

Accessibility: 2010 Americans with Disabilities Act Regulations Compliance



Presented By: Bob Fitz, LA

Director of Landscape Architecture, Koontz-Bryant, P.C.

Overview

- Changes to Titles II and III of the Americans with Disabilities Act (ADA)
- Title II - State and Local Governments (Public Entities)
- Title III - Public Accommodations and Commercial Facilities
- Effective March 15, 2012 For New Construction or Alterations
 - ◀ **Effective January 31, 2013 for provision on accessible entry and exit to existing Swimming Pools, Wading Pools and Spas (built before March 15, 2012.)**

Different Businesses Affected

- Applies to activities of more than 80,000 units of state and local government
- More than 7,000,000 places of public accommodation



Exceptions

- Entities controlled by religious organizations, including places of worship
- Private clubs are not covered, except to the extent that the facilities are made available to patrons of a place of public accommodation

Element-By-Element “Safe Harbor”

- If your business facility was built or altered in the past 20 years in compliance with the 1991 Standards, or you removed barriers to specific elements in compliance with those Standards, you do not have to make further modifications to those elements – even if the new standards have different requirements for them – to comply with the 2010 Standards
- This provision is applied on an element-by-element basis and is referred to as the “safe harbor”



Element-By-Element “Safe Harbor”

- Safe harbor no longer applies to elements altered that were in compliance with the 1991 Standards
- For example:
 - ◀ Restriping Parking Lot
 - ◀ Relocate a fixed ATM



Element-By-Element “Safe Harbor”

- Elements that were not included in the 1991 Standards are not subject to the safe harbor.
- These include recreation facilities such as:
 - Swimming pools
 - Play areas
 - Exercise machines
 - Miniature golf facilities
 - Bowling alleys



Readily Achievable Barrier Removal

- On or after March 15, 2012, public accommodations must remove architectural barriers to elements subject to the new requirements in the 2010 Standards
 - ◀ For example, a hotel must determine whether it is readily achievable to make its swimming pool accessible to people with mobility disabilities by installing a lift or a ramp as specified in the 2010 Standards.
- ADA requires small businesses to remove architectural barriers in existing facilities when it is "readily achievable" to do so
 - ◀ Readily achievable: "easily accomplishable without much difficulty or expense"
- Based on the size and resources of business

Readily Achievable Barrier Removal

➤ May include:

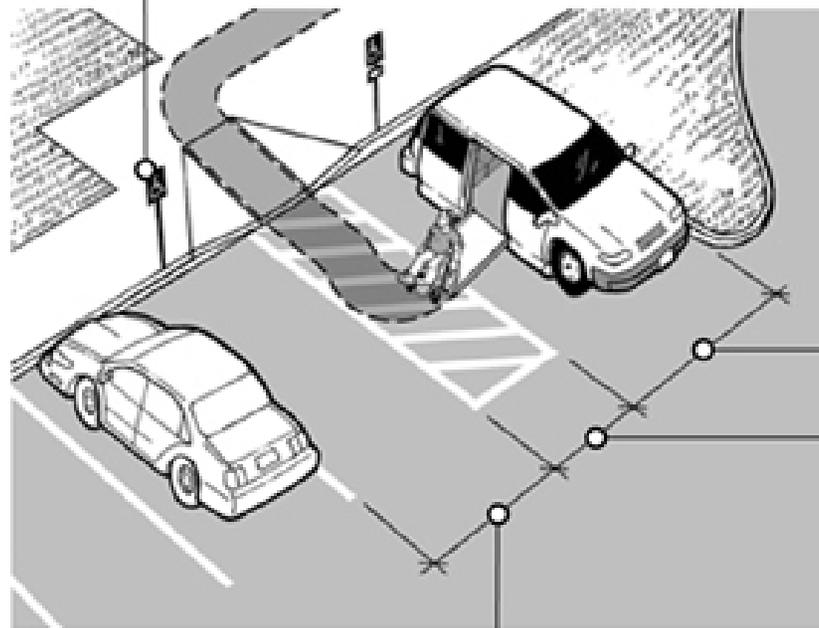
- Providing an accessible route from a parking lot to the business's entrance
- Installing an entrance ramp
- Widening a doorway
- Installing accessible door hardware
- Repositioning shelves
- Moving tables, chairs, display racks, vending machines, or other furniture



Readily Achievable Barrier Removal

Signage: international symbol of accessibility placed in front of the parking space mounted at least five feet above the ground, measured to the bottom of the sign. Van accessible spaces include the designation "van accessible".

