

City of St. Louis
Office on the Disabled
Reviewing Construction Design Plans

Introduction

The City has a building code that contains standards for making construction of property accessible. But, the building code standards for accessible design are not identical to the standards applied for compliance with the Americans with Disabilities Act ([ADA](#)) for commercial construction or Fair Housing [Act](#) standards for residential construction.

The Building Division, not the Office on the Disabled, enforces compliance with the building codes. The Office on the Disabled brings to the attention of the Building Division and developers and designers. It makes suggestions about how construction can be made to comply with ADA and Fair Housing Act standards. With respect to real estate issues, the Office on the Disabled performs four functions:

- Consulting with the Plan Examiners from the Building Division on unique accessibility problems in new construction and renovation projects;
- Working with the Building Inspectors when a relatively small project requires an Occupancy Permit, and the project has inaccessible features;
- Consulting with the public about how to make aspects of a planned project accessible; and
- Explaining requirements of the ADA and the Fair Housing Act to design professionals, developers, businesses, and home owners and renters.

Accessibility Requirements Enforced by the City

The City currently requires business construction to comply with the 2003 International Building Code, which includes Chapter 11- Accessibility. The accessibility standards in that code were those adopted in 1998 and known as ICC/ANSI Q117.1998 *Accessible and Useable Buildings and Facilities*. (Building codes are not in the public domain. They can be purchased or viewed some libraries.)

Subject to certain exceptions, both these codes require full accessibility for

- all new construction,
- all renovations or alterations of an existing building, and
- circumstances where a property's occupancy is changing from one use group to another.

In the case of new construction, all features must be accessible.

Where there are renovations of an existing space or a change in use of an existing space, renovations must be fully accessible. In addition, the developer is required to spend a certain amount of money making the pathway from the parking lot or curb to the renovated space accessible. "Pathway" includes, in addition to the actual walkway to the renovated space, restrooms, drinking fountains, and pay telephones along the way.

Accessibility is accomplished through complying with a series of architectural standards and installing certain signs required by the building code and by standards that have been adopted for compliance with the ADA and/or the Fair Housing Act.

Consulting with the Plan Examiners

While the Plan Examiners decide whether design for a project meets code standards, sometimes unusual situations occur that present an opportunity for the Plan Examiners to consult with the Office on the Disabled. In order to make the application of standards predictable for the public, the two offices seek agreement between them as to what is required. Unique access issues can arise in new construction. More commonly, the uniqueness of old buildings and often limited scopes of alterations bring up unusual accessibility issues.

Working with the Building Inspectors

Building Inspectors ensure that construction that is done according to the project design approved when the Building Permit is issued. Since the design has been reviewed for accessibility, there are only rare times that a new accessibility issue comes up for projects that have Building Permits.

Building Inspectors also review whether to grant an Occupancy Permit where there is a new use in an existing space. Often these spaces are being cleaned up and painted, but do not involve sufficient construction to require a Building Permit. When the Building Inspectors inspect such situations, they deny the Occupancy Permit, among other reasons, if the property is not accessible.

When the Building Inspectors deny an Occupancy Permit because of accessibility issues, they direct the issue to the Office on the Disabled. The Office on the Disabled reviews the matter and explores the opportunities to make the project more accessible. The Office sometimes makes suggestions and ultimately advises the Building Division on whether it believes that the project, as may be modified, complies with the ADA and the City's building code accessibility standards. The requirements of the ADA as applied to existing structures are somewhat complicated. [See "Requirements of The ADA and The Fair Housing Act" below.](#)

CONSULTING WITH THE PUBLIC

Together, the staff of the Office of the Disabled and the Office's Advisory Council have a wealth of knowledge about how to solve difficult accessibility issues. They can offer information about such unusual technologies as fold up grab bars, offset hinges, lifts, "levels" that measure slopes, roll in showers, automatic door openers, etc. They have experience in suggesting cost effective means to make as built situations accessible. The staff makes itself available to the public for inquiries.

