

Commission on Disability Meeting  
Minutes from Tuesday June 18<sup>th</sup>, 2013  
Worcester City Hall, Levi Lincoln Room, 3<sup>rd</sup> fl.  
4:15 PM

**Attendance**

**Members present:** Rachel Shannon Brown, Herbert Cremer, John Nah and Stephen Stolberg

**Members absent:** Charles Hiamah, Javier Pena, Pauline Piso, Lynne Towler

**Staff:** Dawn Clark, Ryan C. Ollis, and Jayna Turchek

**Guests:** Jeff Dougan, Asst. Director for Community Services at the Massachusetts Office of Disabilities; Elvira, Guardiola, Parking Administrator and Municipal Parking Hearing Officer; and Sgt. John Fallavolita, Traffic Division of the Worcester Police Department.

**Members of the Public:** Diane Feilen, Jacqueline Norton, and Scott Ricker

**1. Call to Order:** The meeting began with a call to order and welcome from the chairperson. There were around the room introductions.

**2. Approval of May 21, 2013 Minutes:**

Edits to the May 21, 2013 minutes were offered. A motion was made to accept the minutes with edits. Motion carried.

**3. Public Comment Period:**

Chairperson Brown explained the public comment period guidelines and asked that comments reflect needs of the disabled. An opportunity was given to reserve time later in the meeting to express their concerns on a particular item on the agenda.

Mr. Ricker asked if the Commission submitted a letters to the MAAB regarding the Fire Alarm Building. The Chairperson answered that the Commission had not.

Mr. Ricker wanted to know what the city's policy was for portable accessible bathrooms at temporary events. The Chairperson explained that the Commission did

not have that information, offered to look into it, and discuss it at a future commission meeting.

#### **4. Handicap Parking and Ramp Enforcement:**

Ms. Elvira Guardiola, Parking Administrator and Municipal Parking Hearing Officer, presented information on the number of parking tickets issued for handicap ramps and parking spaces during the fiscal year 2013. As of June 12<sup>th</sup>, 2013 there were 693 tickets issues in total, for handicap parking and ramp enforcement. Of the 693 tickets issued there were 654 handicap parking violations and 39 ramp violations.

That total ticket amount for this fiscal year is \$138,600. Ms. Guardiola further explained that \$87,565 has been collected for the parking tickets and \$8,355 has been collected for ramp violations.

The collections data does not include tickets that have been dismissed because the handicap placard fell, the driver forgot to put the placard up, or another legitimate reason. Abatements for handicap parking tickets for this past fiscal year totaled \$50,485 and \$305 for handicap ramp tickets.

Mr. Nah asked about the process to get a handicap space on a residential street. Ms. Guardiola explained that any person could petition the Parking and Traffic Committee. That Committee may send an engineer to discern the need, request input from residents and if granted forward the petition to the City Council.

Mr. Nah also asked what major complaints Ms. Guardiola hears about the city's handicap parking. Ms. Guardiola said that people often complain that they did not see the handicap sign. If there is no sign, the violation is dismissed. Additionally, about 70% of the tickets that are dismissed occur with people who have a handicap placard that was not displayed at the time the ticket was written.

Ms. Guardiola explained that about the same number of tickets was issued this year as in previous years.

Mr. Cremer requested monthly reports on handicap parking tickets. The Chairperson countered that perhaps quarterly reports would be less taxing on her. Ms. Guardiola agreed to provide reports to the Commission as requested but, explained that she could not break down how many tickets were dismissed in those quarterly reports because of the limitations on their computer system.

Chairperson Brown thanked Ms. Guardiola for providing the report to the Commission.

Sgt. Fallavolita of the Worcester Police Department took questions about handicapped parking from the Commission. Sgt. Fallavolita explained that individuals caught using someone else's placard can lose their license for a year.

Mr. Cremer commended the Police Department's efforts in cracking down on handicapped parking in the past and encouraged handicapped parking stings in the future. Sgt. Fallavolita offered to contact officers at the MA Registry of Motor Registry and get back to Director Turchek about the possibility of future police stings.

Director Turchek asked the Commission members if they had any suggestions for problem areas where increased enforcement would be helpful. There were no suggestions for Sgt. Fallavolita at this time. Members can direct future suggestions to Director Turchek to provide to Sgt. Fallavolita.