Van Accessible Spaces: 2010 Standards—one for every six accessible spaces (1991 Standards required one for every eight)



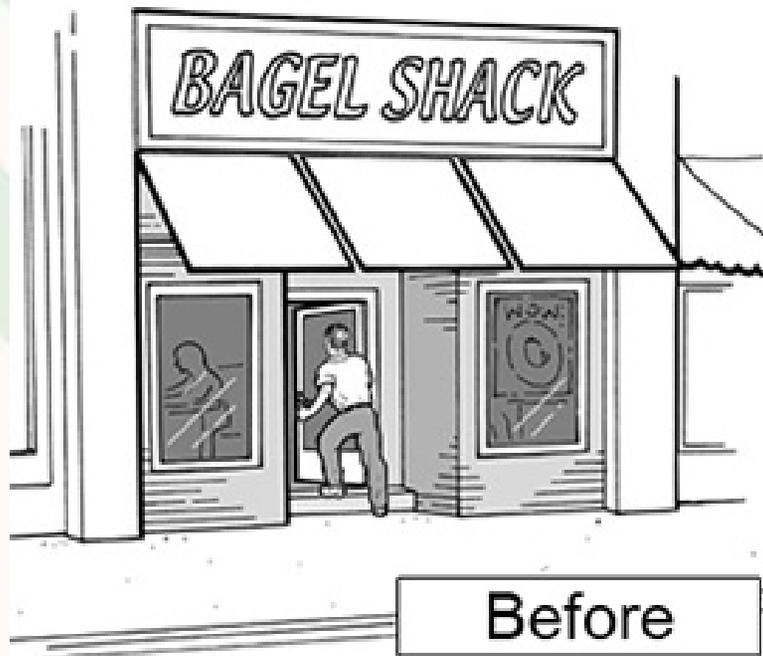
Space width for car: eight feet

Space width for van: 11 feet (although it may be eight feet wide if its access aisle is eight feet wide)

Access aisle:
Width: five feet (if aisle serves car and van spaces)

Length: full length of parking space

Readily Achievable Barrier Removal



Removing barriers, such as a step to an entrance, is required when readily achievable.
(Department of Justice Exhibit)

Why The Changes?

➤ Additional Facilities Coverage

- Swimming pools
- Parks
- Golf courses
- Boating facilities
- Exercise clubs
- Other recreation facilities accessible for individuals with disabilities



➤ Harmonize Governmental Codes: **STATE & LOCAL**

- Adoption of 2004 ADA Accessibility Guidelines
- International Building Code (including accessibility standards of the American National Standards Institute)
- Specific DOJ Directives and Clarifications

Why The Changes?

- When building to state requirements, you will already be following most of the federal requirements.
- DOJ includes more specific provisions:
 - ◀ Detention and correction facilities
 - ◀ Seating in assembly areas
 - ◀ Medical care facilities
 - ◀ Housing at a place of education
 - ◀ Path of travel requirements for alterations

Areas of Significant Change

➤ RECREATION FACILITIES

- Amusement Rides
- Recreational Boating Facilities
- Exercise Machines and Equipment
- Fishing Piers and Platforms
- Golf Facilities
- Miniature Golf
- Play Areas
- Swimming Pools
- Sauna and Steam Rooms

➤ PUBLIC FACILITIES

- Detention and Correctional Facilities
- Judicial Facilities
- Residential Dwelling Units

