

These guidelines are intended to reduce risk when your entity decides to allow businesses to reopen. With social distancing requirements in place, resulting in reduced capacity for interior spaces, many local entities are considering closing off selected streets in business districts, and allowing restaurants or retail businesses to place tables and display racks within the Public Right-of-Way (PROW) of sidewalks and streets.

A conceptual CAD drawing attached shows an option for an accessible route within one city block with restaurants or businesses on both sides of the roadway, using parklets within existing on-street parking and drive lanes as outdoor dining or retail areas.

We know that local governments have as much interest in allowing businesses to re-open, as do the business owners, but thinking through the steps to reduce risk for all parties involved is an important part of the planning process. Here are some points to consider:

Avoid Discrimination

Complying with building code requirements and preventing civil rights violations can be two different things. The minimum requirements in building code often lack sufficient guidance to make elements usable. Narrow interpretations can result in discrimination. Businesses need to know how to protect themselves, because if discrimination exists, hefty fines could be in store under state law.

Even though almost all disabled access litigation is referred to as ADA litigation, it usually has nothing to do with the Americans with Disabilities Act (ADA) because significant damages are awarded by state laws, not the ADA. California Civil Code §51 requires judges to award \$4,000 per instance of discrimination, and each instance can be a single code violation. The repercussions of this and other state laws can present a serious financial burden to any small business, which is especially true for a business trying to re-open under the pandemic.

Covid-19 Stage 3 – Businesses with Outdoor Use and Dining in Parking Areas or Elsewhere

Social distancing may be with us for some time. When your entity can provide clear guidance detailing measures to enable businesses to safely reopen, business owners may be more willing to take the chance and follow through. Where sales tax revenue is a concern, the reopening of each business is a win-win situation. Elements to consider include:

1. Temporary structures are required to be ADA Access Compliant: California Building Code and the ADA have no exemption for temporary structures (See CBC 11B-201.3 and ADAS 201.3).
2. Reduction in Access: Alterations or changes to existing spaces cannot result in less access than required in new construction (See CBC 11B-202.3.1 and ADAS 202.3.1).
3. Choose the most feasible path of travel to identify as an accessible route: Due to crowning in roadways, this path may be at the crown in the center of the roadway.
4. Exterior Pedestrian Paths: Sidewalk must have min. 48" clear width. This will apply to temporary paths of travel from sidewalks to outdoor dining and retail areas. Clear width can be reduced to 36" only when restrictions, natural barriers or other existing conditions are present, but these situations should be avoided, even in a temporary setup.
 - a. Provide min. 60" wide passing areas every 200 feet (See CBC 11B-403.5.3 and ADAS 403.5.3)

5. Accessible Route to Shopping or Dining Areas: Transitions from the sidewalk to the asphalt, ramps over the curb and gutter, and other marked pedestrian paths will need to follow standard CBC requirements:
 - a. Trip hazards need to be removed (max. ½” high with a bevel per CBC 11B-403.4 and ADAS 403.4).
 - b. Walking surface must be firm, stable and slip-resistant (See CBC 11B-302.1 and ADAS 302.1).
 - c. Sloped surfaces (Ramps 5.1% to 8.33%) must have compliant edge protection and handrails, even when temporary.
 - Provide min. 60” turning circle at top and bottom of ramp, sloped walkway or platform where pedestrians need to change direction during travel (See CBC 11B-304.3 and ADAS 304.3).
 - Handrails required regardless of the length of the ramp (See CBC 11B-405.8).
 - Edge protection required regardless of the length of the ramp (See CBC 11B-405.9.2 and ADAS 405.9.2).
 - Due to the number of trip and fall lawsuits, we recommend providing edge protection at temporary transition ramps or walking surfaces with a slope of less than 5.0%.
 - Consider using yellow paint on edges as a visual warning.
 - d. Designating one route as “In” and another as “Out” can aid in social distancing. Consider using the route from the sidewalk to the roadway as the “In” route, and the path along the roadway crown as the exit or “Out” route.
6. Dining Areas: Tables or bars for dining must be located on an accessible route, have accessible table/bar surface height, knee and toe clearance under surface, and clear space at the table for people using wheelchairs (See CBC 11B-226.2 and detailed notes on CAD drawing).
7. Obstructions: Bikes and scooters left on sidewalks often reduce or block the pedestrian path. When dining tables or retail racks are also placed on the sidewalk, all potential obstructions need to be managed to ensure an accessible pedestrian route. Consider designating areas for bike and scooter parking.

We are ADA Access Consultants with decades of experience working with state or local agencies and small businesses. We understand these trying times, and hopefully, this information can help you to reimagine a reopening for your City in a manner safe for all.

If you have any questions, please feel free to reach out. We are here to help in any way we can.

Sincerely,

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