

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 18 (BUILDING AND CONSTRUCTION), CHAPTER 18.08 (BUILDING CODE), OF THE EL PASO CITY CODE, TO PROVIDE THAT ALTERATIONS, REPAIRS OR ADDITIONS MADE FOR THE PURPOSE OF ADA COMPLIANCE SHALL NOT REQUIRE COMPLIANCE WITH NON-ADA CODE REQUIREMENTS, THE PENALTY BEING AS PROVIDED BY SECTION 18.02.111 (VIOLATIONS AND PENALTIES) OF THE EL PASO CITY CODE.

WHEREAS, on September 21, 2010, the City Council for the City of El Paso adopted the 2009 Edition of the International Building Code together with certain local amendments appropriate for the City of El Paso; and

WHEREAS, the City Council now desires to add another local amendment to the 2009 Edition of the International Building Code to provide that alterations, repairs or additions made for the purpose of ADA compliance shall not require compliance with non-ADA code requirements; and

WHEREAS, the City Council has deemed the proposed local amendment appropriate for the City of El Paso.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

Section 1. That Title 18 (Building and Construction), Chapter 18.08 (Building Code), of the El Paso City Code is hereby amended to add the following section to read as follows:

18.08.221 Section 3401.3 Compliance, amended.

International Building Code, 2009 Edition, Section 3401.3 Compliance, is hereby amended to read as follows:

3401.3 Compliance. Alterations or repairs to existing buildings and structures shall comply with the provisions for alterations or repairs in the International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Property Maintenance Code, International Private Sewage Disposal Code, International Residential Code and NFPA 70. Any alterations or repairs to existing structures made solely in order to comply with ADA accessibility and/or Architectural Barriers Texas Accessibility Standards shall comply with the provisions for alterations or repairs in this Code, provided however, that nothing in this Code shall require the entire existing structure to be brought into current code compliance. For example, modifications to height and placement of

water fountains, widening of doorways, or improvement of accessibility to restroom facilities, shall not require the entire structure to become compliant to current codes. Any site modifications such as curbs, sidewalks, ramps, or driveways which may be required as a result of the alterations or repairs made solely for ADA compliance, may be deferred for a period of up to 18 months.

Section 2. That Title 18 (Building and Construction), Chapter 18.08 (Building Code), of the El Paso City Code is hereby amended to add the following section to read as follows:

18.08.222 Section 3403.1 General, amended.

International Building Code, 2009 Edition, Section 3403.1 General, is hereby amended to read as follows:

3403.1 General. Additions to existing buildings or structures shall comply with the requirements of this code for new construction. Any addition to existing structures made solely in order to comply with ADA accessibility and/or Architectural Barriers Texas Accessibility Standards shall comply with the provisions for new construction in this Code, provided however, that nothing in this Code shall require the remaining existing structure to be brought into current code compliance. Any site modifications such as curbs, sidewalks, ramps, or driveways which may be required as a result of any new addition made solely for ADA compliance, may be deferred for a period of up to 18 months.

Section 3. Except as herein provided, Title 18 (Building and Construction), Chapter 18.08 (Building Code), shall remain in full force and effect.

PASSED AND APPROVED this _____ day of _____, 2014.

THE CITY OF EL PASO

Oscar Leeser
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Cynthia Osborn
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew McElroy, Director
City Development Department



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September 15, 2014



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Lunchbox Project – Chronology

June 3 – Initial submission of plan indicating a new addition to the rear of the restaurant – architectural plan only of an accessible bathroom and no electrical, plumbing or mechanical systems/plans were included.

