

# BUILDING CODE DEVELOPMENT AND ENFORCEMENT: IMPACT ON ACCESSIBILITY FOR PERSONS WITH DISABILITIES

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## INTRODUCTION

One of the most significant barriers to the creation of accessible, affordable housing and one of the most challenging to address is the complexity of the current system of developing and enforcing building code and specialized codes related to the renovation or construction of buildings. The numerous agencies and entities that currently develop code, including the primary building code (one and two family and basic)<sup>1</sup> and specialized codes, sometimes leads to the creation of (1) conflicting codes, and/or (2) codes that do not necessarily respond to the needs of various populations such as people with disabilities. Another consequence of the complexity is the challenge it creates for the local building officials<sup>2</sup> and others to apply and/or enforce the code accurately and efficiently. Ultimately, this issue has a serious impact on accessibility for persons with disabilities.

This document identifies the entities that currently develop the primary building code and specialized code and describes the process by which the building code is enforced during the design and construction phase of development. Its purpose is to help others address gaps in the existing process which, in doing so, may prevent errors from taking place in the design and construction phase that are difficult, costly and time-consuming to remedy after construction is substantially complete. In addition, these errors may trigger litigation which could otherwise be avoided. Ultimately, addressing this issue may create an environment in which the development of accessible, affordable housing is a less onerous and expensive undertaking. This document is also intended to be a practical resource for developers, builders, and consumers to have more information about how accessibility issues can be raised and potentially resolved after the construction process is completed.

The document is organized into three parts:

1. History of the Evolution of Building Code and Accessible Housing
2. Development and Enforcement of the Building Code and Specialized Codes During Design and Construction
3. Building Code Enforcement after Construction is Complete

## HISTORY OF THE EVOLUTION OF BUILDING CODE AND ACCESSIBLE HOUSING

The primary building code and the specialized codes have been developed separately over the past one hundred years. At least since 1970, the complexity of developing and enforcing the building code

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<sup>1</sup> The *Seventh Edition, Massachusetts Building Code* (780 CMR), consists of both a basic building code (the *Massachusetts Basic Building Code*) and a stand-alone one-and two-family dwelling code (the *Massachusetts One- and Two-Family Dwelling Code*).

<sup>2</sup> Local building officials are defined by 780 CMR 106: “The inspector of buildings and local inspector (building official) shall enforce all of the provisions of 780 CMR, 521 CMR (Architectural Access Board) and any other state statutes, rules and regulations, or ordinances or bylaws which empower the building official. The building official shall act on any question relative to the mode or manner of construction and materials to be used in the construction, reconstruction, alteration, repair, demolition, removal, installation of equipment and the location, use, occupancy and maintenance of all buildings and structures, except as otherwise specifically provided for by statutory requirements or as provided for in 780 CMR 109.0.”

and specialized codes has been acknowledged as a problem resulting in the inaccurate application of building code. Errors during design, design review, construction and inspection have a negative impact on both the individuals who utilize the structures as well as those entities that fund the development.

In 1970, a “Report Relative to the Development, Administration and Enforcement of Housing Codes” (which became Massachusetts House bill 4939) states “The responsibility of carrying out code enforcement activities rests with several (local) departments depending upon the size of the particular city or town. Each department is concerned solely with its own functions, and little coordination exists though they share common objectives.” The report also includes a chart illustrating the complexity of intergovernmental relationships. In House bill 4938 of 1971, confusion with regard to building code is noted: “There is confusion over the proper jurisdictional responsibilities between state and local agencies.” Massachusetts adopted its first statewide building code in 1972 in an effort to reduce confusion. In 1984, legislation passed which mandated that the statewide building code “incorporate any specialized construction codes, rules or regulations pertaining to building construction....”

