

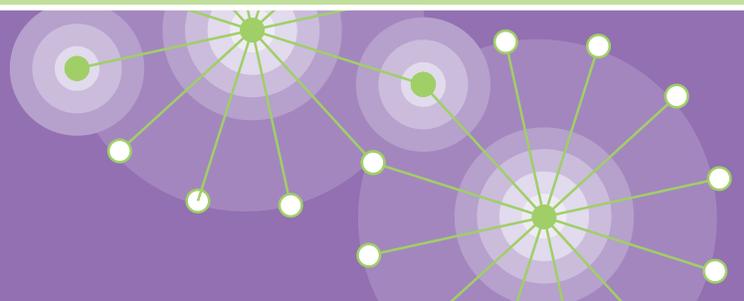
ACCESSIBILITY CODES AND THE CALIFORNIA ARCHITECT

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PART I: BACKGROUND AND INTRODUCTION

California architects work under a complex set of rules and guidelines for accessibility design and construction. Chapters 11A and 11B of the California Building Code, Title 24, contain the requirements for the State's accessible design and construction. On the federal level, the ANSI A117.1 Standards have been the "grandparent" of accessibility codes since the early 1960s. Since that time, the Uniform Federal Accessibility Standards (UFAS), and subsequent civil rights-based legislation and regulation, the Americans With Disabilities Act and its accompanying ADA Accessibility Guidelines (ADAAG), and the Fair Housing Accessibility Guidelines under the Federal Fair Housing Act, have been established, each with rules for specific building projects and jurisdictions. Many local municipalities have developed their own policies and interpretations for accessibility for their jurisdictions as well.

For some architects who work consistently on a similar building type, such as K-12 projects, there is little confusion about the rules, and they have little trouble keeping up with code rules and regulations. They work with the same inspectors at the same accessibility compliance section at the Division of the State Architect, and the rules are fairly consistent. For other architects who complete varied project types around the state (or in other states as well), it can be a very complex world of overlapping and confusing rules and interpretations. The State has been endeavoring for several years to bring California codes into alignment with the federal standard, but that has not happened in every instance. Title 24 may mandate one criteria, and ADA will mandate another, for the same detail, such as a shower or a curb. Some local jurisdictions take a very hard line and others are more liberal with their interpretations. Building officials have difficulty interpreting consistently at times.

Ultimately, the end product is a building that is subject to civil rights laws, and a lawsuit can be initiated by a private citizen to determine if the project is compliant with accessibility laws and regulations. This is motivation enough for many architects to work very diligently in-house or to hire outside consultants to review their plans to ensure they are compliant.

Recent legislation has attempted to reduce the business community's exposure to litigation: SB 1608 (Chaptered in 2008) mandates that California architects take accessibility continuing education courses as part of their licensure requirement. It also changes the legal process for an accessibility lawsuit if the building was inspected by a Certified Access Specialist (CAsp); creates the Commission on Disability Access to provide recommendations to the Legislature; and requires local building officials, examiners, and inspectors to take disability access continuing education. The law requires every local building official in California to have a CAsp inspect accessibility plans for all projects.

What is the experience of the "average" architect in the field, with regard to accessibility codes and regulations?

The purpose of this whitepaper is:

- 1) to describe the multitude of accessibility codes and regulations that California architects may encounter in their work, and who is responsible for maintaining and interpreting them; and
- 2) to describe the perspective of the architect in their workaday world as they manage these codes and regulations.

Architects who work in many practice areas were interviewed for this project: healthcare, K-12, housing/multi-family, hospitality, university/higher-education, government, retail/mixed-use, and commercial. Their experiences as they grapple with the various issues that come forth from working with accessibility codes will be explored in detail, including specific anecdotes from these interviews.

