

## DEC REQUEST DS 2016-076 STAFF ANALYSIS

The petitioner request Florida Building Commission to correct the erroneous assertion set forth in the Florida Building Codes 101.2, 201, 202.3.3 and other codes relating to **Barrier removal**, removing that it is the responsibility of the Department of Justice to enforce rather than local government entities. The US Justice Department enforces the Americans with Disabilities Act. The EXCEPTIONS to the ADA Standards for Accessible Design in the State of Florida are **enforced** per **ss553.513** titled **ENFORCEMENT**.

### Florida Building Code 5th Edition (2014) Accessibility

#### CHAPTER 1

##### SECTION 101.2

### 101.2 Effect on Removal of Barriers in Existing Facilities.

Removal of architectural barriers, pursuant to 28 C.F.R. s. 36.304, from *buildings*, structures or *facilities* shall comply with this code's requirements for *alterations* unless compliance would render the removal not *readily achievable*. In no instance shall the removal of an architectural barrier create a significant risk to the health or safety of an individual with a *disability* or others.

This code applies to *alterations to existing facilities* that are subject to the barrier removal requirement under Title III of the ADA to the extent required by regulations issued by the Department of Justice incorporated in 202.6.1 and to *alterations* undertaken by Title II entities to provide program access.

This document does not address existing *facilities* unless *altered* at the discretion of a covered entity. The Department of Justice has authority over existing *facilities* that are subject to the requirement for removal of barriers under Title III of the ADA. Any determination that this document applies to existing *facilities* subject to the barrier removal requirement is solely within the discretion of the Department of Justice and is effective only to the extent required by regulations issued by the Department of Justice.

#### CHAPTER 2

##### SECTION 201 APPLICATION

###### 201.1 Scope.

This code establishes standards for accessibility to *places of public accommodation* and *commercial facilities* by individuals with disabilities. This code shall also apply: to state and local government *facilities* pursuant to Section 553.503, F.S.; to *private clubs* pursuant to Section 553.505, F.S.; and to residential *buildings* pursuant to Section 553.504(2), F.S., and the ADA Standards for Accessible Design. All new or altered *public buildings and facilities, private buildings and facilities, places of public accommodation* and *commercial facilities* subject to this code shall comply with this code.

This code applies to: All areas of newly designed and newly constructed *buildings* and *facilities* as determined by the ADA Standards for Accessible Design; portions of altered *buildings* and *facilities* as determined by the ADA Standards for Accessible Design; a *building* or *facility* that is being converted from residential to nonresidential or mixed use as defined by the Florida Building Code where such *building* or *facility* must, at a minimum, comply with s. 553.508, F.S., and the requirements for *alterations* as determined by the ADA Standards for Accessible Design; *buildings* and *facilities* where the original construction or any former *alteration* or renovation was carried out in violation of applicable permitting law.

## Florida Building Code 5th Edition (2014) Residential

### 202 EXISTING BUILDINGS AND FACILITIES

## 202 EXISTING BUILDINGS AND FACILITIES

### 202.3.3 Barriers at Common or Emergency Entrances and Exits.

Barriers at common or emergency *entrances* and 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 *entrances* or exits shall be removed.

#### Staff Analysis:

#### Petitioner's request:

To correct the erroneous assertion set forth in the Florida Building Codes 101.2, 201, 202.3.3 and other codes relating to **Barrier removal**, removing that it is the responsibility of the Department of Justice to enforce rather than local government entities. The US Justice Department enforces the Americans with Disabilities Act. The EXCEPTIONS to the ADA Standards for Accessible Design in the State of Florida are *enforced* per ss553.513 titled **ENFORCEMENT**.

#### Staff's response:

Petition has no particular facts and circumstances and calls for a statement of general applicability; therefore answering this petition for declaratory statement would be legally improper.