

June 22, 1999

Commissioner David Meyers, CPM
Thomas Group, Inc.
311 N. Clyde Morris Boulevard
Daytona Beach, Florida 32114

RE: Inclusion of Unisex Toilet Room Requirement

Dear Commissioner Meyers:

The purpose of this letter is to respond to your request, as well as that of other commissioners, that I further research the issue of including in the plumbing chapter of the Florida Building Code a requirement for a unisex toilet room in assembly and mercantile occupancies. The requirement is modeled upon section 1108.2.1 of the final draft of the 2000 International Building Code. As you recall, in my memorandum of February 1, 1999, I recommended against inclusion of such a requirement as beyond the commission's authority. The basis for that recommendation was that the requirement constituted an accessibility requirement; therefore, incorporating that requirement in the plumbing code would circumvent the statutory requirement that the Florida Accessibility Code for Building Construction be amended only as provided in Part V, Chapter 553, Florida Statutes.

I have reviewed the information you mailed to me, as well as having contacted individuals involved in the process by which the unisex toilet/bathing facility requirement came to be included in the model codes. Despite this research, my legal opinion and recommendation on this issue have not changed, and are perhaps strengthened based upon this new information. As explained below, my conclusion is that the requirement for a unisex restroom is indeed an accessibility issue which, for a variety of reasons, the federal government has deferred to the model code process to address. While this may be an innovative and progressive approach, it is not supported by the structure of the Florida Americans with Disabilities Act and is not authorized under Florida law.

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Ironically, the article you sent me in support of your argument that the unisex toilet requirement is not an accessibility issue, contradicts that conclusion. The article states, "Approval of the pending [model code] proposals would be strong evidence that the model code development process can respond to a newly identified **accessibility concern** in a manner that is more efficient, more timely and in a more appropriate arena than the alternative route – federal rulemaking." Perry, Lawrence G. and Williams, Soy L., AIA;

"Unisex Toilet Codes: Flushing Out the Issues," Skylines, September 1996 (p. 20-22). This is exactly the situation which I am trying to prevent in Florida: A scenario in which the Florida Building Commission is convinced by some group to include an issue in a technical section of the Florida Building Code because it is more expedient than going through agency rulemaking to amend the FACBC to incorporate new federal requirements, or to the legislature for adoption of new Florida-specific requirements. Certainly my opinion would be the same, or perhaps stronger, if the proposal before the commission had the effect of reducing some standard in the FACBC, yet the advocate claimed it was a plumbing, structural or other technical issue, rather than an accessibility issue.

My research did not end with that article, however, as I contacted several individuals involved in the model code process. Ms. Soy Williams, AIA, Legislative Director for the International Code Council (ICC), emphatically agreed that this is an accessibility requirement. Her response to the argument that it is not an accessibility requirement because accessibility codes only require accessible designs and fixtures where restroom facilities are required, while plumbing codes require the facilities, was that this requirement is "where bathrooms are provided, then a unisex bathroom must be provided." It is interesting to note that Ms. Williams represented the Paralyzed Veterans Association in 1994 when she and Larry Perry from BOMA presented this issue to the Board of Coordination of Model Codes (BCMC).

Marsha Mazz with the federal Access Board, and Brian Black with the Eastern Paralyzed Veterans Association, were both involved in the early 90s when the federal government first took an interest in this issue. According to Ms. Mazz, the Access Board was approached by the Association of Retarded Citizens and several accessibility advocacy groups which were interested in including such a requirement in the ADAAG. Ms. Mazz indicated that the requirement was rejected by the Access Board for two reasons: (1) It encourages segregation, rather than inclusion, of people with disabilities, which is against federal policy; and (2) It raised issues unique to plumbing codes (such as how and when to require "rounding up" of the number of facilities) which the Access Board was not prepared to answer. The Access Board referred the matter to the BCMC, which took on the issue in its deliberations between 1993 and 1995, and delivered its recommendations to the ICC. Mr. Black served on the BCMC and provided me with a copy of the BCMC Report on Accessible Toilet and Bathing Rooms, as well as the minutes of several meetings during which the proposal was considered. The report finds that the **primary issue** relative to unisex toilet/bathing facilities **is that some people with disabilities use the assistance of persons of the opposite sex** and therefore require a facility that accommodates both persons. Ms. Mazz considers this to be "not exactly" a disability issue alone because children and the

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elderly may also benefit. But, she indicated that in future versions, the ADAAG may reference these model code requirements. When the BCMC presented this requirement to the ICC for incorporation into the model building code, the ICC obviously determined it to be an accessibility issue because it is found in the accessibility chapter of the draft model code.

I hope this explains the foundation on which my legal opinion on this matter is based. Since it appears that the design professionals, the affected industries and the accessibility advocates all support the unisex toilet room requirement, I recommend that the commission pursue one of the following options: (1) Seek legislative

approval for including this as a Florida specific requirement, (2) Contact the Department of Justice for an opinion on how it would affect our certification if we amended the FACBC to include this requirement, through agency rulemaking, even though it is not included in ADAAG, or (3) Recommend to the legislature a statutory scheme in which the Florida Building Code may be used to address accessibility issues outside of the FACBC. Please contact me at (850) 922-1689 if you need additional information on this subject.

Sincerely,

Suzanne H. Schmith
Florida Building Commission
Staff Attorney

cc: Steven M. Seibert, Secretary
Department of Community Affairs
Thomas A. Pierce, Director
Division of Housing and Community Development