The Chairperson thanked Sgt. Fallavolita.

##### **5. Massachusetts Office on Disability:**

Mr. Dougan provided information to all those in attendance including: 1) A pamphlet from the Massachusetts Office on Disability; 2) An overview of Revised Title II and Title III regulations of the ADA; 3) M.G.L. ch. 40 § 22G; 4) M.G.L. ch. 40 § 8J; 5) a general description on what Commissions do in Massachusetts; 6) a booklet of Disability Rights Laws in Massachusetts; and 7) a printout from ADA.gov.

Mr. Dougan also informed the Commission that about half of the 150 Municipal Commissions on Disability in Massachusetts receive money from fines for handicap parking violations. He explained that some cities, like Fall River, hire officers to specifically go out and both ticket violators and educate them on the importance of handicapped parking. He further explained that about twenty years ago these Commissions adopted the handicap enforcement provision that gave the Commissions the fines and some conducted resident patrolling. Now it is more common to use the fines to hire police details to do the enforcement.

Mr. Dougan took a question from Ms. Feilen. Ms. Feilen informed the Commission that the WRTA has cancelled buses which leave residents waiting for

buses that never come. Mr. Dougan explained that Worcester has a process for handling that type of complaint through the WRTA Advisory Board.

Mr. Ricker commented on the importance of enforcement of curbcut snow removal.

A Commission member became ill and a quorum was no longer established.

Adjourned at 5:46

Respectfully submitted:

Ryan Ollis  
*Intern*  
Human Rights &  
Disabilities Office

Jayna Turcek  
*Director*  
Human Rights &  
Disabilities Office

## Invitation to Participate

The Commission on Disability typically meets on the third Tuesday of the month at 4:15 pm in the Levi Lincoln Chamber, 3<sup>rd</sup> Floor, City Hall, 455 Main St. Please check meeting notices at City Hall, on the City website:

[www.worcesterma.gov](http://www.worcesterma.gov)

or on the Worcester government channel, Charter cable channel 12.

If you would like to bring an issue to the attention of the Commission, you can speak during the public comment period of the meeting or make a request to address the Commission by contacting Jayna Turchek, at (508) 799-1152 or by email to: [disabilities@worcesterma.gov](mailto:disabilities@worcesterma.gov)

## To request an Accommodation

The City of Worcester is committed to making all public meetings accessible to the public. Please contact Jayna Turchek to request an accommodation. Please note that we may require 1-2 weeks advance notification to request sign interpreters.

## Administration

Michael V. O'Brien  
*City Manager*

Jayna Turchek  
*Director of Human Rights &  
Disabilities  
& ADA Coordinator*

Dawn Clark  
*Disability Intake Coordinator*

## Commission Members

Rachel Shannon Brown, *Chair*  
Lynne Towler, *Secretary*  
Herbert Cremer  
Charles Hiamah  
John Nah  
Pauline Piso  
Stephen Stolberg

## Associate Member

Javier Peña

*Working together to improve  
accessibility & understanding*

City of Worcester, Massachusetts



## Commission on Disability

### **Mission Statement**

*The Commission ensures that all Worcester residents and visitors with disabilities have access to city programs and services by providing information and referral, advocacy, outreach and educational programs.*

Executive Office of the City Manager  
Office of Human Rights & Disabilities  
Outreach Office, Room 303  
Office of the Director, Room 311  
City Hall - 455 Main Street  
Worcester, MA 01608

Telephone: (508) 799-8483 or  
(508) 799-1152  
Fax: (508) 799-1208

Email:

[disabilities@worcesterma.gov](mailto:disabilities@worcesterma.gov)

Web:

[www.worcesterma.gov/ocm/disabilities](http://www.worcesterma.gov/ocm/disabilities)

es

## History of the Worcester Commission on Disability

In 1977, a small group of people with disabilities met with City Manager Frances McGrath to request the establishment of an advisory committee on disability issues. In 1978, City Manager McGrath, through Executive Order 19, established the “*City Manager’s Advisory Committee on the Handicapped*.”

The Worcester Commission on Disability was established in 2003 under the Authority of the Home Rule Charter.

## Establishment and Membership

*Classification:* Advisory

*Term:* Three (3) years

*Membership:* Seven regular members, five associates; appointed by the city manager.

*Special requirements for nomination:* A majority shall consist of people with disabilities; one member may be a member of the immediate family of a person with a disability.

