



How Codes Become Law

By Richard J. Davis, P.E., J.D.

This article explains how codes written by private corporations become law, and discusses some aspects in the operation of building codes.

Several building and safety codes that affect construction and renovation are adopted by states and local governments. For example a state legislature might adopt the International Building Code by enacting a statute, making the IBC of a certain year applicable throughout the state. The legislature's bill becomes law when signed by the governor. The statute may give cities, counties, or other divisions of local government authority to adopt later versions of the code or stricter provisions. This practice maintains a minimum state standard, below which no entity of local government may go. The state could also preempt local regulation, not allowing any variation in the state-adopted codes. This creates uniformity of regulation within the state. Both methods of adoption create results that will be different than would occur if the state legislature debated and adopted their own code because:

- Persons who write codes for private organizations are usually experts in their field. Assembling a similar group for each state's building codes would be both difficult and inefficient.
- Writers of private codes may have a financial interest in the manufacture and sale of equipment that may be required by the code.
- Although a private code is adopted by the state, causing the provisions of the code to operate as law, the users usually must purchase the code

from its owner. This is unusual in the American legal system but common in the construction industry. The notion of free access to printed copies of laws that affect us, based on ideas of due process, would deprive private code writers of a chief source of revenue and would destroy the present system of partial regional code uniformity.

There are instances where payment for access to codes is not required because they are written by a governmental body or the contract stipulates public ownership of the work output. If a state owns the code, or has otherwise acquired the right to publish the code, it will likely be printed in the state's

are adopted are published in the C.F.R. (Code of Federal Regulations).

Those making design and planning decisions should be keenly aware of the statement made in their civics and government classes stating that federal law is supreme and supersedes in the event of conflict with state law. This is especially applicable in the context of the Americans with Disabilities Act (ADA). This is a field that affects building planners, designers and operations staff. They must be keenly aware of the interplay of state law with federal, and the seemingly ever-changing legal landscape in this area. The complexity of the ADA is beyond the scope of this article, but suffice it to say that determining whether a facility planned for renovation is new or existing is important, and various federal laws provide different threshold dates. Also important is whether a building is private, public, and whether the state's

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regulatory code, such as the California Code of Regulations (CCR).

What happens at the state level is similar to the regulatory practices of the U.S. government. Congress passes statutes, which are signed into law by the President. These statutes often leave detailed regulations to an agency or department. That entity writes regulations to enforce the statute. The statutes are found most commonly in the U.S.C.A. (United States Code Annotated), and the regulations that

regulations have been accepted as presumptively compliant by the Department of Justice. General recommendations for ADA are:


- Analyze the various regulations.
- Unless you are current in your specialized knowledge in this area, get help from someone who is.
- If an improvement to your facility is planned, resolve associated accessibility issues by following the ADAAG (ADA Accessibility Guidelines) unless doing so is inconsistent with a

known regulation that is lawful and applicable. Any contrary decision should be made with extreme caution for three reasons: you are probably making accessibility more difficult or impossible for those who need it, you may be exposing your employer to litigation and fines, and you may have to add the improvement in the near future at greater expense, either because of an erroneous analysis or a change in the law.

The codes applicable to our buildings can provide much benefit to owners and the public by assuring standards of quality and safety. New and evolving needs can be addressed that are important for life safety, such as the codification of new requirements for seismic safety. However, there is an unsettling trend in some of our regulations. Owners must be vocal when rules are introduced that exceed the authority granted by the legislative body, that do not promote health and safety, or that unduly interfere with the legitimate design choices of the owner.

Designers often discuss code issues with local officials. This is a healthy process, where subtleties and rationale can be discussed. These discussions often lead to sensible decisions. However, code decisions are not frequently appealed. Does this impair the development of consistent code interpretations over time and throughout a jurisdiction? Does it assure that illogical interpretations are adequately questioned?

As with many American institutions, our building codes and enforcement processes work well despite challenges. Credit for this is owed to private associations, government entities, contractors, professional associations, and trade groups. We have shown an ability to study failures, as demonstrated by fires, and methodically modify existing private codes. Earthquakes have triggered a federal response, with new codes announced by the Federal Emergency Management Agency (FEMA), and are available for state adoption.

This capacity to study past practices and willingness to solve new problems through codes is essential for the success of facility operators, owners, and designers. It allows the public to have confidence in the safety and regulations associated with our buildings. 

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