



Mike McGinn, Mayor
City of Seattle

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CITY CLERK

Executive Order Number 01-2012

Compliance with Accessibility Standards, including those required by the federal Americans with Disabilities Act (ADA)

An Executive Order affirming the City's commitment to local, state and federal accessibility standards and requirements, including recent amendments to federal ADA standards and regulations as they pertain to Title II and Title III entities.

WHEREAS, the federal Americans with Disabilities Act (ADA) regulates the provision of access to buildings and other facilities for individuals with disabilities;

WHEREAS, the City of Seattle is a public entity as defined in regulations implementing Title II of the ADA, and therefore its departments, agencies, offices, and special purpose districts are subject to Title II of the ADA;

WHEREAS, the City of Seattle owns property and facilities that it leases or otherwise makes available to other public entities subject to Title II of the ADA, and to private entities defined under Title III of the ADA;

WHEREAS, the Architectural and Transportation Barriers Compliance Board (Access Board) issued the 1991 ADA Standards for Accessible Design (the "1991 Standards"), which provided minimum standards for facilities constructed or altered on or after January 26, 1992;

WHEREAS, the Federal Department of Justice (DOJ) Regulations for Title II required facilities constructed or altered after January 26, 1992 to be readily accessible and usable to individuals with disabilities, and referenced the 1991 Standards;

WHEREAS, from 1992 through 2004, the Washington State Building Code (which the City of Seattle is obligated to follow as a matter of law) had unique accessibility provisions that were certified by the DOJ as equivalent to the 1991 Standards;

WHEREAS, the DOJ has revised regulations for ADA Titles II and III and amended and revised the previously enforceable accessibility standards, and recorded these in the Federal Register as the **2010 ADA Standards for Accessible Design** ("2010 Standards");

WHEREAS, effective **March 15, 2012**, compliance with the 2010 Standards is required for new construction and alteration of existing structures and facilities by Title II and Title III entities;

WHEREAS, there may be substantive inconsistencies between the Washington State Building Code, the Seattle Building Code, the Seattle Residential Code, the Seattle Existing Building Code, and the **2010 Standards**;

WHEREAS, where there is an inconsistency between the Washington State Building Code, the Seattle Building Code, the Seattle Residential Code, the Seattle Existing Building Code and the ADA, the City should abide by the most stringent requirements;

NOW, THEREFORE, I, MICHAEL MCGINN, Seattle Mayor do hereby direct all City of Seattle Departments and Offices that manage, design, construct, alter, maintain and lease City facilities and properties to comply with all applicable portions of the regulations related to Title II, including the 2010 ADA Standards for Accessible Design.

Dated this 11 day of May, 2012.



Michael McGinn

Mayor, City of Seattle

NEED FOR EXECUTIVE ORDER:

The federal Department of Justice published revised regulations for Titles II and III of the Americans with Disabilities Act and incorporated new technical design standards known as the **2010 ADA Standards for Accessible Design**. **These standards become mandatory for new construction and alterations as of March 15, 2012.**

Facilities that are owned, operated, managed and leased by City of Seattle, its departments, agencies, special purpose districts, and instrumentalities are subject to all applicable local, state and federal laws and regulations. The Washington State Building Code has not yet been updated to be consistent with the 2010 federal ADA standards and regulations.

This executive order is being issued to remind Departments and Offices that are responsible for owning, managing, constructing, altering and/or leasing City facilities to adhere to the most stringent standards upon their effective date.

BACKGROUND:

The Americans with Disabilities Act of 1990 (ADA) directed federal agencies charged with oversight and enforcement responsibilities to issue regulations that are consistent with the Act. The Architectural and Transportation Barriers Compliance Board (Access Board) responsible for creating the standards and those agencies responsible for issuing the regulations and adopting or amending the standards create by the Access Board are not the same entities that develop building and engineering codes. As a result of this, the scope and technical requirements in the codes may differ from the enforceable ADA Standards.

The Washington State Building Code accessibility provisions were uniquely certified as equivalent to the 1991 ADA Standards for Accessible Design and were integral to the Seattle Building Code for many years. When the State adopted the International Building Code in 2004, the new code format along with its accessibility requirements resulted in the State no longer maintaining its own DOJ-certified accessibility code.

Recent adoption of revised accessibility standards by the Department of Justice does not coincide with the normal code adoption cycles of the International Code Council (ICC). Seattle's current building codes are consistent with the ICC as adopted and amended by Washington State during the last code cycle. *As such these are not harmonized with the new standards issued by the DOJ and it is unknown when a full harmonization will occur.*

SCOPE:

The provisions of this Executive Order apply to the design, construction, alteration, repair, or maintenance of any facility or element therein by, or on behalf of, public agencies subject to Title II of the ADA. This order applies to all types of facilities, all types of occupancy groups, and all elements within facilities and sites. This order also applies to the removal of barriers, design, construction or alteration, repair, and maintenance of places of public accommodation and commercial facilities subject to federal civil rights requirements under the ADA, where Title III or other Title II entities are located on city-owned land or in city-owned facilities. Additional federal design standards and regulations may be required by other Titles of the ADA where different federal agencies have ADA implementation authority.