June 10 – Plan reviewed and returned to contractor within 5 business days with requests for additional information:



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- Interior route of access to bathroom from existing dining area (existing interior plan for exiting requirements)
 - Electrical hookup to existing system detail
 - Plumbing hookup to existing plumbing detail
 - Mechanical connections to existing system detail
 - Distance to nearest fire hydrant (by Fire Dept.)
 - Exterior accessibility (by Land Dev. since bathroom had an exterior access also)
 - Plan of parking and access from public street
- (Commercial plan review performance measure is 15 days)



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August 5 – Council Session

Public discussion regarding the delay by City Development staff in reviewing the initial plans and the number of excessive requirements imposed on the owner attempting to comply with ADA

August 5 – Staff called contractor to inquire as to whether the project will continue with addition or remodeling and whether the requests for additional information were understood



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August 6 – Met with contractor and explained information requests and the possibility of performing interior remodeling rather than an addition (IEBC affords us alternative)

August 7 – Contractor continued with an addition and provided requested information early morning

August 7 – Contractor picked up permit late in the afternoon

S E R V I C E S O L U T I O N S S U C C E S S

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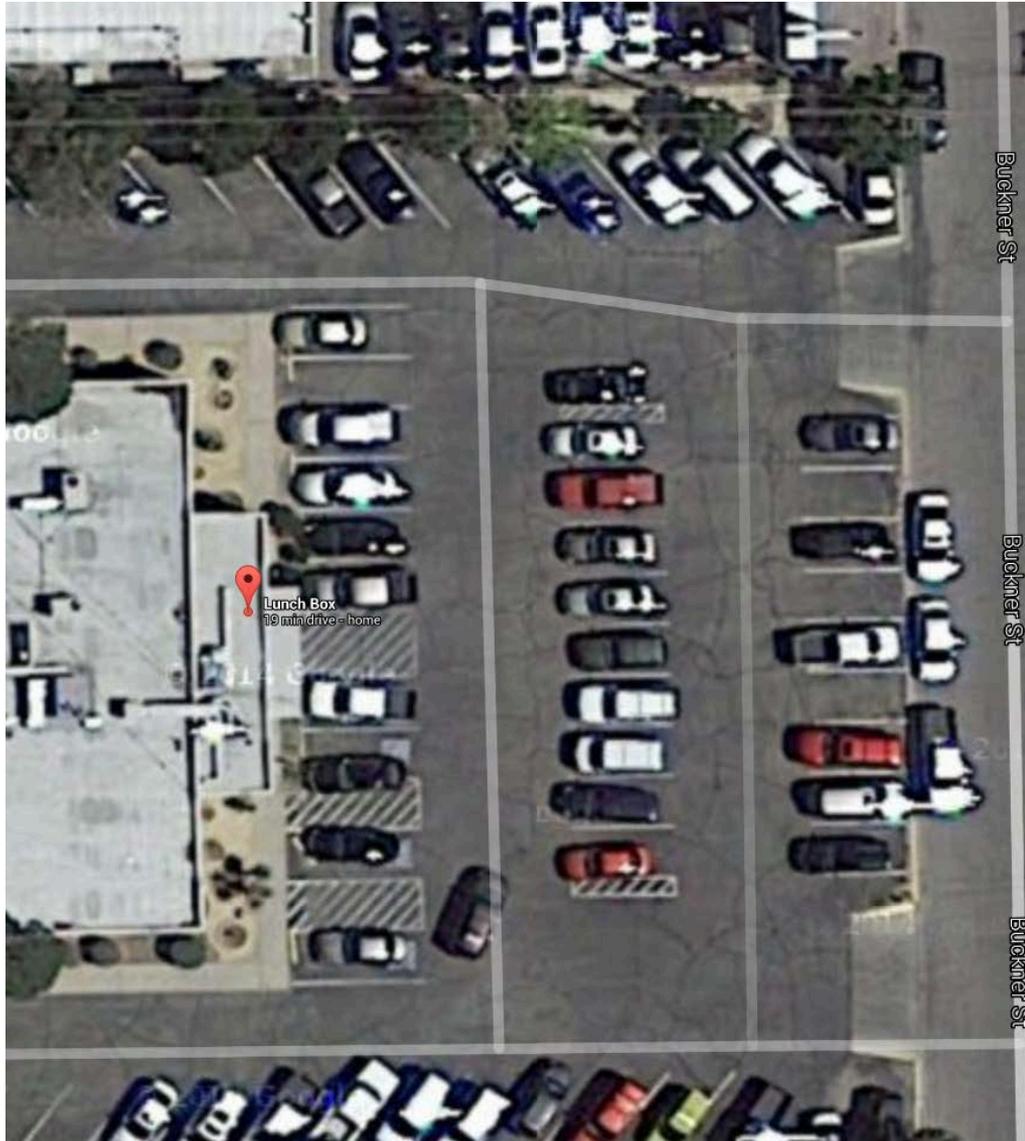
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Current ADA Requirements for Existing Buildings

US Department of Justice – Title III – Civil Rights Div.