Updated 6/2013

## Duties and Responsibilities

- Encourage public awareness of disability issues.
- Coordinate with local groups or individuals organized or committed to conduct research and carry out programs designed to meet the problems and needs of people with disabilities.
- Review and make recommendations about policies, procedures, services and activities of city departments and agencies to bring about full and equal participation by people with disabilities.
- Advise and assist city officials and employees to ensure compliance with local, state and federal laws and regulations that affect people with disabilities.
- Monitor the city’s development for the proper accessibility protocols.
- Provide information, referrals, guidance and technical assistance to individuals, public agencies, businesses and organizations in all matters pertaining to disability.
- Submit an annual report to the city manager stating the undertakings of the commission, its accomplishments, conclusions and recommendations concerning the status of persons with disabilities in Worcester.

## Activities

Monitor the City’s progress regarding the Americans with Disabilities Act Transition Plan.

Review HP Parking violation statistics.

Monitor Accessible cab statistics.

Advise Public Works Dept. on critically needed repairs and annual expenditure of \$200,000 for accessibility of sidewalks.

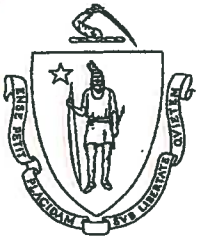
Review and comment on local applications before the MA Architectural Access Board.

Provide trainings for the community on disability related topics.

## Become a Member

Membership is open to Worcester residents who have lived in the city for at least one year and are registered voters. Contact Jeannie Michelson at 508-799-1175 for more information. An application can also be obtained on the city’s website:

[www.worcesterma.gov/boards-commissions](http://www.worcesterma.gov/boards-commissions)



The Commonwealth of Massachusetts  
Department of Public Safety

Architectural Access Board  
One Ashburton Place, Room 1310  
Boston, Massachusetts 02108-1618

Phone 617-727-0660

Fax 617-727-0665

[www.mass.gov/dps](http://www.mass.gov/dps)

Thomas G. Gatzunis, P.E.  
Commissioner

Thomas P. Hopkins  
Director

Deval L. Patrick  
Governor

Timothy P. Murray  
Lieutenant Governor

Andréa J. Cabral  
Secretary

TO: Local Building Inspector  
Independent Living Center  
Local Commission on Disability  
Complainant

Docket Number C 13 032

FROM: Architectural Access Board

RE: Blackstone Lofts  
70 Winter Street  
Worcester

DATE: 5/20/2013

Enclosed please find a copy of the following material regarding the above location:

Application for Variance

Decision of the Board

Notice of Hearing

Correspondence

Letter of Meeting

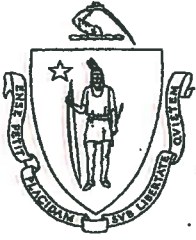
Stipulated Order

First Notice

Second Notice

The purpose of this memo is to advise you of action taken or to be taken by this Board. If you have any information which would assist the Board in this case, you may call this office, or you may submit your comments in writing to the above address.

Thank you for your assistance.



The Commonwealth of Massachusetts

Department of Public Safety

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Secretary

Thomas G. Gatzunis, P.E.  
Commissioner

Thomas P. Hopkins  
Director

May 20, 2013

Docket Number C13 032

Raymon C. Green  
111 Huntington Avenue  
Suite 600  
Boston, MA 02199

RE: Blackstone Lofts 70 Winter Street Worcester

Dear Sir/Madam:

Upon information received by the Architectural Access Board, the facility referenced above has been reported to violate M.G.L. c. 22, § 13A and the Rules and Regulations (CMR 521) promulgated thereunder. Reported violations, include the following items:

Section: Reported violation:

3.3.4 No alteration shall be undertaken which decreases or has the effect of decreasing accessibility or usability of a building or facility below the requirements for new construction.

It has been reported that the door to access that lift is kept locked and that the area of the lift is being used as storage.

2.6 Maintenance of Access Features: At all times, accessibility features must be maintained and fully operational. (i.e. access aisles kept clear at all times, mechanical devices be kept in operating condition, etc.).

It has been reported that the wheelchair lift is in need of maintenance. Please provide the Board with a current Inspection Certificate or Maintenance contract that includes a completion date and date for inspection by the State Elevator Board.