REGULATORY REQUIREMENTS:

State and local government facilities must follow the standards and regulations as adopted by the Department of Justice, including the Title II regulations at 28 CFR 35.150 (Program Access for Existing facilities), 35.151 (New Construction and Alterations); and the 2010 ADA Standards for Accessible Design.

Facilities are defined in the regulations as all or any portion of:

- Buildings
- Structures
- Sites
- Complexes
- Equipment
- Rolling stock or other conveyances
- Roads
- Walks
- Passageways
- Parking lots
- Other real or personal property, including the site where the building, property, structure, or equipment is located.

Alteration is defined as a change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Alterations include, but are not limited to:

- Remodeling
- Renovation
- Rehabilitation
- Reconstruction
- Historic restoration
- Resurfacing of circulation paths or vehicular ways
- Changes or rearrangement of the structural parts or elements
- Changes or rearrangement in the plan configuration of walls and full height partitions
- Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.

It is the responsibility of the Departments and Offices:

1. To review the Title II regulations to determine what revisions to administrative procedures, if any, may be necessary to achieve compliance with components of the regulations that are non-facility related. It may be necessary for departments to implement physical improvements to facilities without waiting for any planned alterations due to scoping provisions that may exist solely in the regulations and not in the ADA Standards. These may include, without limitation:
 - a. Signage at inaccessible entrances that provides direction to accessible entrances.
 - b. Maintenance of accessible features and provision of effective communication.
2. To understand the requirements of Program Accessibility indicated in 28 CFR 35.150 as they pertain to the activities, programs, and services in existing facilities.
 - a. It should not be assumed that existing facilities are exempt from the new standards.

- b. It may be necessary to modify existing facilities outside of the scope of a planned alteration in order to achieve program access.
3. To understand that exemptions applicable to private entities do not extend to city-owned facilities or facilities the city will inherit at the end of agreements with other entities that improve city-owned property.
4. To utilize the regulations (Title II scoping) and the design standards (element scoping and technical requirements) together to achieve compliance for new or altered facilities, to comply with regulations governing site selection for facilities, and to become familiar with new scoping and technical requirements for elements including but not limited to:
 - a. Requirements for employee work areas and common use areas, regardless of the type of facility. Abilities routinely necessary to perform work tasks in a particular space or facility shall not be used as programmatic criteria to determine which spaces are or are not required to be accessible within the context of the project.
 - b. Requirements for accessible paths of travel, routes, and means of egress
 - c. Requirements for reach ranges, operable controls, and protruding objects
 - d. Requirements for recreational facilities, marinas, golf courses, gyms, sport courts
 - e. Requirements for judicial, correctional, detention, and holding facilities
 - f. Requirements for accessible parking, loading zones, transient lodging, and social services
 - g. Requirements for residential facilities (when provided to the public or to employees)
 - h. Requirements for medical facilities and associated parking requirements
 - i. Requirements for assembly seating and ticketing
5. To apply relevant accessibility criteria from the standards on an element-by-element basis within a facility or site when specific scoping or technical standards are not listed for that facility type.
6. To understand that program and facility maintenance and operations work performed by departments outside the scope of capital improvements may be subject to the new standards for work types that have previously been deemed to be routine maintenance.

ENFORCEMENT:

The Seattle Department of Planning and Development (DPD) enforces the requirements for accessibility that are found in chapters of the International Building Code (IBC) as amended by the Washington State Building Code (WSBC, WAC 51-40). The State and the City have adopted IBC Chapter 11 and some sections of IBC Appendix E. Accessibility regulations for existing buildings are found in Seattle Building Code Section 3411.

DPD enforces accessibility provisions adopted under the local code, whereas enforcement of the ADA is a federal responsibility. The designer and owner remain responsible for complying with all requirements of local codes and with federal standards governing accessible design. **Approval of a building permit does not guarantee compliance with the federal regulations.** Where local or state codes conflict with the requirements of federal regulations or the 2010 ADA Standards, the standards that provide the highest degree of accessibility to the broadest group of individuals in the most integrated setting should be followed.

Departments and Offices of the City of Seattle are responsible for making their facilities, sites, and portions thereof comply with the accessibility standards and regulations. Any project proposing to deviate from the scoping or technical standards associated with civil rights laws must obtain approval from the federal enforcement agency.

Exceptions to the ADA Standards: Exceptions from the ADA standards are generally not permitted unless permission is obtained for the exception by the Department of Justice (DOJ). In instances where local codes provide exceptions from accessibility requirements that differ from the 2010 ADA Standards for Accessible Design, such exceptions shall not be permitted for city owned facilities subject to Title II requirements unless that exception exists in the Title II regulations.

TECHNICAL ASSISTANCE:

Departments and Offices that require further information regarding the application of the regulations and standards may contact the ADA Title II Program Manager, Brenda Bradford at brenda.bradford@seattle.gov.

Copies of the standards and regulations and additional technical resources are available on the DOJ website at <http://www.ada.gov/>.

<http://www.ada.gov/regs2010/ADAregs2010.htm>

http://www.ada.gov/2010ADAstandards_index.htm