

Business Accessibility Guide



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HAMILTON TOWNSHIP BUSINESS ACCESSIBILITY GUIDE

Many of Hamilton Township's residents have disabilities and each of them is a potential customer. They, and their families, want to patronize businesses that welcome customers with disabilities. Studies show that once people with disabilities find an accessible and accommodating business where they can easily shop or get services, they become repeat customers.

The ADA strikes a careful balance between increasing access for people with disabilities and recognizing the financial constraints many small businesses face. Its flexible requirements allow businesses confronted with limited financial resources to improve accessibility without excessive expense.

The Department of Justice has revised its regulations implementing the Americans with Disabilities Act (ADA). This rule took effect on March 15, 2011, and clarifies issues that have arisen over the past 20 years. It contains new requirements, including the 2010 Standards for Accessible Design (2010 Standards). This document provides guidance to assist small business owners in understanding how this regulation applies to them.

***Please note:** This guidance is adapted from ADA Update: A Primer for Small Business (<http://www.ada.gov/regs2010/smallbusiness/smallbusprimer2010.pdf>), as published by the U.S. Department of Justice's Civil Rights Division, *Disability Rights Section*. It was developed for small businesses in accordance with the Small Business Regulatory Enforcement Flexibility Act of 1996.

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An Overview of the Americans with Disabilities Act (ADA)

The ADA is a Federal civil rights law that prohibits discrimination against people with disabilities and opens doors for full participation in all aspects of everyday life. This publication provides general guidance to help business owners understand how to comply with the Department's revised ADA regulations and the 2010 Standards, its design standards for accessible buildings. The ADA applies to both the built environment and to policies and procedures that affect how a business provides goods and services to its customers.

Using this guidance, a small business owner or manager can ensure that it will not unintentionally exclude people with disabilities and will know when it needs to remove barriers in its existing facilities. If you are planning to build a new facility or alter an existing one, please see [New Construction and Alterations](#) for specific guidance on these types of projects. Businesses should consult the revised ADA regulations (www.ada.gov/2010_regs.htm) and the 2010 Standards (www.ada.gov/2010ADASTandards_index.htm) for more comprehensive information about specific requirements.

Who is Covered by the ADA?

Businesses that provide goods or services to the public are called "public accommodations" in the ADA. The ADA establishes requirements for 12 categories of public accommodations, which include stores, restaurants, bars, service establishments, theaters, hotels, recreational facilities, private museums and schools, doctors' and dentists' offices, shopping malls, and other businesses. Nearly all types of businesses that serve the public are included in the 12 categories, regardless of the size of the business or the age of their buildings.

Businesses covered by the ADA are required to modify their business policies and procedures when necessary to serve customers with disabilities and take steps to communicate effectively with customers with disabilities. The ADA also requires businesses to remove architectural barriers in existing buildings and make sure that newly built or altered facilities are constructed to be accessible to individuals with disabilities. "Grandfather Provisions" often found in local building codes do not exempt businesses from their obligations under the ADA.

Commercial facilities, such as office buildings, factories, warehouses, or other facilities that do not provide goods or services directly to the public are only subject to the ADA's requirements for new construction and alterations.

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NON-DISCRIMINATION REQUIREMENTS

Policies and Procedures

Your business has formal and informal policies, practices, and procedures that keep it running smoothly. However, sometimes your policies or procedures can inadvertently make it difficult or impossible for a customer with a disability to access your goods and services. That is why the ADA requires businesses to make "reasonable modifications" to their usual ways of operating when serving people with disabilities. Most modifications involve only minor adjustments in policies.

For example, a clothing store must modify a policy of permitting only one person at a time in a dressing room for a person with a disability who is shopping with a companion and needs the companion's assistance to try on clothes. Anything that would result in a fundamental alteration – a change in the essential nature of your business – is not required. For example, a clothing store is not required to provide dressing assistance for a customer with a disability, if this is not a service provided to other customers.

Customers with disabilities may need different types of assistance to access your goods and services. For example, a grocery store clerk is expected to assist a customer using a mobility device by retrieving merchandise from high shelves. A person who is blind may need assistance maneuvering through a store's aisles. A customer with an intellectual disability may need assistance in reading product labels and instructions. Usually the customer will tell you up front if he or she needs assistance, although some customers may wait to be asked, "May I help you?" When only one staff person is on duty, it may or may not be possible for him or her to assist a customer with a disability. The business owner or manager should advise the staff person to assess whether he or she can provide the assistance that is needed without jeopardizing the safe operation of the business.