1. Accessibility Standards and Guidelines: An Overview

Accessibility guidelines are the uniform standards for the design, construction, or renovation of a building or structure that allow a disabled person to have access to that structure. According to the Americans with Disabilities Act, a disability is defined as “a physical or mental impairment that substantially limits one or more major life activities.” A physical impairment can include the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. It can include mobility, sight, and hearing limitations. A mental impairment can include any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. An impairment is a disability under the ADA only if it substantially limits one or more major life activities. An individual must be unable to perform, or be significantly limited in the ability to perform, an activity compared to an average person in the general population. It is critical to understanding accessibility regulations to understand that persons with disabilities include many more people than just those with mobility impairments. It is also critical to purge the word “handicapped” from our vocabulary and speak of “disabilities” and “persons with disabilities,” not handicapped people.

Historically, standards have been developed in the form of state and federal-level codes and regulations, beginning with formation of the American National Standards Institute A117.1 Standards in 1961. Since that time, several other federal-level standards have been enacted, as well as the California accessibility guidelines contained in Title 24 (the California Building Code), and other state and local regulations. Generally, where the state codes are more strict than the federal codes, as is typically the case in California, then the state codes should be followed.

Accessibility guidelines have three defining characteristics:

- **Civil rights** provisions of the law, which prohibit discrimination based on disability and describe what kind of facilities and public places should be designed and constructed so that they do not discriminate based on disability. Examples include the ADA and the Amendments to the Fair Housing Act (FFHA);
- **Scoping provisions**, which describe *where* accessibility is appropriate, when it is required, and what features of a building, facility, or site must be accessible. Examples include the Americans with Disabilities Act Accessibility Guidelines, or ADAAG (which contains some scoping and also technical requirements) and the Federal Fair Housing Act Guidelines;
- **Technical requirements** for the design and construction of new buildings and facilities as well as the remodeling of existing facilities, which describe *how* features should be designed and installed for accessibility requirements; the information is largely based on anthropometric, ergonomic, and human performance data. Examples include Title 24 (Chapters 11A and 11B).

It is important to understand that only building code requirements are enforced through the building permit plan review and inspection process. The ADA and FFHA are enforced by legal action, and the local building department does not inspect for ADA compliance. Architects are obliged to design to both the state building codes and to the ADA or FFHA, but people use the term “ADA” to signify accessible design, and that is not the case for permitted work.

2. History of Accessibility Codes and Regulations

ANSI A117.1 Standards

In 1959, the President's Committee on Employment of the Physically Handicapped and the National Society for Crippled Children co-sponsored the development of the **ANSI A117.1 Standards** (American National Standards Institute). It provided the first standards for accessibility for the federal government and most state governments. Compliance with ANSI A117.1 was originally voluntary, but today it is part of the International Building Code. (In IBC Chapter 11, which is not adopted in California).

The ANSI A117.1 Standards provide the details, dimensions, and specifications to help building designers develop their plans so that the facility will offer accessibility entry and ease of use to all people with disabilities. It was first published in 1961, republished in 1971, and revised significantly in 1980. Later revisions were published in 1986, 1992, and 1998. The most recent edition was published in 2003.

The ANSI A117.1 Standards have been adopted as an enforceable code by many state and local agencies, and the technical requirements are referenced in model building codes established by the Building Officials and Code Administrators International (BOCA) and the International Conference of Building Officials (ICBO).

Agencies and organizations that reference ANSI A117.1 must establish scoping specifications through other regulations because the ANSI guidelines contain primarily technical requirements.

Architectural Barriers Act (ABA)

Because of a need for environmental improvement to benefit the disabled and the elderly, Congress created the National Commission on Architectural Barriers to Rehabilitation in 1965 and charged the commission with studying how to improve access for the disabled. In its report, "Design for All Americans," the commission concluded that voluntary compliance with accessibility standards was not effective, and recommended that more be done to improve access for the disabled. As a result of their recommendations, as well as a growing movement in the disabled community, in 1968 Congress passed the landmark Architectural Barriers Act, which required that federal facilities and those built with federal funding must comply with standards for physical accessibility. This Act applies to post offices, social security offices, prisons, and national parks, as well as non-government facilities that have received federal funding, such as certain schools, public housing, and mass transit systems.