Under Massachusetts law, the Board is authorized to take legal action against violators of its regulations, including but not limited to, an application for a court order preventing the further use of an offending facility. The Board also has the authority to impose fines of up to \$1,000.00 per day, per violation, for willful noncompliance with its regulations.

You are requested to notify this Board, in writing, of the steps you have taken or plan to take to comply with the current regulations. Please note the current sections may be different from the sections that are cited above. Unless the Board receives such notification within 14 days of receipt of this letter, it will take necessary legal action to enforce its regulations as set forth above. If you have any questions, you may contact this office.

cc: Local Building Inspector  
Local Disability Commission  
Independent Living Center  
Complainant

Sincerely,

Walter White / U.E.D.

Walter White  
Chairperson



**GREGORY J. O'CONNOR ASSOC., INC.**  
 339 Main Street Suite 510  
 WORCESTER, MA 01608

**LETTER OF TRANSMITTAL**

**(800) 757-1377**  
**FAX (800) 757-3577**

TO Disability Commissioner  
455 Main Street  
Worcester, MA 01608

DATE 5/29/13	JOB NO. 11-894
ARCHITECT MS Turcsek	
RES Spencer Savings Bank	
230 Park Avenue, Worcester, MA	

WE ARE SENDING YOU  Attached  Under separate cover via Person the following items:

- Shop drawings     Prints     Plans     Samples     Specifications  
 Copy of letter     Change order     \_\_\_\_\_

COPIES	DATE	NO.	DESCRIPTION
1			Architect Barriers Board Variance / CD

THESE ARE TRANSMITTED as checked below:

- For approval     Approved as submitted     Resubmit \_\_\_\_\_ copies for approval  
 For your use     Approved as noted     Submit \_\_\_\_\_ copies for distribution  
 As requested     Returned for corrections     Return \_\_\_\_\_ corrected prints  
 For review and comment     \_\_\_\_\_  
 FOR BIDS DUE \_\_\_\_\_     PRINTS RETURNED AFTER LOAN TO US

REMARKS \_\_\_\_\_  
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COPY TO \_\_\_\_\_

SIGNED: Greg O'Connor

*If enclosures are not as noted, kindly notify us at once.*



*The Commonwealth of Massachusetts*

**Department of Public Safety  
Architectural Access Board**

**One Ashburton Place, Room 1310  
Boston Massachusetts 02108-1618**

Phone: 617-727-0660

Fax: 617-727-0665

[www.mass.gov/dps](http://www.mass.gov/dps)

Docket Number

(Office Use Only)

**APPLICATION FOR VARIANCE**

In accordance with M.G.L., c.22, § 13A, I hereby apply for modification of or substitution for the rules and regulations of the Architectural Access Board as they apply to the building/facility described below on the grounds that literal compliance with the Board's regulations is impracticable in my case.

**PLEASE ENCLOSE:**

- 1) A filing fee of \$50.00 (Check/Money Order) made payable to the "Commonwealth of Massachusetts" and all supporting documentation (e.g. plans in 11" x 17" format, photographs, etc.). In addition, the complete package (including plans, photographs and the completed "Service Notice") must be submitted to all parties via compact disc.
- 2) If you are a tenant seeking variance(s), a letter from the owner of the building authorizing you to apply on his or her behalf is required.
- 3) The completed "Service Notice" form provided at the end of this application certifying that a copy of your *complete application* has been received by the Local Building Inspector, Local Disability Commission (If applicable), and Local Independent Living Center for the city/town that the property in question resides in. A list of the local entities can be found by calling the Architectural Access Board Office or the Local City/Town Clerk. For a list of the Local Independent Living Centers you can either call the Architectural Access Board Office or visit the Massachusetts Statewide Independent Living Council website at <http://www.masilc.org/membership/cils>.

1. State the name and address of the owner of the building/facility:

Spencer Bank

Attention: Mike Robbins

P.O. Box 912 176 Main St. Spencer, MA 01562

E-mail: [mrobbins@spencerbankonline.com](mailto:mrobbins@spencerbankonline.com)

Telephone: 508-885-5313

2. State the name and address of the building/facility:

Fire Alarm Building  
230 Park Av.  
Worcester, MA 01609

3. Describe the facility (i.e. number of floors, type of functions, use, etc.):

The existing vacant 2 story historic fire alarm building will be renovated to house a bank and community room. An addition will be constructed to house the new main entry lobby and elevator making both levels accessible. A new parking lot and street entrance will be installed.

