Handrails. Ramps with a rise greater than 6 inches (150 mm) shall have handrails complying with Section 505. Handrails shall not reduce the required clearances of a ramp run or landing.

406.7 Location. Curb ramps and their side flares shall not protrude into vehicular traffic lanes, parking spaces, or into parking space access aisles.

406.8 Obstructions. Curb ramps shall be located or protected to prevent their obstruction by parked vehicles.

406.9 Handrails. Handrails are not required on curb ramps.

406.10 Location at Marked Crossings. Curb ramps at marked crossings shall be wholly contained within the markings, excluding any flared sides.

406.11 Diagonal Curb Ramps. Diagonal or cornertype
Curb ramps with returned curbs or other well-defined edges shall have the edges parallel to the direction of pedestrian flow. Bottoms of diagonal curb ramps shall have 48 inches (1220 mm) minimum clear space, measured parallel to the running slope. Diagonal curb ramps provided at marked crossings shall provide the minimum clear space within the markings. Diagonal curb ramps with flared sides shall have a segment of straight curb 24 inches (610 mm) long minimum on each side of the curb ramp and within the marked crossing.

ICC/ANSI A117.1-1998

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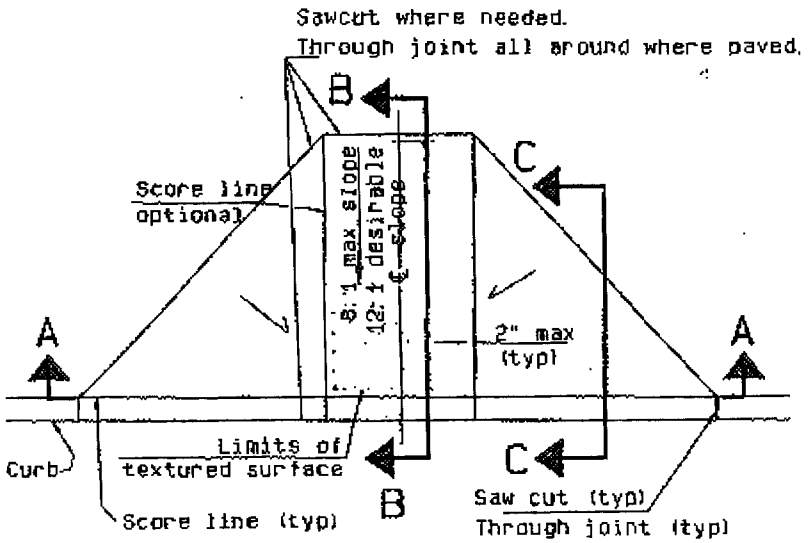
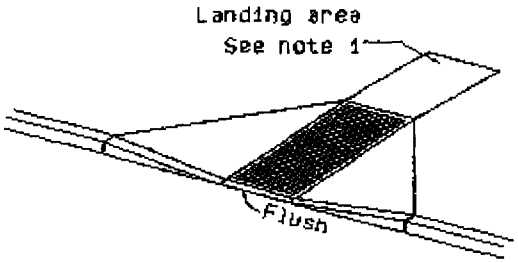
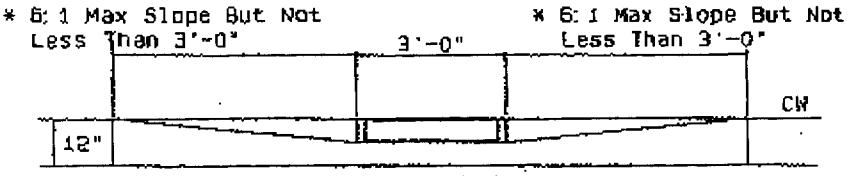
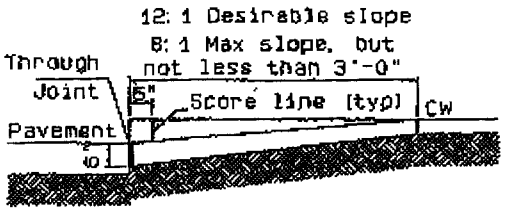