The Rehabilitation Act

The Rehabilitation Act of 1973 recognized that people with disabilities, as a group, face similar discrimination in employment, education, and access to society, and as such, constitute a legitimate minority group deserving basic civil rights protection. The Act required nondiscrimination in the employment practices of federal agencies of the executive branch and federal contractors, and required all federally assisted programs, services, and activities to be available to people with disabilities. The Act also created the **Architectural and Transportation Barriers Compliance Board (US Access Board)**, an independent federal agency whose purpose is to maintain the design criteria for accessibility guidelines for the public and private sector. The Access Board later became responsible for maintaining and updating the ADA's Accessibility Guidelines.

UFAS (Uniform Federal Accessibility Standards)

The Architectural Barriers Act (ABA) of 1968 required that the US Department of Defense, Department of Housing and Urban Development, General Service Administration, and Postal Service develop accessibility standards for all federal buildings and facilities covered by the ABA. For 16 years, the four departments used the ANSI A117.1 Standards as their guide, until the Access Board published the Uniform Federal Accessibility Standards (UFAS) in 1984. The UFAS was based on the 1980 edition of the ANSI A117.1 Standards. Compliance with UFAS is regulated by the Access Board. Certain federal agencies, such as the VA, still use UFAS.

ADA - The Americans with Disabilities Act

The ADA of 1990 is a landmark civil rights law that prohibits discrimination on the basis of disabilities in employment, state and local government services, transportation, public accommodations, commercial facilities, and telecommunications. Public accommodations are covered by Title III of the ADA and are defined as the following:

- places of lodging (e.g., hotels, motels)
- establishments serving food and drink (e.g., restaurants, bars)
- places of exhibition or entertainment (e.g., theaters, stadiums)
- places of public gathering (e.g., auditoriums, convention halls)
- sale or rental establishments (e.g., bakeries, clothing stores, video stores)
- service establishments (e.g., professional offices of doctors, dentists, lawyers, gas stations, funeral parlors)
- stations used for public transportation
- places of public display or collection (e.g., museums, gardens, galleries)
- places of recreation (e.g., parks, zoos)
- places of education (e.g., private schools)
- social service centers (e.g., homeless shelters, day care centers)
- places of exercise or recreation (e.g., gymnasiums, golf courses).

ADA Accessibility Guidelines (ADAAG)

The ADA required the development of design criteria for the construction and alteration of facilities covered by the law to serve as the basis for ADA accessibility standards. As a result, the Access Board developed the **ADA Accessibility Guidelines (ADAAG)** in 1991. These standards, developed by the ATBCB, are enforced by the US Department of Justice and the Department of Transportation, and address places of public accommodation and commercial facilities in the private sector. The ADA applies to all new construction or renovation work begun after January 1992.

Amendments to the Fair Housing Act

The Fair Housing Act, first passed in 1968, is a civil rights law that prohibits discrimination in housing and housing-related transactions based on race, color, religion, and national origin. The Act was amended in 1974 to add discrimination based on sex, and amended again in 1988 to include discrimination against the disabled and because of familial status. It covers housing in the public and private sectors and bans discrimination in any aspect of selling or renting housing. Under the Act, new multifamily housing must be able to be adapted for accessibility according to established guidelines. It also requires reasonable exceptions to housing policies and operations so that people with disabilities are given equal housing opportunities. In 1988, amendments to the Act provided that all multifamily dwellings built after March 1991 be designed and built so they are accessible to people with disabilities. The Act doesn't set specific technical criteria to follow, but refers to the ANSI Standards as the guidelines to follow. In practice, the Fair Housing Accessibility Guidelines apply to this work.

Fair Housing Accessibility Guidelines

Developed in 1991, these guidelines adopted by the Department of Housing and Urban Development provide technical guidance on how to comply with the specific accessibility requirements of the Fair Housing Amendments Act of 1988. They are not mandatory.