4. Total square footage of the building: 7,934 gross sq.ft.

Per floor: First Floor: 4,004 sq.ft.

Second Floor: 3,920 sq.ft.

a. total square footage of tenant space (if applicable): NA

5. Check the work performed or to be performed:

New Construction  Addition  
 Reconstruction/Remodeling/Alteration  Change of Use

6. Briefly describe the extent and nature of the work performed or to be performed (use additional sheets if necessary):

The existing historic fire alarm building will be restored to house a full service bank and community room. An addition will be constructed to house the new main entry lobby and elevator making both levels accessible. The main bank space will be on the second floor and the community room on the first. The existing interior stair will be restored. A new entrance to the site will be created at the intersection of Park Av. & Elm St. with a new parking area extending to the new main entrance. All mechanical systems in the building will be replaced and new interior partitions and finishes installed.

7. State each section of the Architectural Access Board's Regulations for which a variance is being requested:

7a. Check appropriate regulations:

1996 Regulations  2002 Regulations  2006 Regulations

SECTION NUMBER	LOCATION OR DESCRIPTION
26.6.2, .3, & .4	Door clear floor space
27.4.1	Handrails both sides
20.12.2	Area of rescue assistance
25.1	Accessible public entrances

8. Is the building historically significant?  yes  no. If no, go to number 9.

8a. If yes, check one of the following and indicate date of listing:

National Historic Landmark  
 Listed individually on the National Register of Historic Places  
 Located in registered historic district



12a. If yes, state the dates that permits were issued and the estimated cost of construction for each permit: \_\_\_\_\_

13. Has a certificate of occupancy been issued for the facility? Unknown  
If yes, state the date: \_\_\_\_\_

14. To the best of your knowledge, has a complaint ever been filed on this building relative to accessibility? \_\_\_\_\_ yes  no

15. State the actual assessed valuation of the **BUILDING ONLY**, as recorded in the Assessor's Office of the municipality in which the building is located:

\$441,000

Is the assessment at 100%? no

If not, what is the town's current assessment ratio? .95

16. State the phase of design or construction of the facility as of the date of this application:  
Design in progress

17. State the name and address of the architectural or engineering firm, including the name of the individual architect or engineer responsible for preparing drawings of the facility:

Gregory J. O'Connor Associates, Inc.

Attention: Greg O'Connor

339 Main Street, Suite 510

Worcester, MA 01608

e-mail: greg.oconnor@gjoassociates.com

telephone: (508) 757-1377

18. State the name and address of the building inspector responsible for overseeing this project:

John Kelly

Commissioner Building & Zoning

City of Worcester

Department of Inspectional Services

25 Meade St.

Worcester, MA 01610

Date: 05/29/2013

  
\_\_\_\_\_  
Signature of owner or authorized agent

**PLEASE PRINT:**

Gregory J. O'Connor Associates Inc.

Greg O'Connor

**Name**

339 Main St.

**Address**

Worcester

MA

01608

City/Town State Zip Code

[greg.oconnor@gjoassociates.com](mailto:greg.oconnor@gjoassociates.com)

---

E-mail

508-757-1377

---

Telephone

**ARCHITECTURAL ACCESS BOARD VARIANCE APPLICATION  
SERVICE NOTICE**

I, CAREG O'CONNOR, as AGENT  
for the Petitioner SPENCER BANK submit a  
variance application filed with the Massachusetts Architectural Access Board on 5/29  
20 13.

**HEREBY CERTIFY UNDER THE PAINS AND PENALTIES OF PERJURY THAT I SERVED OR CAUSED TO BE SERVED, A COPY OF THIS VARIANCE APPLICATION ON THE FOLLOWING PERSON(S) IN THE FOLLOWING MANNER:**

	<u>NAME AND ADDRESS OF PERSON OR AGENCY SERVED</u>	<u>METHOD OF SERVICE</u>	<u>DATE OF SERVICE</u>
1	<b>Building Inspector</b> 25 Meade St. Worcester, MA 01610	Hand Delivered	5/29/13
2	<b>Independent Living Center Suite 345</b> 484 Main St. Worcester, MA 01608	Hand Delivered	5/29/13
3	<b>Disability Commissioner, City Hall</b> 455 Main St. Worcester, MA 01608	Hand Delivered	5/29/13

