

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: November 17, 2015

TO: Afsaneh Ahmadi, Chief Building Official, and Deputy Director,
Development Services Department

FROM: City Attorney

SUBJECT: Update on Accessibility Requirements for Fire Stations

INTRODUCTION

As more fire station projects are being designed and constructed, you have asked for an update on the accessibility requirements as they pertain to fire stations under the Americans with Disabilities Act (ADA) and Title 24 of the California Code of Regulations/California Building Code (CBC). Specifically, you have asked whether the City must comply with accessibility standards for the areas of the fire stations used only by Fire Department personnel. This memorandum will incorporate and update the June 11, 2002 Confidential City Attorney Memorandum entitled "ADA and Fire Stations" (Available upon request to the City Attorney) and the September 29, 2012 Engineering and Capital Projects Memorandum entitled "ADA and Fire Stations Updates to City Attorney Memo Dated June 11, 2002" (Attachment 1).

QUESTION PRESENTED

Are the non-public use areas of a newly constructed fire station exempt from the accessibility requirements of the ADA or the CBC?

SHORT ANSWER

No. The 2010 ADA standards for Accessible Design (2010 Standards) and the 2013 California Building Code do not include a general exemption for the non-public use portions of public buildings. All portions of the building must meet accessibility standards unless it is structurally impracticable to comply or a specific exemption exists for a particular element.

ANALYSIS

I. A PUBLIC ENTITY SHALL DESIGN AND CONSTRUCT NEW FACILITIES SO THAT THEY ARE READILY ACCESSIBLE TO AND USABLE BY INDIVIDUALS WITH DISABILITIES UNLESS IT IS STRUCTURALLY IMPRACTICABLE TO COMPLY WITH THE REQUIREMENTS OR IT MEETS AN EXPRESS EXEMPTION.

Title II of the ADA and its implementing regulations mandate that no qualified individual with a disability shall, by reason of such disability, or because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity. 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a) (2011); 28 C.F.R. § 35.149 (2011).

For new construction after January 26, 1992, "[e]ach facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities...." 28 C.F.R. § 35.151(a)(1) (2011).¹ Full compliance with the accessibility requirements are not required if a public entity can demonstrate that it is structurally impracticable to meet these requirements. 28 C.F.R. § 35.151(a)(2)(i) (2011). These instances are rare and usually involve unique terrain characteristics that prevent the incorporation of accessibility features. *Id.* This exception will not apply unless the City can demonstrate that it is structurally impracticable to integrate accessible requirements to the non-public use portions of the fire stations used exclusively by fire personnel.

Other general exceptions that exempt sites, buildings, facilities, and elements are specified in section 203 of the 2010 Standards and section 11B-203 of the 2013 CBC. In 2002, prior to the adoption of the 2010 Standards and the 2013 CBC, our Office opined that the non-public use areas or "dorm elements," including the bathrooms, lockers, storage lockers, doors, the Chief/Captain's room, and the bunk room area, were "employee work areas" and thus only required to be designed and constructed such that individuals with disabilities can approach, enter, and exit the areas. *See* 2010 Standards § 203.9; 2013 CBC § 11B-203.9.

¹ The current accessibility requirements for new construction are contained in the 2010 Standards and the 2013 CBC.

The 2010 Standards and 2013 CBC modified this definition. An “employee work area” is “[a]ll or any portion of a space used only by employees and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are not employee work areas.” 2010 Standards § 106.5; 2013 CBC § 202. Therefore, these elements of the fire station no longer meet the “employee work areas” exception and must be accessible. 2010 Standards § 203.9. Generally, spaces not used for work, including employee restrooms, locker rooms, break rooms, cafeterias, and parking, must be fully accessible. *United States Access Board Guide to the 2010 Standards on Employee Work Areas*, § 203.9.

It is often argued that since Fire Department personnel must meet certain physical qualifications that have the effect of precluding individuals with mobility disabilities, there is no need to construct accessible areas in fire stations that will be used exclusively by fire crew such as their sleeping quarters, bathrooms, kitchens, and common use areas serving those sleeping quarters. “The ADA does not exempt spaces because of a belief or policy that excludes persons with disabilities from certain work.” *United States Department of Justice Guidance on the 2010 ADA Standards for Accessible Design*, § 35.151(d) *Scope of Coverage*, September 15, 2010. As such, historically there has not been and currently there still is no exemption from the accessibility standards for non-public use portions of public buildings, including fire stations.