Title 24, Chapters 11A and B (California Building Code)

The State's accessibility requirements are contained in the California Building Code in Title 24, Chapters 11A and 11B, adopted by the California Building Standards Commission. To correct problems and confusion resulting from the uncoordinated proliferation of conflicting, duplicate, and overlapping state regulations, all of the State's building codes were combined into a single building code in the late 1970s. Generally, the State's accessibility codes have been known to be as stringent or more stringent than federal ADA guidelines. In fact, the State had a reputation as having excellent accessibility requirements long before the ADA was enacted. In 2007, modifications were made to Title 24 to address items identified by the US Department of Justice which do not meet or exceed the accessibility requirements of the ADA Standards for Accessible Design as well as the adoption of the 2006 International Building Code. The first accessibility provisions appeared in the California codes in 1982.

PART II: ACCESSIBILITY ISSUES: WHAT ARCHITECTS ARE SAYING

During a series of telephone interviews, California architects were asked to describe their day-to-day interactions with accessibility codes and regulations: what type of work they do, how they maintain their continuing education with regard to codes, whether they retain accessibility consultants or keep the work in-house, and whether they have had any issues with the complexities or interpretations of accessibility codes and regulations. Out of these conversations, several broad issue topics have arisen:

- Inconsistent code interpretation
- Conflicts between access guidelines
- Loss of reasonableness/lack of acceptable tolerances in code enforcement
- Unreasonable legal/court interpretations
- Uneven continuing education opportunities

First, it should be noted that some of those interviewed did not have any conflicts with the codes or interpretations whatsoever. Most commonly, those were architects who work in the K-12 arena. They were complimentary of the DSA accessibility section and stated that as long as they kept up with the changes in codes and regulations, they didn't have any problems. "It's become part of our nature," said one architect.

Overall, there was a general understanding among those interviewed that it is the architect's responsibility to keep up with accessibility codes, and that accessibility codes are no different than any other building code. They expressed an understanding that accessibility as a civil right was beneficial and good, and they felt a deep responsibility to contribute their part to making their buildings accessible to the greatest number of people possible. "It's not about doing the minimum, it's about doing the right thing for the greatest number of people," said one architect.

Following are the issues that surfaced during these conversations, and comments by specific architects in these conversations:

1. Inconsistent Code Interpretation

A number of architects cited the difficulty and frustration of plan checkers making inconsistent code interpretations. Plan checkers in the same building office will sometimes interpret the same code differently – often, it appears to be a subjective reading that depends on the individual giving the interpretation. Sometimes the field inspector will rule differently than the plan checker, creating even more confusion that delays the project.

In one jurisdiction, Plan Checker A could interpret plans differently than Plan Checker B, even when there could be a project detail of great expense at stake, such as an elevator. Plan checkers are also known to change their mind during the course of the project. Architects report that it is impossible to predict the outcome based on plan check. There is an ongoing problem with different interpretations between in-house plan reviewers and so-called “third-party” plan reviewers who are with private companies working as contract employees for the Authorities Having Jurisdiction (AHJ).

Architects are also using plan check as one of their continuing education methodologies, i.e. keeping up with rule changes through comments by plan checkers. They report that they find out about code and/or rule changes from plan check, counter check, or field inspection. They admit it is not the most efficient way to keep up, but it’s often the most prudent since the changes are often rather subjective (i.e., determinations made by the building officials in that jurisdiction). “This is the way we’re doing things now at this jurisdiction,” is often how it’s interpreted by the architect.

Other issues include inconsistencies within the same jurisdiction, such as DSA field offices in different parts of the state. Architects report that plan checkers at DSA field offices will have different interpretations, or will have new interpretations that were not previously published. Some experienced architects reported drawing plan details one way for one DSA field office and another way for another field office, knowing they will be interpreted differently.

Due to budget restrictions, state and local offices also use temporary plan checkers who are less experienced and less familiar with the codes and regulations. Several architects cited difficulties with DSA temporary plan checkers who are inconsistent, don’t work from the DSA offices, don’t return phone calls or emails, and don’t have backup documentation for their interpretations. One architect noted that DSA temps were noted to be so inexperienced they didn’t seem to know how construction documents should be put together. If complaints are made, they would become even more unreasonable and vindictive. One more experienced architect said, “In our office, we like to say there are a lot of ways to do things right. That is not how some inspectors see it.”