The Commonwealth has continued to try to address the confusion related to application of multiple codes. Bringing Down the Barriers: Changing Housing Supply Dynamics in Massachusetts issued by the MA Executive Office of Administration and Finance in 2000, again calls for action: “Because there are numerous boards and state agencies independently promulgating the codes that regulate building construction, the Commonwealth will sometimes put into place regulations that are conflicting or duplicative.” The report called for the formation of the Special Commission on Barriers to Housing Development. The Commission and its subcommittees issued a report in 2002.

The Commission’s Building Code Subcommittee identified six recommendations intended to address some of the same issues that exist today:

1. conflicting and duplicative codes
2. inconsistent interpretation and enforcement of codes
3. inadequate use of current technology
4. inadequate local staffing
5. inadequate state level staffing
6. local requirements that exceed municipal authority

One of their recommendations was the creation of the Building Code Coordinating Council (BCCC)<sup>3</sup> which would be responsible for “coordinat[ing] the building and specialty codes, and creat[ing] a forum for discussing the processes for the promulgation of regulations, licensing, inspections, and appeals.” The BCCC was originally established in 2002 and continues to function today.

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<sup>3</sup> Per Executive Order number 518, reestablishing the BCCC, issued by Governor Deval Patrick the BCCC shall consist of the following members: the Secretary of the Executive Office of Administration and Finance, who shall serve as co-chair of the Council; the Secretary of the Executive Office of Public Safety, who shall serve as co-chair of the Council; the Director of the Department of Housing and Community Development; the State Fire Marshal; the Commissioner of the Department of Public Safety; the Chairman of the Board of Fire Prevention Regulations; the Chairman of the State Board of Electrical Examiners; the Chairman of the Board of Building Regulations and Standards; the Chairman of the State Board of Plumbers and Gasfitters; the Commissioner of the Department of Public Health; the Chairman of the Architectural Access Board; the Commissioner of the Department of Environmental Protection; the Chairman of the Board of Elevator Regulations; the Chairman of the Bureau of Pipefitter, Refrigeration Technicians and Sprinkler fitters; the Chairman of the Board of State Examiners of Sheet Metal Workers; the Commissioner of Energy Resources, the Chairman of the Fire Safety Commission; the Attorney General or their respective designees.<sup>3</sup>

## DEVELOPMENT AND ENFORCEMENT OF THE BUILDING CODE AND SPECIALIZED CODES DURING DESIGN AND CONSTRUCTION

Development of the Primary Building Code and Specialized Codes<sup>4</sup>:

Currently, in Massachusetts, when housing with four or more units is being designed and constructed, there are four sets of standards that architects, contractors, building inspectors and others may need to consult depending upon the type(s) of funding that the development receives. These standards may need to be consulted in order to ensure that the building complies with legally-mandated accessibility standards. They are intended to ensure that a person with a disability has an opportunity equal to that of a person without a disability to utilize and enjoy the premises.

The four standards are:

1. Massachusetts Architectural Access Board Regulations (MAABR/521 CMR)
2. Fair Housing Act Design Manual (FHA DM-1998) or ten HUD-approved safe harbors (see FairHousingFirst website)
3. Uniform Federal Accessibility Standards (UFAS-1988)
4. Standards for Accessible Design (ADAAG-1994) as required by the Americans with Disabilities Act (ADA)

The Massachusetts Architectural Access Board Regulations mentioned above promulgates one of several specialized codes in Massachusetts, the Architectural Access Code. Although the Architectural Access Code is the principal Massachusetts code that addresses accessibility, the way in which other codes interface with this “access code” may have an impact on accessibility. The existence of numerous specialized codes and the number of agencies involved in developing and enforcing these codes exacerbates the complexity of the code development and enforcement process.

Four executive offices within the executive branch of the Commonwealth’s government are responsible for promulgating these codes and/or overseeing regulation related to the codes. They are:

- the Executive Office of Public Safety and Security
- the Executive Office of Health and Human Services
- the Executive Office of Energy and Environmental Affairs
- the Executive Office of Housing and Economic Development

The chart below identifies the primary building and specialized codes in Massachusetts and the entities responsible for promulgating and enforcing those codes.