Service Animals

Often businesses, such as stores, restaurants, hotels, or theaters, have policies that can exclude people with disabilities. For example, a "no pets" policy may result in staff excluding people with disabilities who use dogs as service animals. A clear policy permitting service animals can help ensure that staff are aware of their obligation to allow access to customers using service animals. Under the ADA's revised regulations, the definition of "service animal" is limited to a dog that is individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the dog must be directly related to the person's disability.

For example, many people who are blind or have low vision use dogs to guide and assist them with orientation. Many individuals who are deaf use dogs to alert them to sounds. People with mobility disabilities often use dogs to pull their wheelchairs or retrieve items. People with epilepsy may use a dog to warn them of an imminent seizure, and individuals with psychiatric disabilities may use a dog to remind them to take medication. Service members returning from war with new disabilities are increasingly using service animals to assist them with activities of daily living as they reenter civilian life. Under the ADA, "comfort," "therapy," or "emotional support animals" do not meet the definition of a service animal.

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Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents him/her from using these devices. Individuals who cannot use such devices must maintain control of the animal through voice, signal, or other effective controls. Businesses may exclude service animals only if:

- 1) The dog is out of control and the handler cannot or does not regain control; or
- 2) The dog is not housebroken. If a service animal is excluded, the individual must be allowed to enter the business without the service animal.

In situations where it is not apparent that the dog is a service animal, a business may ask only two questions: 1) is the animal required because of a disability; and 2) what work or task has the animal been trained to perform? No other inquiries about an individual's disability or the dog are permitted. Businesses cannot require proof of certification or medical documentation as a condition for entry.

Wheelchairs and Other Power-Driven Mobility Devices

People with mobility, circulatory, or respiratory disabilities use a variety of devices for mobility. Some use walkers, canes, crutches, or braces while others use manually-operated or power wheelchairs, all of which are primarily designed for use by people with disabilities. Businesses must allow people with disabilities to use these devices in all areas where customers are allowed to go.

MAKING THE BUILT ENVIRONMENT ACCESSIBLE

People with disabilities continue to face architectural barriers that limit or make it impossible to access the goods or services offered by businesses. Examples include:

- a parking space with no access aisle to allow deployment of a van's wheelchair lift
- steps at a facility's entrance or within its serving or selling space
- aisles that are too narrow to accommodate mobility devices
- counters that are too high
- restrooms that are simply too small to use with a mobility device

The ADA's regulations and the ADA Standards for Accessible Design, originally published in 1991, set the standard for what makes a facility accessible. While the updated 2010 Standards retain many of the original provisions in the 1991 Standards, they do contain some significant differences. These standards are the key for determining if a small business's facilities are accessible under the ADA. However, they are used differently depending on whether a small business is altering an existing building, building a brand new facility, or removing architectural barriers that have existed for years.

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EXISTING FACILITIES

Element-by-Element Safe Harbor

If your business facility was built or altered in the past 20 years in compliance with the 1991 Standards or you removed barriers to specific elements in compliance with those Standards, you do not have to make further modifications to those elements – even if the new standards have different requirements for them – to comply with the 2010 Standards. This provision is applied on an element-by-element basis and is referred to as the "safe harbor." The following examples illustrate how the safe harbor applies:

- The 2010 Standards lower the mounting height for light switches and thermostats from 54 inches to 48 inches. If your light switches are already installed at 54 inches in compliance with the 1991 Standards, you are not required to lower them to 48 inches.
- The 1991 Standards require one van accessible space for every eight accessible spaces. The 2010 Standards require one van accessible space for every six accessible spaces. If you have complied with the 1991 Standards, you are not required to add additional van accessible spaces to meet the 2010 Standards.
- The 2010 Standards contain new requirements for the input, numeric, and function keys (e.g. "enter," "clear," and "correct") on automatic teller machine (ATM) keypads. If an existing ATM complies with the 1991 Standards, no further modifications are required to the keypad.

If a business chooses to alter elements that were in compliance with the 1991 Standards, the safe harbor no longer applies to those elements. For example, if you restripe your parking lot, which is considered an alteration, you will now have to meet the ratio of van accessible spaces in the 2010 Standards. Similarly, if you relocate a fixed ATM, which is considered an alteration, you will now have to meet the keypad requirements in the 2010 Standards. The ADA's definition of an alteration is discussed later in this publication.

The revised ADA rules and the 2010 Standards contain new requirements for elements in existing facilities that were not addressed in the original 1991 Standards. These include recreation facilities, such as swimming pools, play areas, exercise machines, miniature golf facilities, and bowling alleys. Because these elements were not included in the 1991 Standards, they are not subject to the safe harbor. Therefore, as of March 15, 2012, public accommodations were required to remove architectural barriers to elements subject to the new requirements in the 2010 Standards when it is readily achievable to do so. For example, a hotel must determine whether it is readily achievable to make its swimming pool accessible to people with mobility disabilities by installing a lift or a ramp as specified in the 2010 Standards.