REQUIREMENTS OF THE ADA AND THE FAIR HOUSING ACT

The following is a brief summary the understanding that the Office on the Disabled has of certain laws and regulations. The following is not to be taken as legal advice. Anyone concerned with complying with the standards involved should consult with his/her own design professional and lawyer.

The ADA's Readily Achievable Requirement

Many people in the City and around the Nation think that there is a "grandfather clause" in the ADA. They think that established businesses may ignore forever making their facilities accessible. That is not so. Not every business has to make itself fully accessible as soon as it opens. But that is not because of a "grandfather clause." Instead, it is because of the somewhat relaxed requirement in the ADA to do whatever is "readily achievable."

All businesses, even if they are not doing renovations, are required by the ADA to do what is "readily achievable," year by year until the business is fully accessible. The original idea was that the ADA would lead businesses to make themselves ever more accessible over the years, without having to spend unmanageable amounts in any given year. Some businesses have done that. By now, they have made themselves fully accessible. Others have done nothing since the ADA became effective in 1992. As such, these are now exposed to complaint and to the expectation that they spend now what they might have over all those years.

The U.S. Department of Justice regulations make some suggestions ([in regulation 28 C.F.R. § 36.304](#)) about what is "readily achievable." The regulation and law speak in terms of "public accommodations." Generally speaking, "public accommodations" are businesses or non-profits that sells goods on a retail basis or provide services to the public. Everything from dress shops to barber shops, restaurants to stadiums, tax preparation offices to medical care offices, private hospitals to private universities, social service agency offices to law offices, and beyond are "public accommodations." The regulation provides as follows:

Removal of barriers.

- (a) General. A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.
- (b) Examples. Examples of steps to remove barriers include, but are not limited to, the following actions:
- (1) Installing ramps;
 - (2) Making curb cuts in sidewalks and entrances;
 - (3) Repositioning shelves;
 - (4) Rearranging tables, chairs, vending machines, display racks, and other furniture;
 - (5) Repositioning telephones;
 - (6) Adding raised markings on elevator control buttons;
 - (7) Installing flashing alarm lights;
 - (8) Widening doors;
 - (9) Installing offset hinges to widen doorways;
 - (10) Eliminating a turnstile or providing an alternative accessible path;
 - (11) Installing accessible door hardware;
 - (12) Installing grab bars in toilet stalls;
 - (13) Rearranging toilet partitions to increase maneuvering space;
 - (14) Insulating lavatory pipes under sinks to prevent burns;
 - (15) Installing a raised toilet seat;
 - (16) Installing a full-length bathroom mirror;
 - (17) Repositioning the paper towel dispenser in a bathroom;
 - (18) Creating designated accessible parking spaces;
 - (19) Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
 - (20) Removing high pile, low density carpeting; or
 - (21) Installing vehicle hand controls.
- (c) Priorities. A public accommodation is urged to take measures to comply with the barrier removal requirements of this section in accordance with the following order of priorities.
- (1) First, a public accommodation should take measures to provide access to a place of public accommodation from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces.
 - (2) Second, a public accommodation should take measures to provide access to those areas of a place of public accommodation where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing Brailled and raised character signage, widening doors, providing visual alarms, and installing ramps.
 - (3) Third, a public accommodation should take measures to provide access to restroom facilities. These measures include, for example, removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars.
 - (4) Fourth, a public accommodation should take any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

Renovating Existing Buildings or Parts of Buildings

As stated above, new construction must be fully accessible. In the case of renovating buildings, the ADA is somewhat more complicated.

The space being renovated must be done in a way that makes it fully accessible. (The ADA refers to renovations as "alterations.") Thus, in the case of a "gut rehab" of a second floor office space in an existing building, the renovated space must be fully accessible. Anything in the space – offices, restrooms, dining areas, exercise facilities, etc. – must become fully accessible.

