



DISABILITY AND COMMUNICATION ACCESS BOARD

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INTERPRETIVE OPINION

Pursuant to §103-50, Hawaii Revised Statutes (HRS), all public buildings, facilities and sites constructed by, or on behalf of the State or any county, shall conform to the 2004 Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG) and amendments. In accordance to HRS §103-50 and Chapter 11-216, Hawaii Administrative Rules, the Disability and Communication Access Board has authority to issue interpretive opinions to HRS §103-50 design standards.

Docket: **DCAB 2011-12:**

- 1) What is the definition of Primary Function?**
- 2) What areas are covered by the ‘path of travel’ in alterations affecting primary function areas?**
- 3) When are alterations affecting primary function areas considered disproportionate to the overall alterations in terms of cost and scope for Title II buildings, facilities and sites?**

Summary: DCAB staff consistently receive questions related to “path of travel” and “primary function” as it applies to alterations.

Section 202.4 of the 2004 ADAAG contains scoping provision for “Alterations Affecting Primary Function Areas”. It does not however, define other than in the ‘advisory’ section, what constitutes a ‘primary function area’ and which areas are included in or are covered by, the term “path of travel. The ADAAG does not have provisions, other than in the advisory section that addresses the issue of disproportionality. The DOJ has included within their Title II regulations, clarifications, for Title II entities on how to apply disproportionality and what constitutes a primary function area. In addition the regulations include an explanation of those areas covered by the path of travel in regards to alterations affecting primary function areas.

The is the agency responsible for enforcement of the standards with regards to Title II of the ADA. There is an explanation of those areas covered by the path of travel in regards to alterations affecting primary function areas within their Title II regulations. State and County entities must comply with the Title II regulations set by the Department of Justice and the 2004 ADAAG.

Ruling: For buildings or facilities subject to HRS §103-50,

ADAAG Section 202.4 Alterations Affecting Primary Function Areas

The following definitions are applicable to Section 202.4 “Alterations Affecting Primary Function Areas”.

1. **Primary function.** A “primary function” is a major activity for which the facility is intended. Areas that contain a primary function include, but are not limited to, the dining area of a cafeteria, the meeting rooms in a conference center, as well as offices and other work areas in which the activities of the public entity using the facility are carried out.
 - (A) Mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, and corridors are not areas containing a primary function. Restrooms are not areas containing a primary function unless the provision of restrooms is a primary purpose of the area, *e.g.*, in highway rest stops.
 - (B) Alterations to windows, hardware, controls, electrical outlets, and signage shall not be deemed to be alterations that affect the usability of or access to an area containing a primary function.
 - (C) There can be multiple areas containing a primary function in a single building. Primary function areas are not limited to public use areas. For example, both a bank lobby and the bank's employee areas such as the teller areas and walk-in safe are primary function areas.

2. **Path of Travel.** A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility. The term “path of travel” also includes the restrooms, telephones, and drinking fountains serving the altered area.
 - (A) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

3. **Disproportionality.** Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20% of the cost of the alteration to the primary function area. When the cost of alterations necessary to make the path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, the path of travel shall be made accessible to the extent that it can be made accessible without incurring disproportionate costs.

[Rul: 01/21/2016] (Auth and Imp: HRS §103-50)

If you have any questions or comments regarding this ruling, please call us at 586-8121.

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