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New Requirements in the 2010 Standards Not Subject to the Safe Harbor

- Amusement rides
- Recreational boating facilities
- Exercise machines and equipment
- Fishing piers and platforms
- Golf facilities
- Miniature golf facilities
- Play areas

- Saunas and steam rooms
- Swimming pools, wading pools, and spas
- Shooting facilities with firing positions
- Residential facilities and dwelling units
- Miscellaneous
 - Team or player seating
 - Accessible route to bowling lanes
 - Accessible route in court sports facilities

Readily Achievable Barrier Removal

The ADA requires that small businesses remove architectural barriers in existing facilities when it is "readily achievable" to do so. Readily achievable means "easily accomplishable without much difficulty or expense." This requirement is based on the size and resources of a business. Therefore, businesses with more resources are expected to remove more barriers than businesses with fewer resources.

Readily achievable barrier removal may include:

- providing an accessible route from a parking lot to the business's entrance
- installing an entrance ramp
- widening a doorway
- installing accessible door hardware
- repositioning shelves
- moving tables, chairs, display racks, vending machines, or other furniture

When removing barriers, businesses are required to comply with the Standards to the greatest extent possible. For example, where there is not enough space to install a ramp with a slope that complies with the Standards, a business may install a ramp with a slightly steeper slope. However, any deviation from the Standards must not pose a significant safety risk.

Determining what is readily achievable will vary from business to business and sometimes from one year to the next. Changing economic conditions can be taken into consideration in determining what is readily achievable. Economic downturns may force many public accommodations to postpone removing some barriers. The barrier removal obligation is a continuing one, and it is expected that a business will move forward with its barrier removal efforts when it rebounds from such downturns. For example, if a restaurant identified barriers under the 1991 Standards but did not remove them because it could not afford the cost, the restaurant has a continuing obligation to remove these

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barriers when it has the financial resources to do so.

In some instances, especially in older buildings, it may not be readily achievable to remove some architectural barriers. For example, a restaurant with several steps leading to its entrance may determine that it cannot afford to install a ramp or a lift. In this situation, the restaurant must provide its services in another way if that is readily achievable, such as providing takeout service.

Businesses should train staff on these alternatives and publicize them so customers with disabilities will know of their availability and how to access them. *For more information on training, see the section on Staff Training.*

Accessible Entrances

One small step at an entrance can make it impossible for individuals using wheelchairs, walkers, canes, or other mobility devices (such as medical strollers) to do business with you. Removing this barrier may be accomplished in a number of ways, such as installing a ramp or a lift. If the main entrance cannot be made accessible, an alternate accessible entrance can be used. If you have several entrances and only one is accessible, a sign should be posted at the inaccessible entrances, directing individuals to the accessible entrance. This entrance must be open whenever other public entrances are open.

Accessible Route to Goods and Services

The path a person with a disability takes to enter and move through your business is called an "accessible route." This route, which must be at least three feet wide, must remain accessible and not be blocked by items, such as vending or ice machines, newspaper dispensers, furniture, filing cabinets, display racks, or potted plants. Similarly, accessible toilet stalls, dressing rooms, or counters at a cash register must not be cluttered with merchandise or supplies.

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Shelves, Sales and Service Counters, and Check-Out Aisles

The obligation to remove barriers also applies to merchandise shelves, sales and service counters, and check-out aisles. Shelves and counters must be on an accessible route with enough space to allow customers using mobility devices to access merchandise. However, shelves may be of any height since they are not subject to the ADA's reach range requirements. Where barriers prevent access to these areas, they must be removed if readily achievable. However, businesses are not required to take any steps that would result in a significant loss of selling space.

At least one check-out aisle must be usable by people with mobility disabilities, though more are required in larger stores. When it is not readily achievable to make a sales or service counter accessible, businesses should provide a folding shelf or a nearby accessible counter. If these changes are not readily achievable, businesses may provide a clip board or lap board until more permanent changes can be made.

Food and Restaurant Services

People with disabilities need to access tables, food service lines, and condiment and beverage bars in restaurants, bars, or other establishments where food or drinks are sold. There must be an accessible route to all dining areas, including raised or sunken dining areas and outdoor dining areas, as well as to food service lines, service counters, and public restrooms. In a dining area, remember to arrange tables far enough apart so a person using a wheelchair can maneuver between the tables when patrons are sitting at them. Some accessible tables must be provided and must be dispersed throughout the dining area rather than clustered in a single location.

Where barriers prevent access to a raised, sunken, or outdoor dining area, they must be removed if readily achievable. If it is not readily achievable to construct an accessible route to these areas and distinct services (e.g., special menu items or different prices) are available in these areas, the restaurant must make these services available at the same price in the dining areas that are on an accessible route. In restaurants or bars with only standing tables, some accessible dining tables must be provided.