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<sup>4</sup> . Specialized codes in Massachusetts include (see 780 CMR 101.5): Architectural Access Code, Electrical Code, Elevator Code, Environmental Code, Fire Prevention Code, Fuel Gas and Plumbing Code, Property Maintenance Code, Sanitary Code, Water Pollution Control Code. These specialized codes work in conjunction with the primary building code (780 CMR)

Type of Building Code	Entities Responsible for Code Development/ Promulgation		Entities Responsible for Code-Related Inspection/ Enforcement	
	State Executive Office	State Department	State	Municipality
Primary Building Code (780 CMR) (Basic Building Code and One and Two family Dwelling Code)	Executive Office of Public Safety and Security	Department of Public Safety (Board of Building Regulations and Standards)	State building officials/inspectors inspect state-owned buildings only	Local building official/inspector
Specialized Building Codes:				
Architectural Access (521 CMR)	Executive Office of Public Safety and Security	Department of Public Safety (Architectural Access Board)	Massachusetts Architectural Access Board will enforce if a complaint is filed.	Local building official/inspector
Electrical (527 CMR)	Executive Office of Public Safety and Security	Department of Fire Services (Board of fire Prevention Regulations)	Jurisdiction of state electrical inspector only includes MWRA, MBTA, MCCA	Licensed electrician hired by municipality- may be on staff of local building official/inspector
Elevator (524 CMR)	Executive Office of Public Safety and Security	Department of Public Safety (Elevator Board)	Department of Public Safety	Not applicable
Environmental Protection(310 CMR)(Title 5-septic) and Water Pollution Control (314 CMR) Waste water disposal	Executive Office of Energy and Environmental Affairs	Department of Environmental Protection	Jurisdiction only includes systems owned or operated by an agency of the Commonwealth or of the federal government and for systems serving a facility with a design flow of 10,000 gallons per day or greater	Local board of health most often addresses issues for systems with flow up to 10,000 gallons per day or greater

	<b>State Executive Office</b>	<b>State Department</b>	<b>State</b>	<b>Municipality</b>
Fire Prevention (527 CMR)	Executive Office of Public Safety and Security	Department of Public Safety (Board of Fire Prevention Regulations)	Division of Fire Safety	Local fire department officers
Fuel Gas (248 CMR 4) and Plumbing (248 CMR 10)	Executive Office of Housing and Economic Development	Office of Consumer Affairs and Business Regulation (Board of Plumbers and Gasfitters)	Jurisdiction of state plumbing inspector only includes property state owned, used, leased or constructed buildings	Licensed plumber hired by municipality- may be on staff of local building official/inspector
Property Maintenance (780 CMR)	No specific Property Maintenance Code has been adopted. The primary building code uses some language from the International Property Maintenance Code, but MA has not adopted that code in its entirety.			
Sanitary (105 CMR)	Executive Office of Health and Human Services	Department of Public Health, Bureau of Environmental Health Community Sanitation Program	If the local board of health fails to effect compliance then Department of Public Health may take action.	Local board of health

The chart identifies the main entities that promulgate and enforce the building code and specialized codes on the state and municipal levels. Although the multiplicity of agencies involved in the process often exacerbates confusion around code compliance issues, the various codes are sometimes unavoidably intertwined. For instance, the Commonwealth's sanitary code is under the purview of the EOHHS's Department of Public Health whose declared mission is to protect, preserve, and improve the health of all the Commonwealth's residents, yet the sanitary code has a relationship to the EOEEA's Department of Environmental Protection since waste water disposal is an issue of concern to both agencies.

#### Enforcement of Building/Specialized Code During Design/Construction Phase

Local building officials are chiefly responsible for enforcing the correct application of the building code and any specialized code. Other specialized codes are enforced by a range of entities as indicated in the above chart. Currently, the following inspection/enforcement process is generally followed by local building officials upon receipt of architectural plans for a project. (Under MGL c.143, s. 54A, all architectural work requires the seal of a registered architect.) Local building officials rely heavily on registered architects to provide plans that accurately apply building code including the architectural access code.