State of Texas Accessibility Standards – 2012 Edition

City of El Paso – Accessibility Transition Plan

– Chapter 13 – Street/Sidewalk/Public Places

– Design Construction Manual (DCM)

International Existing Building Code – 2009 Edition

Technical Manual – A117.1 Accessibility Standard/Guide



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U.S. Department of Justice
Civil Rights Division
Disability Rights Section

Title III



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USDOJ Requirements

VII. Existing Facilities: Removal of Barriers

- Physical barriers to entering and using existing facilities must be removed when "readily achievable."

Readily achievable means "easily accomplishable and able to be carried out without much difficulty or expense."

What is readily achievable will be determined on a case-by-case basis in light of the resources available.



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USDOJ Requirements

First priority should be given to measures that will enable individuals with disabilities to "get in the front door," followed by measures to provide access to areas providing goods and services.

Barrier removal measures must comply, when readily achievable, with the alterations requirements of the ADA Accessibility Guidelines. If compliance with the Guidelines is not readily achievable, other safe, readily achievable measures must be taken, such as installation of a slightly narrower door than would be required by the Guidelines.



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USDOJ Requirements

The regulation does not require the rearrangement of temporary or movable structures, such as furniture, equipment, and display racks to the extent that it would result in a significant loss of selling or serving space.

Legitimate safety requirements may be considered in determining what is readily achievable so long as they are based on actual risks and are necessary for safe operation.



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USDOJ Requirements

Examples of barrier removal measures include –

- Installing ramps,
- Making curb cuts at sidewalks and entrances,
- Rearranging tables, chairs, vending machines, display racks, and other furniture,
- Widening doorways,
- Installing grab bars in toilet stalls, and
- Adding raised letters or braille to elevator control buttons.



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USDOJ Requirements

- **VIII. Existing Facilities: Alternatives to Barrier Removal**
- The ADA requires the removal of physical barriers, such as stairs, if it is "readily achievable." However, if removal is not readily achievable, alternative steps must be taken to make goods and services accessible.



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USDOJ Requirements

Examples of alternative measures include –

- Providing goods and services at the door, sidewalk, or curb,
- Providing home delivery,
- Retrieving merchandise from inaccessible shelves or racks,
- Relocating activities to accessible locations.



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USDOJ Requirements

Extra charges may not be imposed on individuals with disabilities to cover the costs of measures used as alternatives to barrier removal. For example, a restaurant may not charge a wheelchair user extra for home delivery when it is provided as the alternative to barrier removal.



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2012 Texas Accessibility Standards

101.2 Effect on Removal of Barriers in Existing Facilities.

This document does not address existing facilities unless altered at the discretion of a covered entity. The *Texas Department of Licensing and Regulation* has authority over existing facilities that are subject to the requirement for removal of barriers under *Texas Government Code, Chapter 469*.



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Texas Government Code 469 - Subchapter C. Review and Approval Required for Certain Plans and Specifications

Sec. 469.101. Submission for review and approval required.

All plans and specifications for the construction of or for the substantial renovation or modification of a building or facility must be submitted to the department for review and approval if:

- (1) the building or facility is subject to this chapter; and
- (2) the estimated construction cost is at least \$50,000.



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Sec. 469.102. Procedure for Submitting Plans and Specifications.

- (a) The architect, interior designer, landscape architect, or engineer who has overall responsibility for the design of a constructed or reconstructed building or facility shall submit the plans and specifications required under Section [469.101](#).



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- (b) The person shall submit the plans and specifications not later than the 20th day after the date the person issues the plans and specifications. If plans and specifications are issued on more than one date, the person shall submit the plans and specifications not later than the 20th day after each date the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday, or legal holiday is not included.



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- (c) The owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the department. On application to a local governmental entity for a building construction permit, the owner shall submit to the entity proof that the plans and specifications have been submitted to the department under this chapter.



