



INTEROFFICE MEMORANDUM

Date: April 7, 2010

To: Code Services Personnel

From: Brad Claussen M.C.P., Building Official

Subject: Accessibility Construction Requirements

To begin with, I apologize if this memo becomes somewhat lengthy, but that may be necessary in order to fully explain the subject at hand. That is, the various federal, state and local regulations for constructing accessible buildings, how they all fit together and what we use here in Manhattan for accessible construction of various types of occupancies. I will begin with some background and general information on each regulation.

Americans With Disabilities Act

A federal regulation signed into law on July 26, 1990 which covers all public accommodations. It became effective on January 26, 1992. Title II of the ADA deals with the operations and buildings of state and local governments. Title III is the one we commonly utilize. It covers public accommodations and commercial facilities (typically non residential). Title II and III of the ADA were revised and published in the Federal Register on September 15, 2010. Beginning on March 15, 2012, compliance with the updated 2010 standards was required for new construction and alterations. The Federal Department of Justice is the oversight agency for this act.

Fair Housing Act

This is also a federal regulation which was adopted in 1968 and amended in 1988. It is currently administered by the US Dept. of Housing and Urban Development (HUD) and among other things, requires that new multifamily housing with four or more units be designed and built to allow access for persons with disabilities.

ICC / ANSI A117.1

A national standard for accessible construction that has been published since 1961. The current edition at this time is the 2009 version. It is updated on a five year cycle. The International Code Council is the secretary for this standard and has been responsible for its upkeep since 1987.

International Building Code

This code contains scoping provisions for accessibility, primarily in chapter 11. It is allowed as a “safe harbor” for covered housing construction regulated by HUD when interpreted in accordance with the IBC commentary. However, effective March 1, 2014 this chapter of the IBC was deleted locally in order to simplify the compliance process.

Kansas State Statutes

Statutes 58-1301 through 58-1304 and 58-1307 deal with accessibility as it may apply to our construction review and inspection process. These statutes require compliance with Title II or Title III of the Americans with Disabilities Act of 1990 for all “public buildings”. This term is not defined in the statutes, however, there is an Attorney General’s opinion which clarifies this to some extent. This will be addressed under the following heading. In addition, these statutes exempt listed historic sites. Listed means a structure that is on a local, state or national register. The state historic preservation office evaluates and approves equivalent alternative methods for these structures.

Attorney General’s Opinions

Both the state of Kansas and the federal attorney general’s office routinely issue written opinions on a variety of subjects. Some of these include issues relating to accessible construction. Notably four in particular which individually address fraternities & sororities, places of worship, the definition of “public building” and responsibility for enforcing accessibility requirements. Specifically, the Kansas Attorney General (AG) has determined that fraternities & sororities are not covered under the ADA but rather are a residential facility and therefore would be covered under the Fair Housing Act. There may be facilities that have mixed uses that would mandate both the ADA and FHA in different parts of the building. The example of this used in AG opinion 2000-34, is a large hotel with a residential wing and a transient stay wing.

Places of worship (churches) are exempted from the provisions of title III of the ADA and this is affirmed in the Kansas Statute noted earlier in this memo. The AG opinion on this is 97-9.

A public building is not specifically defined in the statutes regarding accessibility. AG opinion 93-3 deals with this question to a certain extent. It notes that since no definition is present in the statute, words and phrases are construed according to their context with the meaning commonly attributed to them. The opinion offers the following definition, “a building, which...may be fairly deemed to promote a public purpose, where the public congregates in numbers for amusement or other purposes”. This would typically include most non-residential buildings that are open to the public.

The last thing under this heading would be a broad scope of who is responsible for enforcing the accessibility requirements in the State of Kansas. AG opinion 92-106 indicates that local building code officials are not required to investigate complaints about accessibility in existing buildings. The enforcement authority of the local code official is limited to denying the application for a building permit for the construction or alteration of a building. In other words, we review plans for a building construction project covered under any of the accessibility requirements and verify compliance through that plan review and field inspections.

Summary

So, let's make some sense out of all of these regulations. As a local jurisdiction within the State of Kansas, we are first obligated to comply with the state statutes. That means we will use Titles II and III of the ADA for commercial construction projects. Because the federal government requires the same thing, no conflict there. Since the state has no statute for residential construction with respect to accessibility, the FHA applies. ANSI A-117.1 is referenced by the FHA, and therefore can be utilized for covered residential construction. The following is a summary in a tabulated list:

- Government buildings ADA Title II
- Public buildings (non-government) ADA Title III
- Covered residential buildings FHA (and ANSI A-117.1 by reference)
- Places of worship and private clubs Exempt
- Fraternities and sororities FHA (and ANSI A-117.1 by reference)
- Transient lodging ADA Title III
- Accessibility complaints (existing) Not required to investigate

Updated Residential Accessibility Requirements

The following is a reprint of a memo issued by me some years ago and has been updated with the current code edition and sections:

Recently, I know there has been a little uncertainty regarding accessible dwelling and sleeping units and which standards apply to various types of buildings. This e-mail is intended to clarify those issues and to get us all working consistently.

To begin with, the FHA regulates accessibility issues with relation to dwelling and sleeping units. It, in turn, refers to ICC / ANSI A117.1 for technical construction details. I have purchased an office copy of ICC / ANSI A117.1 along with a commentary and it will be available for all personnel where the other commentary books are stored.

Covered residential buildings under the FHA are:

1. All dwelling units in new buildings containing 4 or more dwelling units if such buildings have one or more elevators
2. All ground floor dwelling units in other new buildings containing 4 or more units

To be a covered unit, all of the finished living space must be on the same floor, that is, be a single-story unit, such as single-story townhouses, villas, or patio apartments.

In addition, covered units include any building built for first occupancy after March 13, 1991. If the building was built for first occupancy for any purpose on or before that date, then alterations are not covered even if it is a complete occupancy change. Additions to existing buildings are only covered if the addition consists of 4 or more dwelling units.

Also, generally, only the units on the accessible level need to meet accessibility requirements. That level is usually the first floor containing dwelling units whether that floor is over another occupancy or not, and as noted above, all floors served by an elevator.

A multiple story dwelling unit, such as a two story townhouse, if not provided with elevator service, would not need to comply because all of the dwelling unit space is not on a single story. Attached townhouses are not exempt unless they fall under this provision nor are buildings separated by firewalls.

For example, a series of 4 one story attached townhomes would need to meet the requirements of the FHA because all of the living space is on a single story. The same structure with a finished basement or second floor would not. A 4 unit apartment building would need to contain FHA compliant units on the accessible level.

I know this is somewhat confusing, but I am available to discuss these requirements for anyone who has questions on any of these items.

Revised 3/12/15

Revised 4/1/15

Revised 3/10/16