



TOWN OF OCEAN CITY PLANNING & COMMUNITY DEVELOPMENT BUILDING DEPARTMENT

301 Baltimore Avenue
Ocean City, Maryland 21842
410-259-8789

ACCESSIBILITY COMPLIANCE REQUIREMENTS

SCOPE:

This form is applicable to alterations that affect the primary function areas of an existing building, as defined by:

- **28 CFR part 36, subpart D § 36.402(b) Alterations.** *For the purposes of this part, an alteration is a change to a place of public accommodation or a commercial facility that affects or could affect the usability of the building or facility or any part thereof.*
 - (1) *Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical and electrical systems are not alterations unless they affect the usability of the building or facility.*
 - (2) *If existing elements, spaces, or common areas are altered, then each such altered element, space, or area shall comply with the applicable provisions of appendix A to this part.*
 - (3) *To the maximum extent feasible. The phrase “to the maximum extent feasible,” as used in this section, applies to the occasional case where the nature of an existing facility makes it virtually impossible to comply fully with applicable accessibility standards through a planned alteration. In these circumstances, the alteration shall provide the maximum physical accessibility feasible. Any altered features of the facility that can be made accessible shall be made accessible. If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would not be feasible, the facility shall be made accessible to persons with other types of disabilities (e.g., those who use crutches, those who have impaired vision or hearing, or those who have other impairments).*
- **28 CFR part 36, subpart D § 36.403(b)** *A “primary function” is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the customer services lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out. Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, and restrooms are not areas containing a primary function.*

Per 28 CFR part 36, subpart D § 36.402(b), “alterations” made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area.

This means that if one were to spend \$100,000 to alter a primary function area, one would have to spend up to an additional \$20,000 towards creating an accessible path of travel to the altered area.

Any expenses incurred within the creation of an accessible path of travel in the alteration of the primary function area, which is more than the 20% of the overall construction valuation would be considered disproportionate and therefore not required. However, if the barrier exists, the cost must be allocated using

the prioritized list set by 28 CFR part 36, subpart D § 36.403(g)(2), which provides a descending order of importance to the barriers.

- **28 CFR part 36, subpart D § 36.403(g)(2)**, requires that the improvements, based on the application of the “20% Rule” be prioritized. In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access, in the following order:
 1. An accessible entrance;
 2. An accessible route to the altered area;
 3. At least one accessible restroom for each sex or a single unisex restroom;
 4. Accessible telephones;
 5. Accessible drinking fountains; and
 6. When possible, additional accessible elements such as parking, storage, and alarms.

Individual tenant spaces undergoing alterations, which do not affect areas of the building under the control of the landlord, need only comply with the following:

- **2010 ADA § 36.403(d) Landlord/tenant:** *If a tenant is making alterations as defined in § 36.402 that would trigger the requirements of this section, those alterations by the tenant in areas that only the tenant occupies do not trigger a path of travel obligation upon the landlord with respect to areas of the facility under the landlord’s authority, if those areas are not otherwise being altered.*

The use of the ACCESSIBILITY COMPLIANCE FORM applies only to alterations within the primary function area of the building under the control of the building owner or tenant. For individual tenant spaces undergoing alteration, where the tenant does not have control of the accessible route that falls under the control of the landlord. The tenant need only to complete the TENANT INTERIOR ALTERATION AFFIDAVIT form to show compliance with 2010 ADA § 36.403(d).

APPLICATION OF 20% RULE & PATH OF TRAVEL OBLIGATION:

Completion of Section 2 of the ACCESSIBILITY COMPLIANCE FORM provides acknowledgement from the building owner that the path of travel obligation has either been met or will be met in compliance with the Americans with Disabilities Act, through a later permit application process.

Any required improvements to the Path of Travel shall be prioritized in compliance with 28 CFR part 36, subpart D § 36.403(g)(2), and will require a separate permit for the construction activity.

Once approved during the plan review process, The ACCESSIBILITY COMPLIANCE FORM will be archived with the jurisdiction, with the approved construction documents for the project.

INSTRUCTIONS FOR COMPLETION OF ACCESSIBILITY COMPLIANCE FORM:

- 1.1** To show compliance with the 2010 ADA, a completed ACCESSIBILITY COMPLIANCE FORM must be submitted with your permit application and construction documents.
- 1.2** Revise construction documents (plans) to show compliance with the accessibility improvements to show compliance with the application of the “20% rule”. (See above)