

ACCESSIBLE BUSINESS ENTRANCE PROGRAM: A GUIDE FOR PROPERTY OWNERS

This handout serves as a guide for property owners to understand your obligations for disability access compliance under the Accessible Business Entrance Ordinance, and in accordance with other Federal, State and local access laws.

Disclaimer: This handout is intended to provide a brief explanation of the City and County of San Francisco's Accessible Business Entrance Program. Refer to Department of Building Inspection's webpage <http://sfdbi.org/businessentrance> for complete compliance information regarding the program.

San Francisco is a city with many hills, steep streets, narrow sidewalks and stock of small, old mixed-use buildings. This poses special challenges for efforts to ensure that entryways are compliant with federal state, and local disability access requirements. Through the Accessible Business Entrance Program, the City and County of San Francisco is taking a step forward in helping property owners better understand their responsibilities under the Ordinance, and help ensure that the civil rights of individuals with disabilities are upheld.

An interagency group is working together to streamline processes for complying with this ordinance, which encompasses relevant disability access laws. As a building code addition, the group is directed by the Department of Building Inspection (DBI) in consultation with the Planning Department for historic preservation, San Francisco Public Works for sidewalk modifications, Access Appeals Commission for unreasonable hardship and technical infeasibility requests, Mayor's Office on Disability for standards on accessibility and Office of Small Business for outreach and resources to small businesses.

COMPLIANCE REQUIREMENTS

What is Required Under the Accessible Business Entrance Program?

Some buildings (for example, buildings originally constructed with a permit application dated on or after 2002) are exempt from the Accessible Business Entrance Program (ABE). But, for most buildings that contain places of public accommodation, property owners must complete the following steps in order to comply:

1. Hire a licensed design professional or Certified Access Specialist (CASP) to inspect the primary entryways;
2. In conjunction with a design professional or CASp, complete and submit the Category Checklist Compliance Form to DBI by the deadline based on their compliance category;
3. Apply for required building permit(s) to correct non-compliant elements and;
4. Obtain building permit(s) within a year of the permit application.

Nothing in this ordinance is intended to relieve the property owner or tenant of their obligation to comply with the requirements of any Federal or State law, including but not limited to the Americans with Disabilities Act (ADA), or to modify or extend the time for compliance with any such law.

What is Required Under the Federal ADA?

Under Title III of the federal Americans with Disability Act of 1990 (ADA), places of public accommodation must comply with standards for accessibility and conduct “barrier-removal” when it is “readily achievable,” which the ADA defines as “easily accomplishable and able to be carried out without much difficulty or expense.” But determining whether barrier removal is “readily achievable” in a particular situation can be a complicated, fact-intensive inquiry. And barrier removal is an ongoing responsibility; thus what was not “readily achievable” at first may be required later due to length of time one has owned the property, financial capability and other changed conditions.

For help determining whether your business tenant is a place of public accommodation, review the [ADA Title III Technical Assistance Manual](#) or call the Department of Justice ADA line at 1-800-514-0301.

Property owners have an independent obligation to comply with the ADA that cannot be discharged to tenants through commercial lease provisions. Even when a lease agreement seeks to delegate responsibility for compliance with the ADA from a landlord to a tenant, the landlord can still be liable under the ADA. In general, a plaintiff can sue the landlord, the tenant, or both. And because the ADA’s “readily achievable” standard includes consideration of factors like the financial resources of the party responsible for ADA compliance, courts may even hold landlords—who often have more financial resources than their tenants—to more stringent standards than tenants, in assessing ADA compliance.

The consequences of an ADA violation can be serious. The federal ADA authorizes injunctive relief on behalf of individual plaintiffs. Additionally, ADA violations are often violations of California’s civil rights laws, which can require property owners to pay monetary damages and the plaintiff’s attorneys’ fees. Even issues that seem minor can be grounds for a lawsuit, and the same ADA violation can give rise to multiple lawsuits.

Fortunately, ADA compliance problems are preventable through proactive measures. The cost of liability is often greater than the up-front investment of making the business accessible.

ACCESSIBLE BUSINESS ENTRANCE PROGRAM: COMMON SCENARIOS AND POTENTIAL IMPLICATIONS

Following are common scenarios and some corresponding potential implications.

SCENARIO 1

Property owner fulfills their responsibilities for complying with the ordinance and satisfies all proposed barrier remediation to make the entryway accessible.

POTENTIAL IMPLICATION: The entrance is in compliance with the Ordinance. The property owner and tenant reduce their risk of being sued for lack of compliance with the Ordinance.

SCENARIO 2

A property owner submits the checklist to DBI in consultation with a design professional or CASp and subsequently passes the responsibility to the tenant to determine the barrier remediation plan and pay for it.

- The tenant achieves a barrier remediation plan that is readily achievable for her/his situation, but does not make the entryway fully compliant per the Ordinance, including compliance with State, Federal and local access laws, because of the tenant's financial limitations
 - Potential implication: The property owner and tenant are both at risk of being sued. By passing the responsibility to the tenant, the property owner can be viewed in civil court as deliberately dodging their obligation to make the entryway compliant to a higher degree than achievable for the tenant. If a court agrees with the tenant's assessment of their financial situation and the remediation is "readily achievable," the property owner might be exposed to greater liability if they have more financial resources than the tenant and could have remediated the barriers to a higher level of compliance.

SCENARIO 3

A property owner submits the checklist to DBI in consultation with a design professional or CASp, pays for the production of the plans for barrier remediation and subsequently requires the tenant to pull the permit, facilitate the construction and pay for all related compliance expenses.

- The tenant cannot afford the barrier remediation plan arranged by the property owner.
 - Potential implication: If a court agrees with the tenant's assessment of their financial situation, the tenant's inability to pay may mean that barrier removal is not "readily achievable"—insulating the tenant from liability under Title III of the ADA. But if the property owner has more

financial resources than the tenant, the property owner may still be liable under Title III of the ADA—even if the tenant is not.

SCENARIO 4

Property owner evades their responsibility for complying with the ordinance and passes the responsibility and any remediation to the tenant.

- The tenant can only afford a “readily achievable” barrier remediation plan.
 - Potential implication: Both the property owner and the tenant remain liable for any violations of the ADA, including any failure to engage in “readily achievable” barrier removal. But steps that would be “readily achievable” for the property owner might not be “readily achievable” for a tenant, which might expose the property owner to greater liability.

Recommendations for Property Owners

Following are recommendations for property owners when determining how to comply with the Accessible Business Entrance Ordinance, and related Federal, State and local disability access laws.

1. To ensure the requirements of the ordinance are fully met and disability access of the entryway is achieved, property owners should take responsibility by completing the compliance steps and ensuring barrier remediation is done to the maximum extent feasible.
2. Property owners should share the completed Category Compliance Checklist with their tenants and discuss proposed remediation plans.
3. Property owners must provide a 30-day notice to tenants regarding remediation prior to filing the building permit application. If the entrance requires remediation (Categories 2, 3 and 4), property owners should provide the projected start date, estimated schedule for completion and business closure and/or interruption details.