The following are the steps in the process and the issues related with each step in the process that impede adherence to accessibility standards.

STEP ONE: Property owner/developer hires a licensed architect to provide a complete set of plans for the structure being built.

RELATED ISSUES:

- Licensed architects may or may not receive training on accessibility code as part of their degree program. If they do receive training on this subject it may not be extensive. However, in order to become a licensed architect an individual must pass an exam that includes questions that are intended to prove proficiency in accessibility regulations.
- Architects may not be required to take courses on accessibility code as part of their license renewal process although courses on accessibility may be included in the required hours under the category of Health and Safety.

STEP TWO: Architectural plans will be submitted by the property owner to the local building official(s), such as the Building Commissioner or local building inspector (LBI), upon completion by the architect for the purpose of obtaining a building permit from the LBI.

RELATED ISSUES:

- Staffing levels in the offices of local building officials vary widely. They range from a single part time, building official, to a full time building official with multiple staff such as a plumbing inspector, electrical inspector or others. Some communities, though not many, hire an individual on a part time basis to review plans solely for compliance with architectural access code.
- Lack of adequate capacity and training hampers the local building officials' ability to inspect and enforce code related to accessibility.

STEP THREE: If a building permit is issued to the property owner following the review of the architectural plans the following inspections by local building officials take place at various intervals throughout the construction process:

- foundation
- roughing in of electrical/mechanical/sprinklers, etc.
- shell
- insulation
- structural
- final sign-off

RELATED ISSUES:

- Generally, no site visit by a local building official focuses solely on accessibility issues.
- A local building inspector does not administer federal laws so when they are inspecting a property they would only review for compliance with the Massachusetts accessibility code. Although the Massachusetts specialized code on accessibility does incorporate many of the federal standards it had been found not to incorporate all of the federal standards.<sup>5</sup> In addition,

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<sup>5</sup> Evaluation and Comparison of State and Federal Accessibility Codes, Citizens' Housing and Planning Association, November, 2009.

depending upon the sources of funding received by the owner to construct the development a variety of federal code (FHA DM-1998; UFAS-1988; ADAAG-1994) may apply.

**STEP THREE A:** In addition to the local building official/inspectors, other inspection professionals may visit the site. The architect is legally required to make "periodic" site visits. Lenders, both public and private, will usually have a person either on staff or hire a "fee inspector" to visit the site to ensure that the work is being done satisfactorily and that the drawings are being followed by the builder. If one of these individuals identifies an issue, they will notify the lender and/or owner. Typically, the building inspector is not notified of an issue during this process. If a development is particularly complex an architect may hire their own code consultant to review plans and visit the site.

**RELATED ISSUES:**

- Although the engagement of private individuals to provide additional site inspection for compliance with accessibility code is often very helpful in ensuring that accessibility issues will be appropriately identified and addressed in a timely fashion, it does not guarantee this outcome.
- Owners/ developers must recognize this issue and hire an architect familiar with accessibility code or a specialist to review for accessibility.
- These experts must then visit the site a sufficient number of times and clearly communicate on a regular basis with the owner and contractors on site to ensure communication between all parties responsible for not only the design but also the implementation of the design, i.e. plumbers, electricians, carpenters.
- At no point in this process are "private" inspectors required to notify the local building official if they identify an issue related to accessibility that needs to be addressed.

**STEP FOUR:** Once the local building official is notified by the property owner or his/her representative that the project is complete, the local building officials will schedule a visit for final review and sign-off if all requirements are met.

**RELATED ISSUES:**

- The local building official(s) are not required to have someone specializing in accessibility code sign off on the project in contrast to the requirement that a licensed plumber sign off on plumbing-related matters and a licensed electrician sign off on electrical-related matters.