II. FIRE DEPARTMENT PERSONNEL CREW QUARTERS AND COMMON USE AREAS SERVING THOSE CREW QUARTERS SHALL COMPLY WITH THE RESIDENTIAL DWELLING REQUIREMENTS IN THE ADA STANDARDS.

As stated above, the 2010 Standards and the 2013 CBC contain the current accessibility requirements for new construction. There are no specific regulations about fire station accessibility in either the federal or state standards. However, “public entities must ensure that all normal governmental functions are reasonably accessible to disabled persons, irrespective of whether the DOJ has adopted technical specifications for the particular types of facilities involved.” *Fortyune v. City of Lomita*, 766 F.3d 1098, 1106 (9th Cir. 2014). In *Fortyune*, the City of Lomita argued that without the adoption of ADA regulations or standards specifically targeted toward on-street parking, the City could not have any obligations under the ADA to follow any standards or be required to provide accessible on-street parking. *Id.* The court found that even in the absence of specific regulatory design specifications for on-street parking, the public entity must still provide reasonable access to public parking. *Id.* This is consistent with the implementing regulations of the ADA. “A public entity shall not be excused from compliance with the requirements of this part because of any failure to receive technical assistance, including any failure in the development or dissemination of any technical assistance manual authorized by the Act.” 28 C.F.R. § 35.177 (2011). If no specific regulations exist for a type of facility, the best practice for public entities is to find regulations for similar facilities and comply with those requirements to the extent that it is not structurally impracticable.

The Department of Justice (DOJ) Guidance on the 2010 ADA Standards for Accessible Design states that “crew quarters that are used exclusively as a residence by emergency response personnel and the kitchens and bathrooms exclusively serving those quarters are more like residential dwelling units and are therefore *covered by the residential dwelling standards in the 2010 Standards*, not the transient lodging standards.” *United States Department of Justice Guidance on the 2010 ADA Standards for Accessible Design, § 35.151(d) Scope of Coverage, September 15, 2010* (emphasis added). Thus, the DOJ has specifically provided guidance to follow the residential dwelling standards for the non-public use crew quarters and the kitchens and bathrooms serving those quarters.²

Staff expressed concerns that accessible sinks and the counter top/island in the kitchens and lavatories in the bathrooms would be too low to be comfortably used by Fire Department personnel. The residential dwelling standards allow these elements to be adaptable³ so that they would not have to be lowered unless accessibility was needed. *Id.* Likewise, the City would not need to install grab bars and shower seats at the time of construction as long as the reinforcement has been installed in the walls and located so as to permit their installation at a later date. *Id.*

² Residential dwelling units standards are specified in section 809 of the 2010 Standards and section 11B-809 of the 2013 CBC.

³ “Adaptable” means “capable of being readily modified and made accessible.” 2013 CBC § 202.

CONCLUSION

The current federal and state accessibility standards do not include specific exemptions for any non-public use portion of fire stations. All portions of newly constructed public buildings must comply with the ADA and the CBC unless it is structurally impracticable to do so or a listed exception applies. The DOJ has advised that crew quarters used exclusively as a residence by emergency response personnel and the common use areas exclusively serving those quarters are more like residential dwelling units and are therefore covered by the residential dwelling requirements in the 2010 Standards.

JAN I. GOLDSMITH, CITY ATTORNEY

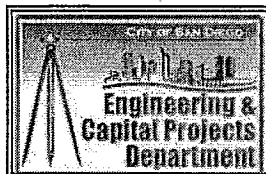
By _____/s/_____
Karen S. Li
Deputy City Attorney

KSL:js

Attachments

cc: Mehdi Shadyab, Senior Structural Engineer, Development Services Department
Elif Cetin, Assistant Deputy Director, Public Works Department
Thyme Curtis, Executive Director, Office of ADA Compliance and Accessibility
Mary Wolford, ADA Compliance Officer, Office of ADA Compliance and Accessibility
Fletcher Callanta, Senior CIP Access Law Compliance Officer, Public Works Department
Alejandra Warner, ADA Compliance Officer, Public Works Department
Noah Brazier, Deputy City Attorney, Advisor to Fire Department

MS-2015-24



**ACCESS LAW DESIGN COMPLIANCE
BUILDING PROJECTS
MEMORANDUM**

Date: September 29, 2012

TO: Engineering and Capital Projects

From: Access Compliance Office, Preliminary Engineering, Engineering and Capital Projects.