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Parking

If your business provides parking for the public but there are no accessible spaces, you will lose potential customers. You must provide accessible parking spaces for cars and vans if it is readily achievable to do so. The chart below indicates the number of accessible spaces required by the 2010 Standards. One out of every six spaces must be van accessible.

Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

Small businesses with very limited parking (four or fewer spaces) must have one accessible parking space. However, no signage is required. An accessible parking space must have an access aisle, which allows a person using a wheelchair or other mobility device to get in and out of the car or van.

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NEW CONSTRUCTIONS AND ALTERATIONS

The ADA requires that all new facilities built by public accommodations, including small businesses, must be accessible to and usable by people with disabilities. The 2010 Standards lay out accessibility design requirements for newly constructed and altered public accommodations and commercial facilities.

Alterations

When a small business undertakes an alteration to any of its facilities, it must to the maximum extent feasible, make the alteration accessible. An alteration is defined as:

- remodeling, renovating, rehabilitating, reconstructing, changing or rearranging structural parts or elements
- changing or rearranging plan configuration of walls and full-height partitions
- making other changes that affect (or could affect) the usability of the facility

Examples include:

- restriping a parking lot
- moving walls
- moving a fixed ATM to another location
- installing a new sales counter or display shelves
- changing a doorway entrance
- replacing fixtures, flooring or carpeting

Normal maintenance, such as re-roofing, painting, or wallpapering, is not an alteration.

Steps of Success

Being proactive is the best way to ensure ADA compliance.

- Evaluate access at your facility.
- Train your staff on the ADA's requirements.
- Think about the ADA when planning an alteration or construction of a new facility.
- Most importantly, use the free information resources available whenever you have a question.

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ASSESSING YOUR FACILITY

Beginning March 15, 2012, only the 2010 Standards can be used.

Staff Training

A critical and often overlooked component of ensuring success is comprehensive and ongoing staff training. You may have established good policies, but if front line staff are not aware of them or do not know how to implement them, problems can arise. Businesses of all sizes should educate staff about the ADA's requirements. Staff need to understand the requirements on modifying policies and practices, communicating with and assisting customers with disabilities, and accepting calls placed through the relay system. Many local disability organizations, including Centers for Independent Living, conduct ADA trainings in their communities.

For more information on training, contact the Progressive Center for Independent Living at (609) 581-4500.

Financial Incentives, Tax Credits and Funding Resources

To assist small businesses in complying with the ADA, the Internal Revenue Service (IRS) Code includes a Disabled Access Credit (Section 44) for businesses with 30 or fewer full-time employees or with total revenues of \$1 million or less in the previous tax year. Eligible expenses may include:

- the cost of undertaking barrier removal and alterations to improve accessibility
- providing sign-language interpreters
- making material available in accessible formats, such as Braille, audiotape, or large print

Section 190 of the IRS Code provides a tax deduction for businesses of all sizes for costs incurred in removing architectural barriers in existing facilities or alterations. The maximum deduction is \$15,000 per year.

Additionally, some disability organizations having funding available to assist businesses looking to enhance accessibility.

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RESOURCES

The Americans with Disabilities Act Checklist for Readily Achievable Barrier Removal:

<http://www.ada.gov/racheck.pdf>

U.S. Department of Justice

For more information about the revised ADA regulations and 2010 ADA Standards, please visit the Department of Justice's ADA Website or call the toll-free number.

ADA Website

<http://www.ADA.gov/>

ADA Information Line

800-514-0301 (Voice)

800-514-0383 (TTY)

Call 24 hours a day to order publications by mail.

Call M-W, F 9:30 am - 5:30 pm, Thurs. 12:30 pm - 5:30 pm (Eastern Time) to speak to an ADA Specialist. All calls are confidential.

"*Reaching Out to Customers with Disabilities*" explains the ADA's requirements for businesses in a short 10-lesson online course (www.ada.gov/reachingout/intro1.htm).

ADA National Network (DBTAC)

Ten regional centers are funded by the U.S. Department of Education to provide ADA technical assistance to businesses, States and localities, and persons with disabilities. One toll-free number connects you to the center in your region:

800-949-4232 (Voice and TTY)

<http://www.adata.org/>

Access Board

For technical assistance on the ADA/ABA Accessibility Guidelines:

800-872-2253 (Voice)

800-992 -2822 (TTY)

Internal Revenue Service

For information on the Disabled Access Tax Credit (Form 8826) and the Section 190 tax deduction (Publication 535 Business Expenses):

800-829-3676 (Voice) or 800-829-4059 (TTY)

<http://www.irs.gov/>