Areas of Significant Change

- CHANGES TO THE 1991 STANDARDS
 - ◀ Reach Range Requirements
 - ◀ Water Closet Clearances in Single User Toilet Rooms
 - ◀ Assembly Areas
 - ◀ Common Use Circulation Paths in Employee Work Areas
 - ◀ Location of Accessible Routes
 - ◀ Direct Access Entrances from Parking Structures
 - ◀ Transient Lodging Guest Rooms

Summary of Changes to Site Related Items

RECREATION FACILITIES

- Amusement Rides: Many newly designed or newly constructed rides must be accessible (e.g., New upon its first use)
- Exceptions:
 - ⏪ **Mobile or Portable Rides**
 - ⏪ **Amusement rides designed primarily for children where they are assisted on and off by an adult**
 - ⏪ Rides that are controlled or operated by the rider (e.g., bumper cars)
 - ⏪ Rides without seats
 - ⏪ Rides with unique designs & features under certain conditions (e.g., "Virtual Reality" Rides)



Summary of Changes to Site Related Items

- Recreational Boating Facilities: Provide boat slips that are accessible
 - ◀ Minimum number depends upon the size of the facility.
 - ◀ Accessible boat slips must be dispersed throughout the various types of boat slips
- Boarding piers at boat launch ramps
 - ◀ At least 5% (but no fewer than one) must be accessible
- Gangways part of a required accessible route are to be accessible
 - ◀ Subject to certain enumerated exceptions



Summary of Changes to Site Related Items

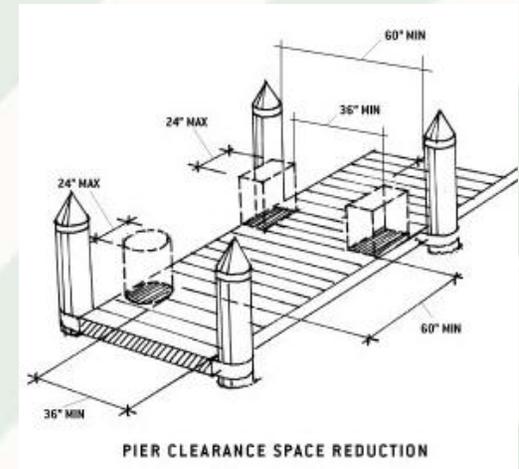
➤ Fishing Piers and Platforms: Newly designed, newly constructed, or altered fishing piers must have accessible routes

➤ Subject to the same exceptions permitted for gangways

➤ At least 25% of guardrails or handrails must be no higher than 34 inches

➤ Must be dispersed to provide opportunities of varied fishing conditions (I.e., shade, sun, shallow, deep, etc.)

➤ Clear floor or ground space must be provided at each accessible railing, and turning space must be provided on the pier



Summary of Changes to Site Related Items

- Golf Facilities: Newly constructed and altered golf facilities must have either an accessible route or golf car passages
 - ◀ Passages must have a minimum width of 48 inches connecting accessible elements and spaces
 - ◀ An accessible route to golf car rental area, bag drop-off areas, and other elements outside boundary of golf course



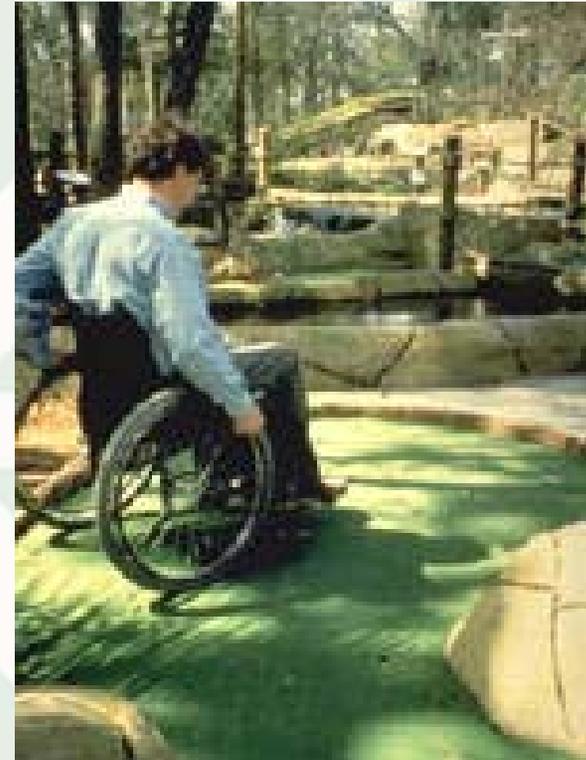
Summary of Changes to Site Related Items