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- (d) A public official of a political subdivision who is legally authorized to issue building construction permits may not accept an application for a building construction permit for a building or facility subject to Section [469.101](#) unless the official verifies that the building or facility has been registered with the department as provided by rule.



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2012 Texas Accessibility Standards – Section 202.4

Alterations - ...to the maximum extent feasible, the path of travel to the altered area, including parking areas, rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope.

Section 202.4 – “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”.



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City of El Paso Transition Plan/ADA Coordinator

Collectively, the assessment findings in conjunction with community stakeholder involvement have provided for the prioritization of identified needs. The following is a listing of established priorities as part of the Transition Plan development:

1. Removal of barriers in municipal buildings and facilities used by the public.
2. Removal of barriers at bus stops, major and minor street arterials.



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3. Removal of barriers at other municipal facilities.
4. Removal of barriers in the right of ways that access commercial facilities.
5. Removal of barriers in the right of ways in residential areas.



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International Existing Building Code – 2009 Edition

- Chapter 5 - Repairs – Section 505.1 General

Repairs shall be done in a manner that maintains the level of accessibility provided.

- Chapter 6 – Alterations level I – Section 605.1 General - A building, facility or element that is altered shall comply with the applicable provisions in Section 605 and Chapter 11 of IBC as well as ICC A117.1 unless it is technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent that is technically feasible.



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Technically infeasible – An alteration of a building or a facility that has little likelihood of being accomplished because the existing structural conditions require the removal or alteration of a load bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features that are in full compliance with the minimum requirements for new construction and that are necessary to provide accessibility.

- Chapter 7 – Alterations Level II – Section 706.1 General - A building, facility or element that is altered shall comply with Section 605



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- Chapter 8 – Alterations Level III – Section 806.1 General
A building, facility or element that is altered shall comply with Section 605 and 706
- ICC A117.1 – Is a Technical Standard providing specific space allowances and dimensions
- Chapter 11 IBC – Provides ADA requirements for new construction



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El Paso City Code Title 18.08 Proposed Revision – 9/14

3401.3 Compliance. Alterations or repairs to existing buildings and structures shall comply with the provisions for alterations or repairs in the International Existing Building Code, International Fire Code, International Fuel Gas Code, International Mechanical Code, International Plumbing Code, International Property Maintenance Code, International Private Sewage Disposal Code, International Residential Code and NFPA 70.



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Any alterations or repairs to existing structures made solely in order to comply with ADA accessibility and/or Architectural Barriers Texas Accessibility Standards shall comply with the provisions for alterations or repairs in this Code, provided however, that nothing in this Code shall require the entire existing structure to be brought into current code compliance.



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For example, modifications to height and placement of water fountains, widening of doorways, or improvement of accessibility to restroom facilities, shall not require the entire structure to become compliant to current codes. Any site modifications such as curbs, sidewalks, ramps, or driveways which may be required as a result of the alterations or repairs made solely for ADA compliance, may be deferred for a period of up to 18 months.



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3403.1 General. Additions to existing buildings or structures shall comply with the requirements of this code for new construction. Any addition to existing structures made solely in order to comply with ADA accessibility and/or Architectural Barriers Texas Accessibility Standards shall comply with the provisions for new construction in this Code, provided however, that nothing in this Code shall require the remaining existing structure to be brought into current code compliance. Any site modifications such as curbs, sidewalks, ramps, or driveways which may be required as a result of the new addition made solely for ADA compliance may be deferred for a period of up to 18 months.



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For example, modifications to height and placement of water fountains, widening of doorways, or improvement of accessibility to restroom facilities, shall not require the entire structure to become compliant to current codes. Any site modifications such as curbs, sidewalks, ramps, or driveways which may be required as a result of the alterations or repairs made solely for ADA compliance, may be deferred for a period of up to 18 months.



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The proposed revisions provide for greater clarity and distinction between new construction, new additions and work performed in existing buildings

Allows for the intended ADA proposed work to proceed and identifies other appropriate ADA work to be accomplished within an 18 month period

Maintains that ADA requirements on new construction and additions must be adhered to



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Questions