

Public comment on the
2018 International Code Council codes

Submitted by:

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As applied to public accommodations and commercial facilities, discrimination includes – failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

Americans with Disabilities Act of 1990

When the Americans with Disabilities Act (ADA) was passed, most facilities in the public realm were inaccessible. Congress required that new buildings must be constructed to accessible standards. All existing facilities were required to make “readily achievable” accessibility improvements by 1992, and then make additional accessibility improvements when alterations are made. The ADA was a compromise between advocates, builders and developers. These triggering events were chosen to minimize cost and disruption, but also to remove barriers to civic life by people with disabilities – a fundamental goal of the ADA.

Since 1992, most neighborhood business districts have experienced changes of owners, changes of businesses, and changes of use. Renovation often occurs when businesses change. Yet, most of our neighborhood business districts contain older commercial properties which have been altered but still lack accessible entrances. Often the barrier is a single step up to the front door. Not only are these facilities sources of goods and services, they’re also socializing and employment opportunities. Accessibility barriers in our neighborhood business districts are effectively excluding people with disabilities from community activities and amenities. Why have these accessibility barriers persisted over the decades?

The state building code requires that a minimum of 20% of renovation costs be allocated to accessibility modifications on the path of travel to the renovated space. However, the state building code doesn’t require any of these modifications to be made to the facility’s entrance. As a result, we see “accessibility modifications” made in inaccessible locations (wheelchair accessible bathroom down a flight of steps, in a business with no accessible entrance) – which makes the term “accessible” meaningless. The state building code establishes no priority as to which barrier must be removed first. This lack of any priority has perpetuated the exclusion of people with disabilities.

The ADA established clear priorities and made barrier removal at entrances the highest priority. A public accommodation’s first priority in barrier removal is to create an accessible entrance on an accessible route. “This priority on ‘getting through the door’ recognizes that providing

physical access to a facility from public sidewalks, public transportation, or parking is generally preferable to any alternative arrangements in terms of both business efficiency and the dignity of individuals with disabilities.”¹

State and local building inspectors routinely approve building permits and grant building and occupancy permits and licenses to operate, even where their inspection shows that the facility fails to provide basic access to people with disabilities without good cause. By doing so, local government violates its own duties under the ADA. Local governmental entities are required to comply with Title II of the ADA. Building inspection, permits and licensing constitute a “service, program or activity,” as defined by the ADA. The ADA requires local governmental entities to periodically review, and if necessary, make reasonable modifications to services, programs or activities if they “adversely impact people with disabilities.” By stripping away the ADA’s priorities, the state building code (as enforced by building inspectors) adversely impacts people with disabilities.

The ADA’s fundamental goal of the removal of barriers to people with disabilities has been thwarted; fallen victim to state and local building codes enforced by government employees.

Additionally, people with disabilities are a “protected class” under the Fair Housing Act. The Fair Housing Act identified lack of equal access to community amenities as an “impediment” to fair housing choice. Neighborhood business districts, and the public accommodations therein, are community amenities. Local governmental entities are required to comply with, and to take actions to “affirmatively further” the goals of the Fair Housing Act. Local government is under a duty to affirmatively further the process of elimination of impediments to fair housing, such as the elimination of accessibility barriers to the entrances of facilities in neighborhood business districts.

The dilemma for building inspectors is that following the state building code causes them to violate federal ADA and Fair Housing Act requirements.

Pennsylvania must modify the state building code to make access to civic life, particularly “getting in the door” a priority. Pennsylvania must amend the state building code to adopt the ADA’s four priorities of barrier removal.²

¹ Excerpted from the "Americans with Disabilities Act Title III Technical Assistance Manual"; <https://www.ada.gov/reachingout/title314.html>

² "Americans with Disabilities Act Title III Technical Assistance Manual; III-4.4500 Priorities for barrier removal."; <https://www.ada.gov/reachingout/title314.html>