**AND CERTIFY UNDER THE PAINS AND PENALTIES OF PERJURY THAT THE ABOVE STATEMENTS TO THE BEST OF MY KNOWLEDGE ARE TRUE AND ACCURATE.**

*Careg O'Connor*  
Signature: Appellant or Petitioner

On the 29<sup>TH</sup> Day of MAY 20 13  
**PERSONALLY APPEARED BEFORE ME THE ABOVE NAMED**

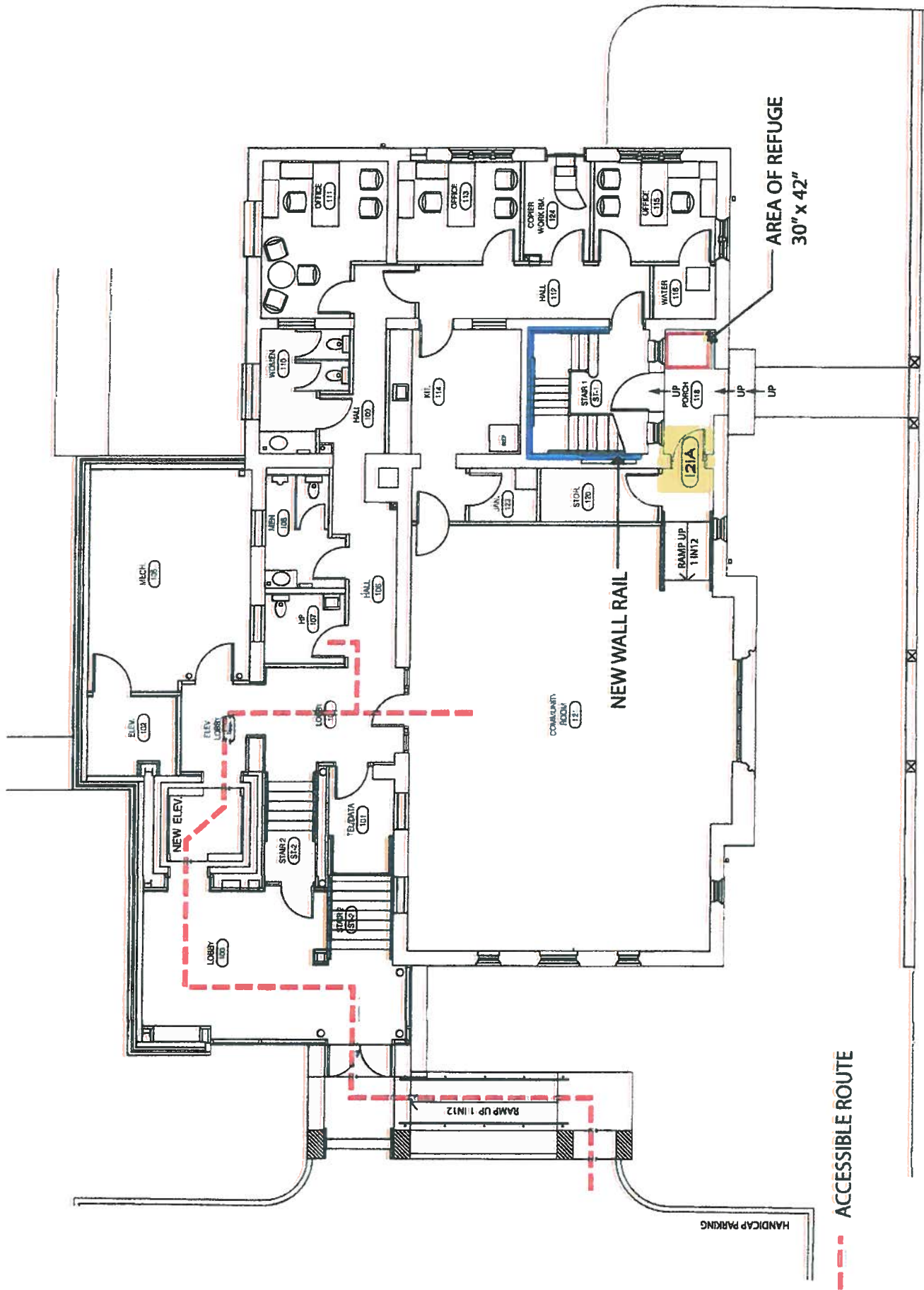
CAREG O'CONNOR  
(Type or Print the Name of the Appellant)

