

**Department of Justice**

**§ 36.406**

series of related projects, housing five or more sales or rental establishments. For purposes of this section, places of public accommodation of the types listed in paragraph (5) of the definition of *place of public accommodation* in §36.104 are considered sales or rental establishments. The facility housing a *shopping center or shopping mall* only includes floor levels housing at least one sales or rental establishment, or any floor level designed or intended for use by at least one sales or rental establishment.

(b) The exemption provided in paragraph (a) of this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements established in this subpart. For example, alterations to floors above or below the accessible ground floor must be accessible regardless of whether the altered facility has an elevator.

**§ 36.405 Alterations: Historic preservation.**

(a) Alterations to buildings or facilities that are eligible for listing in the National Register of Historic Places under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), or are designated as historic under State or local law, shall comply to the maximum extent feasible with section 4.1.7 of appendix A to this part.

(b) If it is determined under the procedures set out in section 4.1.7 of appendix A that it is not feasible to provide physical access to an historic property that is a place of public accommodation in a manner that will not threaten or destroy the historic significance of the building or facility, alternative methods of access shall be provided pursuant to the requirements of subpart C of this part.

**§ 36.406 Standards for new construction and alterations.**

(a) New construction and alterations subject to this part shall comply with the standards for accessible design published as appendix A to this part (ADAAG).

(b) The chart in the appendix to this section provides guidance to the user in reading appendix A to this part (ADAAG) together with subparts A

through D of this part, when determining requirements for a particular facility.

**APPENDIX TO § 36.406**

This chart has no effect for purposes of compliance or enforcement. It does not necessarily provide complete or mandatory information.

	Subparts A–D	ADAAG
Application, General.	36.102(b)(3): public accommodations. 36.102(c): commercial facilities. 36.102(e): public entities. 36.103 (other laws) 36.401 ("for first occupancy"). 36.402(a) (alterations).	1, 2, 3, 4.1.1.
Definitions .....	36.104: commercial facilities, facility, place of public accommodation, private club, public accommodation, public entity, religious entity.  36.401(d)(1)(ii), 36.404(a)(2): shopping center or shopping mall. 36.401(d)(1)(i), 36.404(a)(1): professional office of a health care provider. 36.402: alteration; usability. 36.402(c): to the maximum extent feasible.	3.5 Definitions, including: addition, alteration, building, element, facility, space, story.  4.1.6(j), technical infeasibility.
New Construction: General .....	36.401(a) General ..  36.401(b) Commercial facilities in private residences. 36.207 Places of public accommodation in private residences.	4.1.2.  4.1.3.
Work Areas .....	.....	4.1.1(3).
Structural Impracticability.	36.401(c) .....	4.1.1(5)(a).
Elevator Exemption.	36.401(d) .....	4.1.3(5).
Other Exceptions.	36.404 .....	4.1.1(5), 4.1.3(5) and throughout.
Alterations: General.	36.401(b): commercial facilities in private residences. 36.402 .....	4.1.6(1).