- One or two teeing grounds (depending on the total number provided) per hole
- Weather shelters - golf car must be able to enter and exit
- Certain percentages of practice teeing grounds, practice teeing stations at driving ranges, and putting greens must be accessible



Summary of Changes to Site Related Items

- Miniature Golf: At least 50% of all holes must be accessible
 - Accessible holes must be consecutive
 - Last accessible hole must be on an accessible route that connects to course entrance or exit



Summary of Changes to Site Related Items

- Play Areas: Accessible ground and elevated play components
- Accessible routes
- Ramps and transfer systems (typically a platform or transfer steps)
- Accessible ground surfaces must be provided



- ⚡ Exceptions: Amusement attractions; Family child care center where proprietor resides; Existing play areas where components excluding ground surface are altered to create safe zones; Ground surfaces that are not altered even if play components are altered.

Summary of Changes to Site Related Items

- Swimming Pools, Wading Pools, and Spas
 - ◀ At least 2 accessible means of entry for swimming pools*
 - ◀ Means of entry include a pool lift or sloped entry, and either a transfer wall, transfer system, or pool stairs
 - ◀ At least 1 accessible means of entry for wading pools
 - ◀ Spas must provide a pool lift, transfer wall, or transfer system



Summary of Changes to Site Related Items

- ◀ *Only 1 accessible entry is required for a swimming pool with less than 300 feet of wall.
- ◀ Wave action pools, leisure rivers, and sand bottom pools where user access is limited to 1 area shall not be required to provide more than 1 accessible means of entry; either a pool lift, sloped entry, or a transfer system
- ◀ Catch pools
- ◀ Other existing wading pools, particularly those larger pools associated with aquatic centers or water parks, must be assessed on a case by case basis



Changes to the 1991 Standards

- The 2010 ADA Standards for Accessible Design changes are addressed in detail in Appendix B to the title III regulation and in the DOJ's regulatory impact analysis
- A few examples:
 - ◀ Design requirements for assembly areas
 - ◀ Scoping of seating in large facilities
 - ◀ Criteria for accessible routes
 - ◀ Parking structure direct access, etc.

Compliance Extension for Commercial Pools

- REVISED COMPLIANCE DATE: JANUARY 31, 2013
- Extended date for compliance requirements:
 - ◀ Accessible entry and exit for swimming pools, wading pools, and spas
 - ◀ 85,284 swimming pools at lodging facilities
 - ◀ 55,311 community pools
 - ◀ 26,883 pools run by Parks & Recreation Departments
 - ◀ 28,330 hotel spas

Compliance Extension for Commercial Pools

➤ Proposed Extension of Compliance: January 31, 2013

◀ On May 18, 2012, the Department announced that it is adopting a final rule extending the compliance date for sections 242 and 1009 of the 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design, as they relate to the provision of accessible entry and exit to existing swimming pools, wading pools, and spas (pools built before March 15, 2012). These provisions for existing pools of title II and title III entities will now take effect on January 31, 2013.

◀ The final rule does not affect the March 15, 2012 effective date for newly constructed or altered pools.

Compliance Extension for Commercial Pools

➤ Pending Legislation: Pool Safe Act

“Pool Safety and Accessibility for Everyone (Pool Safe) Act”
bill introduced on March 26, 2012

- Provides compliance date be extended for one year (after the date of enactment of the Pool Safe Act)
- Purpose is to revise certain rules relating to accessible means of entry to pools
- Using a portable lift shall be in compliance; and a facility that has more than one pool be permitted to share portable pool lifts
- Status: Not yet introduced to committee

What to Do?