Finally, the wording and diagrams on the codes sometimes do not match, causing confusion between the architect and the building officials. The code is enforced around the written codes, but as one architect said, both the architect and the building official respond more to the diagrams. This can cause difficulty in interpretation.

Specific comments:

“If someone tried to explain door requirements in a dwelling, it’s almost impossible. The words don’t match the drawings, and vice versa. There are so many opportunities for interpretation and litigation. The codes are not specific enough.”

“Sometimes the City will get backed up and send in a third-party plan checker who may not have the expertise required. There is very little consistency. The onus is on the owner to hire a consultant, because they can’t rely on the municipality to check the accessibility plans thoroughly.”

“The problem is not the code, it is the inconsistency between plan checkers. I work in LA City and County mostly, and I have gotten to know the plan checkers there. I will wait in line for counter check and if I get to the front of the line and don’t want the plan checker I get, I will leave and come back another day. It’s a huge waste of hours and days, but it’s worth it to wait for another plan checker.”

“Inspectors will give us a different interpretation than the checker. We have to get a letter from the City to resolve the issue because no one will back down.”

This happens over and over. We have to wait for them to iron out their own differences in-house while we're trying to keep the projects moving. It seems like they are trying to show their supervisors that they are doing a good job, noticing details."

"Local building inspectors go to training sessions and get taught something we've been doing needs to be changed, often retroactively. It drives the owners nuts because these can be expensive changes. We had to replace all the doors in a hotel once."

2. Conflicts Between Access Guidelines

By far the biggest conflict between access guidelines is reported to be between Title 24 and the ADA design guidelines, although others are reported. The differences between Title 24 and ADA are getting smaller than they have been in the past, but there are still conflicts that are difficult to resolve. Architects find that they must work carefully to ensure that they are in compliance, particularly with projects that fall under the jurisdiction of both state and federal guidelines.

Architects report conflicts during plan check between state and federal guidelines. They will design according to the state requirements, then the federal government will say it needs to be changed. As an example, DSA once required the bottom of a curb ramp to have a 1/2 inch lip, but the DOJ required a flush condition. That has since been changed so the requirements are the same, but prior to that time, architects had to go with the interpretation of the individual/jurisdiction that was approving the project. Several architects noted that shower sizes are still inconsistent between state and federal guidelines. As noted, the discrepancies are becoming fewer and less pronounced as California moves toward meeting federal standards.

There is also some confusion with the Fair Housing Act, and which of the federal guidelines to follow with multi-family housing. It can be difficult to get a consistent answer from the Department of Housing and Urban Development; one architect said if there are questions, staff will simply say, "send in your plans" for an interpretation, without ever giving an explanation.

Overall, California's Title 24 requires more stringent requirements than the ADA guidelines. Accessibility codes are guarded fiercely by the accessibility community, and it takes years for changes to be made and the process can be very emotional. Extended discussions about issues like shower size can take on monumental proportions, according to one State code official.

"Building officials cannot enforce the ADA – they can only enforce Title 24. If there is a violation inside a private restaurant, for example, it's within the purview of the building official."

"We create a color-coded map on our plans that shows what codes are used for different parts of the project, to document our accessibility work."

"We worked on a new branch library in San Francisco with city revenue, and so we moved forward with ADA regulations. The project received some state funding in the middle of the project so we were suddenly faced with complying with Title 24, which required significant changes, especially in the bathrooms. Every inch of space was accounted for, so their changes were significant. It was a terrible lesson to learn to meet the State's requirements."

3. Loss of Reasonableness/Acceptable Tolerances in Code Enforcement

Accessibility codes often call for exact dimensions and standards which are not always practical in the real world. As one architect said, "everyone knows construction is not an exact science." How code enforcement agencies reconcile those exact requirements during plan checks with the reality of the design and construction of a building can cause dilemmas and frustration. The results can sometimes be a loss of reasonableness on the part of the interpreter.

Several explanations are cited for this phenomenon:

- lack of respect for the architect/building owner's point of view
- simple loss of reason on the part of the building official
- loss of creativity on the part of the building official
- younger building officials attempting to show superiors they can do the job accurately
- turf protection on the part of the building official

Stories abound regarding onerous changes that architects are required to make over the most minute differences in measurements in a building plan.

