

# DS 2016-056

## PETITION FOR A DECLARATORY STATEMENT

Brought Before the Florida Building Commission

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>7/15/2016</b>
File #	

I am a person with a disability that forces me to utilize a power wheelchair or wheelchair at all times, because of an inability to walk. I find living in Escambia County and visiting the City of Pensacola, FL to be extremely difficult at times. I am asked to go out to dine and shop in new little shops and find that there is no disabled parking and no ramps and entrances to enter in a wheelchair/power wheelchair. When I am out with my friends, I will have to sit in the van and wait while they shop. There are instances where we go to a restaurant and must leave to find another restaurant because I was unable to get in to the chosen site. I am left sitting in my van, left out of the social activity. I am speaking of EXISTING houses and buildings that served one purpose and now serve as PLACES OF PUBLIC ACCOMMODATION.

Yet, I read the Florida Statutes and find that laws were put in place to stop that, and to make buildings accessible. State Statue 553.504 titled EXCEPTIONS to APPLICABILITY of federal standards: All buildings, structures and facilities in this State must meet the following additional requirements if such requirements provide increased accessibility.

Specifically 553.503(6), Barriers at common entrances or emergency exits of business establishments conducting business with the general public that are EXISTING, under construction or under contract for construction which would prevent a person from using such entrance or exits must be removed. It is one of the exceptions to the Federal ADA standards.

I have complained to the City of Pensacola, the Code Enforcement agency responsible and the complaint got sent to the City-Building Inspection Office stating they handle all ADA issues in the City. Building Inspections tell me they can't do anything until an establishment requests a building permit. Then they can only indicate that the establishment can use 20% of the cost for accessibility development. Pensacola Building Inspections tells me I must complain to the Department of Justice if I have a problem with a proprietor.

A State Statute exists that provides for access to the Code Enforcement/City Building Inspections that provides not only the power but the authority to inspect and bring about access to those of us who are unable to traverse about on foot. In effect the City of Pensacola Code enforcement and Building Inspections does not enforce Florida State Statute 553.503 (6) or 504 which has to do with the requirement that businesses remove barriers to access common areas and entrances/exits.

I began researching the Florida building codes and found the issue: The *ICC Florida Building Codes ADVISORY statement: The federal, "Barrier Removal" mandate and the Florida Accessibility Code for Building Construction section 101.2 of the Florida Accessibility Code for Building Construction addresses the effect of the code on removal of barriers in existing buildings. Federal laws and regulations mandate "barrier removal". Florida law and the Florida Accessibility code DO NOT. The Florida Accessibility Code is invoked for, "Barrier Removal" when alterations are made to a facility to comply with the federal mandate or as directed by a federal enforcement action. (28CFR36, subpart E) The effect of the Florida Accessibility Criteria to barrier removal measures are employed with the federal mandate.*

The Florida State Statutes are written in everyday language and are meant as written. These are clear and concise statements of Statute direction, meant to clearly direct the departments they regulate. How can the Building Commission issue the statement above that is absolutely opposite of the Exceptions placed in The Statute? The Statute does NOT state when alterations are made to a facility the federal mandate applies. The Statute implies and clearly states for EXISTING, under construction and under contract for construction.

I request a declaratory statement on the exceptions in the State Statute. This ruling causes discrimination of disabled persons; this encourages people to set up businesses in older homes that are not accessible and according to your ruling would never have to become accessible unless they chose to make other alterations that require a building permit. Once again we are left out of society and the enjoyment of activities that able bodied persons can enjoy. Thank you for your assistance in the matter of utmost importance.

*Kathleen Ann Wilks*

Kathleen Ann Wilks  
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Moleno, FL 32577

-----Original Message-----  
From: nowind <nowind@panhandle.rr.com>  
To: sfmada <sfmada@aol.com>  
Sent: Fri, Apr 15, 2016 1:42 pm  
Subject: Fwd: Someone has commented on General Information/Other #1522315

Attached Message

From 'Pensacola' <noreply@publicstuff.com>  
To nowind@panhandle.rr.com  
Subject Someone has commented on General Information/Other #1522315  
Date Tue, 12 Apr 2016 19:35:55 +0000

Pensacola



NEW COMMENT

Hi Kathleen Wilks,

Ibuchanan posted a comment on General Information/Other Request #1522315, a request you reported.

## COMMENT

Latasha Buchanan:

We inspect buildings for compliance when building permits are issued for remodeling and new construction. When a building is being remodeled, there is no requirement for the owner of that building to make it 100% accessible. The Florida Accessibility Code requires the owner to spend 20% of the remodel costs on accessibility. There is an order in which the upgrades occur; accessible entrance, accessible route through the altered area, restrooms, accessible telephones, drinking fountains and when possible, accessible parking. If it is an existing building and there are violations that one feels need to be addressed, the individual should ask the owner of the business to make the necessary corrections. If they refuse, the individual could then contact the Justice Department to obtain compliance as a civil rights violation. Should you find a specific area of concern at a City facility, please do not hesitate to provide the location and the possible violation.

*Apr 12, 2016, 2:35 PM CDT by Latasha Buchanan (This is visible to Everyone)*

[https://iframe.publicstuff.com/#?client\\_id=530&request\\_id=1522315](https://iframe.publicstuff.com/#?client_id=530&request_id=1522315)

Please do not reply directly to this email.

Thanks!

*Pensacola*

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