**Suggestions for Improvements in the Process**

It is apparent, even after only a perfunctory analysis of code and the code development, dissemination and enforcement processes, that there are opportunities for improvement in critical areas. Policymakers seeking to improve the codes should start with a more comprehensive analysis of code discrepancies (how the codes are duplicative or conflicting) as well as analyze how codes are developed, disseminated and enforced. Strategies to address the following objectives should be developed:

1. increase emphasis on accessibility code compliance during the design review and construction phase
2. enhance enforcement in order to avoid the creation of accessibility barriers
3. increase communication and code development coordination, perhaps using the BCCC as a vehicle, specifically related to the impact of code changes on accessibility



## BUILDING CODE ENFORCEMENT AFTER CONSTRUCTION IS COMPLETE

If individuals identify accessibility barriers in a building after construction has been completed, they do have recourse. Federal Fair Housing laws are enforced by the U.S. Department of Housing and Urban Development (HUD). Owner occupied houses with 4 or fewer units are exempt from the federal Fair Housing Act. On the state level, the Massachusetts Architectural Access Board (MAAB) and the Massachusetts Commission Against Discrimination (MCAD) are responsible for enforcing the Commonwealth's architectural access code as well as the Commonwealth's fair housing law. Owner occupied property of two or less units is exempt from state law (M.G.L. c. 151B).

If a housing complaint is filed with MCAD, the complaint is also filed with HUD. If a complaint is filed with MAAB, HUD does not receive notice, but MAAB notifies the local Independent Living Center, building inspector, and disability commission (if there is one).

The enforcer of the fair housing laws for each type of housing is traced back to the funding source for public and subsidized housing. Fair Housing law may enforce accessibility issues related to requested reasonable accommodations, temporary code violations, and permanent code violations.

The process for filing a complaint with HUD is as follows:

An individual may file a fair housing complaint with HUD when they have been trying to buy or rent a home or apartment and believe their rights have been violated by contacting the Office of Fair Housing and Equal Opportunity at

[http://portal.hud.gov/portal/page/portal/HUD/topics/housing\\_discrimination](http://portal.hud.gov/portal/page/portal/HUD/topics/housing_discrimination) where you can fill out an online form, or print out a form and send it in to the office, or call the office at 800-669-9777.

The process for filing a complaint with MAAB is as follows:

Any person who believes a building or facility is in violation of the Rules and Regulations of the Architectural Access Board may file a complaint. Complaints must be filed on the Complaint Forms provided by the MAAB. The forms are available at

[http://www.mass.gov/?pageID=eopsterminal&L=4&L0=Home&L1=Consumer+Protection+%26+Business+Licensing&L2=License+Type+by+Business+Area&L3=Architectural+Access+Board&sid=Eeops&b=terminalcontent&f=dps\\_aab\\_complaint\\_process&csid=Eeops](http://www.mass.gov/?pageID=eopsterminal&L=4&L0=Home&L1=Consumer+Protection+%26+Business+Licensing&L2=License+Type+by+Business+Area&L3=Architectural+Access+Board&sid=Eeops&b=terminalcontent&f=dps_aab_complaint_process&csid=Eeops).

The process for filing a complaint with MCAD is as follows:

The Massachusetts Commission Against Discrimination is the state's chief civil rights agency. If a person believes that they have been the victim of discrimination in employment, housing, in a place of public accommodation, in a credit or lending situation, or in an educational setting, they may file a complaint with the MCAD. If they are unsure if what happened to them is discrimination, they can still come in and meet with a staff person who will discuss this with them and help them decide whether or not to file. Filing a complaint

with MCAD involves visiting the agency, and being interviewed by an intake staff person.

The contact information for the agency is as follows: Boston Office (617) 994-6000; Springfield Office (413) 739-2145; Worcester Office (508) 799-8010; New Bedford Office (508) 990-2390 or visit <http://www.mass.gov/mcad/>.