Some architects also lament the loss of creativity inherent in the accessibility code process. The requirements for signage, the strict nature of the design of accessible areas, implies a loss of creativity on the part of the designer. This is exacerbated when the plan checker is very strict in their interpretations.

Comments:

"We do have some glitches from time to time: once when we were remodeling a building adjacent to a new building that was being designed by someone else, a plan checker made us change all the toilet roll dispensers in the new building, even though it wasn't ours, because of a one-inch discrepancy in how far it came out from the wall."

"I worked on a high-rise building and the plan checker asked me for a complete parking accessibility analysis, even though we were not working on the parking for the building. I had to search the files for the parking structure plans and do this analysis, and it pushed the project back for weeks even though it had nothing to do with our project because we were making no changes to the parking." (Note: The accessible path of travel requirements for improvements to existing buildings can trigger work outside of the area of improvement. This applies to the item above this one.)

"Sometimes they will go by the book even when it is unrealistic. An inspector can come to the site and ask you to demolish a ramp for a fraction of a percentage difference (in measurements)."

"What is reasonable and what is a hardship? There is no definition of what is a reasonable hardship. A plan checker can ask you to put in an elevator on a building project that can cost more than the remodel itself."

"Acceptable tolerance is hard for a building official to measure. They might ask you to jack-hammer up a toilet because of a quarter-inch variation in distance from the wall that was caused by the wall's thickness. That seems unreasonable."

"The process is very subjective. I had a project that had completed plan check, but a different plan reviewer looked at the plans and decided the parking spaces needed to be moved. This was the fourth time they had to be moved, because three other times three other reviewers had asked that they be moved. When the project is all done, I'm still faced with the prospect of some attorney asking me a year from now why these parking spaces are located where they are."

"A DSA plan checker asked me to change a ramp that was at 8.33%; he wanted it a fraction of an inch less than that. Why? It seemed OK to us, but he wanted it changed. It's frustrating, but there's nothing we can do about it except make the changes and move on. We can't argue with them. We never have the same issues with our residential projects. A quarter-inch is well within acceptable tolerance to them."

4. Unreasonable Legal/Court Interpretations

Unfortunately, lawsuits have become a big issue in California and across the nation. Although none of the architects interviewed had experience with actual legal/court interpretations, they did have comments about the lawsuits *per se*:

“People are making a living by finding noncompliant situations and suing.”

“Lawsuits are a big problem. A certain percentage of them are valid, but a majority are not valid; people are hoping to settle for quick cash.”

5. Uneven Continuing Education Opportunities

When asked how they keep up with the continually changing codes and regulations, architects responded with a variety of answers: AIA workshops, privately published books, web-based updates published by the government, in-house CE opportunities. Many reported a mentorship system where more experienced architects work with younger architects to teach them the codes and regulations, and review their plans before they go to plan check. Many firms also said they have an in-house accessibility “expert” who reviews plans before plan check. With regard to the new designation of CASp, several reported that their firm had required architects within the firm to become certified; others reported working with CASps as consultants on a regular basis. Others report that they have enough in-house expertise with their project architects, and don’t need the outside consultants or special certification.

As reported by an architect: An accessibility specialist who was giving a continuing education program at a local AIA chapter said the new CASp designation provided “job security” for him. The architect said she found this appalling, and his program was not very effective. She is concerned about the need to follow the law without the ability to use any creativity or to make any adjustments.

“Everyone is expected to know about accessibility. We learn by trial and error mostly. We got a book from the State. We send in our plans and they get shot down, and we learn from experience through plan check. We use a 3-D program that helps put in space required for ADA rules. The senior people in the office will help mentor the younger members, and that’s how we learn.”

“We have our own continuing education programs in-house (brown bag lunch seminars, etc.) and accessibility programs that help us with project design. We also rely on privately published books.”

“We live the code and share what we know in-house – any new wrinkle coming down from an agency gets shared with the rest of the staff.”