Subject: ADA and Fire Stations Updates to City Attorney Memo Dated June 11, 2002

Regarding the updates to the attorney's memo dated June 11, 2002, Subject: ADA and Fire Station, in regards of the scoping requirements for Fire Stations, because the new 2010 ADA Standards.

Yes the memo needs updates because the new 2010 ADA Standards have been adopted and new information from the Department of Justice have clarified gray area issues on the scoping requirement more specific on the non-public portions of public buildings.

Under the ADA all portions of the buildings must comply with the ADA. In addition to the technical requirements set in the 2010 Standards. The city is subject to comply with the Title II requirements set on the ADA¹

The non public areas of concern are the dormitories, toilet rooms, showers and locker rooms. We will analyze dorms separate from toilet rooms, showers and locker rooms.

I. Toilet rooms, showers and locker rooms

1. Per 2010 ADA Standards definition the restrooms are not part of the *"Employee Work Area. All or any portion of a space used only by employees and used only for work. Corridors, toilet rooms, kitchenettes and break rooms are not employee work areas"*. Therefore there is not an exemption for the toilet rooms and the standards require that all

¹ § 35.130 General prohibitions against discrimination

(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

A public entity may not deny a qualified individual with a disability the opportunity to participate in services, programs, or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

toilet rooms and facilities to be accessible. The only exception provided on the 2010 ADA is for the design of toilet rooms in private offices².

“213 Toilet Facilities and Bathing Facilities

213.1 General. Where toilet facilities and bathing facilities are provided, they shall comply with 213.

“213.2 Toilet Rooms and Bathing Rooms, where toilet rooms are provided, each toilet room shall comply with 603. Where bathing rooms are provided, each bathing room shall comply with 603³.”

2. In addition to the requirements listed on the Standards this office consulted with both the Access Board Technical Assistance and the Department of Justice technical assistance to confirm the interpretation of the Standard. Furthermore recent Surveys from the Program Civic Access of the Department of Justice have confirmed that the toilet, shower and locker facilities are included in the spaces and elements surveyed required to be accessible on Fire Stations, per Instance the Settlement Agreement between The United States Department of Justice (Department) initiated this matter as a compliance review of Kansas City, Missouri, (City) under title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§12131-12134, and the Department's implementing regulation, 28 C.F.R. Part 35.
3. Common toilet facilities must be accessible. Depending on the layout and design of the toilet facilities, if they can be deemed multiple then section 213.2.4 can be applied.

² 604.5 Grab Bars. Grab bars for water closets shall comply with 609. Grab bars shall be provided on the side wall closest to the water closet and on the rear wall.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a toilet room for a single occupant accessed only through a private office and not for *common use* or *public use* provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 604.5.

606.2 Clear Floor Space. A clear floor space complying with 305, positioned for a forward approach, and knee and toe clearance complying with 306 shall be provided

EXCEPTION 2. A lavatory in a toilet room or bathing facility for a single occupant accessed only through a private office and not for common use or public use shall not be required to provide knee and toe clearance complying with 306.

606.3 Height. Lavatories and sinks shall be installed with the front of the higher of the rim or counter surface 34 inches maximum above the finish floor or ground.

EXCEPTIONS: 1. A lavatory in a toilet or bathing facility for a single occupant accessed only through a private office and not for common use or public use shall not be required to comply with 606.3.

608.3 Grab Bars. Grab bars for showers shall comply with 609 and shall be provided in accordance with 608.3.

EXCEPTIONS: 1. Grab bars shall not be required to be installed in a shower located in a bathing facility for a single occupant accessed only through a private office, and not for common use or public use provided that reinforcement has been installed in walls and located so as to permit the installation of grab bars complying with 608.3.