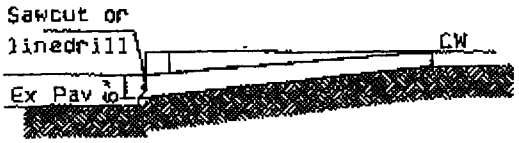
*For projects under Federal design guidelines, must use 10:1 Max. Slope

Section A-A



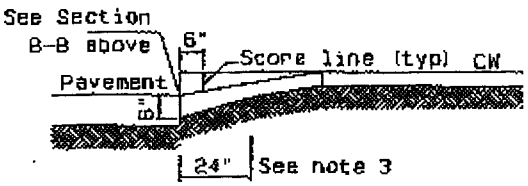
Section B-B
INSTALL WITH NEW PAVEMENT

Curb monolithic with ramp. New pavement blocked out full depth



Section B-B
INSTALL IN EXISTING PAVED AREAS

Curb monolithic with ramp. Existing pavement removed at face of curb



Section C-C

Ref. Std. Spec. Sec. 8-14

1. Sidewalk paving in the planting strip or at the back of the sidewalk shall be installed as necessary to make the ramp accessible to CW landing and provide a flat landing area at the top of the ramp (3'x 4'min).

2. The curb ramp shall not be poured integral with the sidewalk or pavement and shall be isolated by through joint material on all sides.

3. The sidewalks thickened edge shall be continued through the wing of the curb ramp.

4. The center ramp section concrete shall have a coarse textured surface obtained by a 3/4" 9-11 flattened expanded metal mesh being pressed into the still fresh concrete. The long axis of the diamond pattern shall be perpendicular to the curb. The triangular wing sections shall have a slightly brushed finish, parallel to the curb.

5. Minimum distance between adjacent curb ramps shall be 6 feet.

6. Inlets shall be so located that runoff does not flow past the curb ramp.

7. Minimum lateral clearance from inlets, poles, hydrants, and other above ground obstacles shall be 1 foot to the scored portion of the ramp.

8. For additional requirements and conditions refer to the Seattle Board of Public Works Curb Ramp Placement Policy adopted June 25, 1980 and Standard Plan 422.1b

APPROVED BY THE BOARD OF PUBLIC WORKS 7/12 1971 [signature] CHAIRMAN ATTEST: [signature] EXEC SECRETARY	CITY OF SEATTLE DEPARTMENT OF ENGINEERING	Curb Ramp Construction Detail

NO. 66677-1-I

COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION I

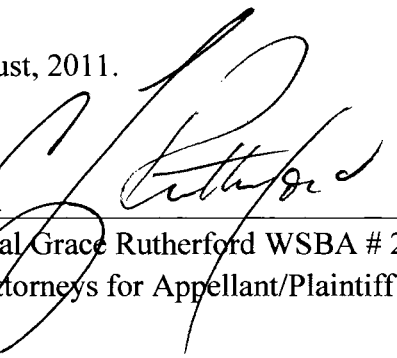
FRANCESCA GIUSTI, a single person Appellant/Plaintiff, v. CSK AUTO, INC., an Arizona Corporation doing business in Washington as SCHUCK'S AUTO SUPPLY, Respondents/Defendants.	CERTIFICATE OF SERVICE

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 AUG -2 AM 11:33

I HEREBY DECLARE under penalty of perjury under the Laws of the State of Washington that on the below date and time, I delivered a copy of the Appellant's Opening Brief on August 1, 2011 to opposing counsel at:

John T. Dalton
Merrick, Hofstedt & Lindsey, P.S.
3101 Western Avenue, Suite 200
Seattle, WA 98121

DATED this 2nd day of August, 2011.



Crystal Grace Rutherford WSBA # 27202
Of Attorneys for Appellant/Plaintiff