➤ Evaluate Facilities

- Businesses should evaluate their facilities and develop priorities for removing barriers
- Businesses encouraged to consult with people with disabilities in their communities
- May not be readily achievable to remove some architectural barriers
 - For example, a restaurant with several steps leading to its entrance may determine that it cannot afford to install a ramp or a lift
 - The restaurant must provide its services in another way if that is readily achievable, such as providing takeout service
 - Businesses should train staff on these alternatives and publicize them so customers with disabilities will know of their availability and how to access them

What to Do?

➤ Prioritize Barrier Removal

- ◀ Understanding how customers arrive and move through businesses to identify existing barriers and setting priorities for their removal
- ◀ ADA recommends the following priorities for barrier removal:
 - ✔ Providing access to your business from public sidewalks, parking areas, and public transportation
 - ✔ Providing access to the goods and services your business offers
 - ✔ Providing access to public restrooms
 - ✔ Removing barriers to other amenities offered to the public, such as drinking fountains

What to Do?

➤ Develop Plan of Compliance

- Utilize the services of a consultant (design professional, attorney, insurance etc...) to assist in development of a program
 - Preparing construction plans and specifications
 - Assistance with obtaining approvals/permits
 - Assistance with construction administration

➤ Implement Plan

- Proceed with barrier removal in an organized systematic manner as resources permit
- Keep detailed documentation to demonstrate efforts of compliance

Tax Credit and Deduction

- Internal Revenue Service Code includes a Disabled Access Credit for businesses with 30 or fewer full-time employees or with total revenues of \$1 million or less in the previous tax year
- Eligible expenses may include
 - Cost of undertaking barrier removal and alterations to improve accessibility
 - Providing sign-language interpreters
 - Making material available in accessible formats such as Braille, audiotape, or large print
- Section 190 of the IRS Code provides a tax deduction for businesses of all sizes for costs incurred in removing architectural barriers in existing facilities or alterations
- The maximum deduction is \$15,000 per year

Penalty for Non-Compliance

➤ FINANCIAL

- ◀ A first non-compliance violation is \$55,000
- ◀ A Second is \$110,000

➤ PUBLIC RELATIONS

- ◀ Risk of damage to image and reputation in the community

Penalty for Non-Compliance

- The DOJ has the ability to bring class action law suits on behalf of individuals with disabilities
- Could be a significant monetary burden on a facility
- The DOJ can also get damages for people who are aggrieved and injunctive relief to force facilities to make required changes
- There are a number of plaintiff attorneys across the country that specialize in this area of the law, and seek out these lawsuits, including group claims

Accessibility can be Good for Business and Services

- Potential Customers: +54 Million People
- Purchasing Power: 175 Billion Dollars
- All Inclusive: Broad Market
- Growing Market: Baby Boomers

Conclusion

- Ongoing dialog between the DOJ and affected organizations and individuals.
- Not all of the requirements are absolute and are subject to interpretation.
- Many requirements are subject to certain conditions or stipulations.
- Much of DOJ's stance will require a "case-by-case assessment."

ADA Resources

ADA WEBSITE <http://www.ada.gov/>

2010 AMERICANS WITH DISABILITIES ACT –TITLE II
REGULATIONS

2010 AMERICANS WITH DISABILITIES ACT –TITLE III
REGULATIONS

2010 ADA STANDARDS FOR ACCESSIBLE DESIGN

ADA UPDATE: A PRIMER FOR SMALL BUSINESSES

ADA CENTER

Questions?

- Koontz-Bryant is continually monitoring situation for updates or changes to the ACT
- Provide assistance with evaluating or addressing specific situations
- Contact Bob Fitz for individualized consultation on case by case basis
phone: 804-200-1913
email: bfitz@koontzbryant.com
www.koontzbryant.com