³ Section 603 Toilet and Bathing Rooms technical requirements.

<http://www.access-board.gov/ada-aba/final.cfm>

213.2. 4. Where multiple single user toilet rooms are clustered at a single location, no more than 50 percent of the single user toilet rooms for each use at each cluster shall be required to comply with 603.

Advisory 213.2 Toilet Rooms and Bathing Rooms Exceptions 3 and 4. A "cluster" is a group of toilet rooms proximate to one another. Generally, toilet rooms in a cluster are within sight of, or adjacent to, one another.

4. After reviewing this information with the City's ADA Attorney, advises that to a minimum, the Fire Station Buildings shall be designed and constructed with

A toilet room accessible to the public at each floor, if more than one toilet room are located on the public areas these public toilets shall be each accessible;

An adaptable shower and locker facility shall be located on accessible toilet room or and adaptable toilet room.

II. Dorms

1. The attorney's memo dated June 11, 2002 deemed the dorms as employee work areas, however the Department of Justice have given this office two opposite answers; the dorms are or are not employee areas.

If the dorms are not employee work areas they will not be eligible to any exemption, and thus have to be accessible.

If the dorms are deemed employee work areas then the dorm spaces will be eligible for the exemption listed in 203.9

203.9 Employee Work Areas. Spaces and elements within employee work areas shall only be required to comply with 206.2.8, 207.1, and 215.3 and shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the employee work area.

2. What are the specific items required under 203.9?

"To approach" means that the dorms shall be connected by an accessible route complying with Chapter 4 Accessible Routes of the 2010 ADA Standards.

"To enter and exit" The doorway shall be accessible as required on section 206.5 of the 2010 ADA Standards, which refers to the size of the doorway and the maneuvering clearance. The 206.5 requirements for doorway are:

206.5 Doors, Doorways, and Gates. Doors, doorways, and gates providing user passage shall be provided in accordance with 206.5.

206.5.2 Rooms and Spaces. Within a building or facility, at least one door, doorway, or gate serving each room or space complying with these requirements shall comply with 404.

404 Doors, Doorways, and Gates

404.1 General. Doors, doorways, and gates that are part of an accessible route shall comply with 404.

404.2.3 Clear Width; and

404.2.4 Maneuvering Clearances. Minimum maneuvering clearances at doors and gates shall comply with 404.2.4. Maneuvering clearances shall extend the full width of the doorway and the required latch side or hinge side clearance

404.2.4.1 Swinging Doors and Gates. Swinging doors and gates shall have maneuvering clearances complying with Table 404.2.4.1.

III. Conclusion:

This office considers that to comply with the minimum requirements the Fire Stations shall follow the minimum scoping requirements as listed below

Minimum scoping requirements the list below is a general list every new building shall be evaluated during preliminary design for the minimum scoping requirements from this office:

1. At least one accessible route is provided within the site to the main entrance from:
 - Accessible parking spaces
 - Accessible passenger loading zones
 - Public streets and sidewalks
 - Public transportation stops (within the boundaries of the site) to the accessible building or facility entrance they serve
2. An accessible route connects accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site including,
 - Plazas
 - Other public spaces
3. An accessible route of travel to and from the following areas
 - From accessible restrooms
 - From drinking fountains
 - Public telephones serving the area to the area of new construction

- From and to elevators serving each floor
- Lobby
- Conference, meeting rooms
- Apparatus room
- Offices
- Dorms. (the clear space including strike clearance at the door)
- Activity room
- From other public rooms

4. Accessible rooms/elements

- Lobby
- Reception area and counter
- Restrooms on each floor, accessible to the public
- Accessible Parking
- Loading Zones
- Elevators
- Stairs
- Signage
- Meeting rooms
- Drinking fountains
- Required accessible doorways
- Elevator
- Stairs
- Ramps
- Curb ramps

5. Elements to be adaptable

- Locker rooms (one locker per floor)
- Shower rooms (one per floor)

Sincerely,

Alex Warner

CIP Access Law Compliance Officer

cc: Rahbeka Harris, Deputy City Attorney, MS 61

Fletcher Callanta, Senior CIP Access Law Compliance Officer, MS 608