In addition, the pathway from the parking lot or curb to the renovated space must be made accessible. "Pathway," in this context, has a special meaning. It means the actual walkway from a disabled designated parking space in a

parking lot or, if no parking lot, from the curb to the public right of way to the renovated space. Also included in this special definition of “pathway” are the restrooms, drinking fountains and pay telephones along the way. There is a limit to pathway requirement, however. While the renovated space in the building must be fully accessible, the business doing the renovations may not have to make the pathway fully accessible in the first year. How much the developer has to spend on making the pathway to the renovated space accessible depends on how much the developer is spending on the main renovation project. If the cost of making all elements of the pathway accessible is more than 20 percent of the cost of the main renovation project, the developer does not have to make all those elements completely accessible at the time of renovation.

Thus, in the example of a developer renovating a second floor office space, the cost of installing an elevator to the second floor might exceed that 20 percent. The developer would not have to install an elevator at that time.

In that example, the developer still cannot ignore all aspects of making the pathway accessible. For example, the developer might be able to install a one-story lift in the building within the 20 percent. If the stairway is wide enough, the developer might install a stair glider with a platform wide enough to hold a person in a wheelchair. If there is a restroom in the common area (that is, the pathway) and there is enough money in the 20 percent to renovate the restroom, the developer should make it accessible. Even if the new office cannot serve wheelchair users, it can serve people who use crutches, canes or walkers and are able to climb stairs. Some such people still need an accessible restroom.

While the developer can limit its work on the pathway to 20 percent of the main renovation project, inevitably, there are still important accessible features it can add. The priority for what is done to make the pathway accessible is similar to the priority set for doing what is readily achievable [link to priority set for doing what is readily achievable] discussed above.

Doing the pathway alterations up to 20 percent of the main renovation project is not the end of the story. Each year that follows, the business is still required to do what is readily achievable until the pathway is fully accessible over time. While some may disagree, the Office on the Disabled believes that, if a business operates in a second floor space for 5 or 10 years without a means to get wheelchair users to the second floor, the readily achievable requirement eventually requires the expenditure necessary to solve the problem – even if that means installing an elevator.

Fair Housing Act

In 1988, Congress amended the Fair Housing Act to prohibit developers from discriminating against tenants on the basis of disability. In short, any developer constructing a new residential project with more than four dwelling units must make certain portions of the property either fully accessible or “adaptable.” In this context, “adaptable” means being capable of being made accessible later if a tenant requires. A developer thinking about building a multifamily residential project should consult with its architect and lawyer to make sure it is meeting its legal obligations. Also the Plan Examiners will pick up deficiencies if they occur.

Two points, however, deserve comment here. First, in existing multifamily buildings, the landlord does not necessarily have to make the apartments and pathways to them accessible. But the landlord does have to permit a tenant, at the tenant’s expense, to make alterations to the unit and pathway accessible. The tenant, however, also has to agree to remove the changes when the tenant moves out, at the tenant’s cost, but only if the landlord requires. (Sometimes adding accessibility features improves a property.)

Second, the apartments that have to be accessible or adaptable are only those that are on an accessible pathway. Those are the apartments that are on the ground floor and on floors that can be reached by elevators. That does not mean that a developer can build some apartments half a flight below grade and the rest a half a flight or more above grade. The ones that are half a flight below grade have to be accessible or adaptable and have to be reached through an accessible pathway from the parking lot or, if none, from the curb.

City Operated Incentive Programs

The City has reserved the right to make extra requirements for real estate projects that receive City incentives.

For example, in order to receive Tax Increment Financing (“TIF”), a developer must make all commercial property fully accessible. Such developers of residential projects must make some units fully accessible and make the rest adaptable. Thus, projects must meet accessibility standards that, in some respects, exceed the requirements of the ADA and the Fair Housing Act.

Likewise, the Affordable Housing Commission requires that all projects it funds meet its “[Universal Design](#)” standards for accessibility, even though those requirements are over and above what would be required by the City’s building codes.

Other information about the Office on the Disabled is available at our [website](#)