*[Signature]*  
NOTARY PUBLIC

05/19/2017  
MY COMMISSION EXPIRES







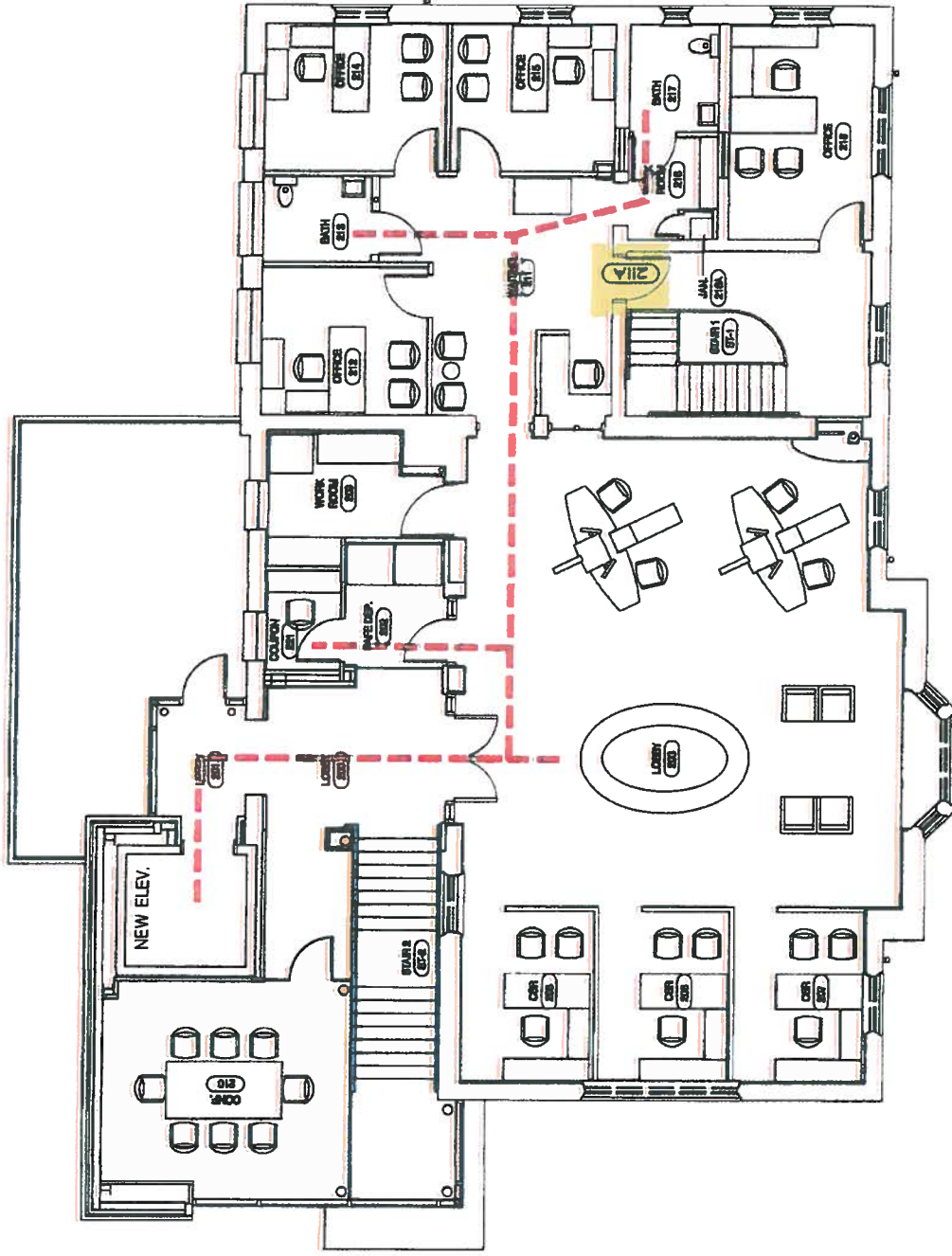
--- ACCESSIBLE ROUTE

AREA OF REFUGE  
30" x 42"

NEW WALL RAIL

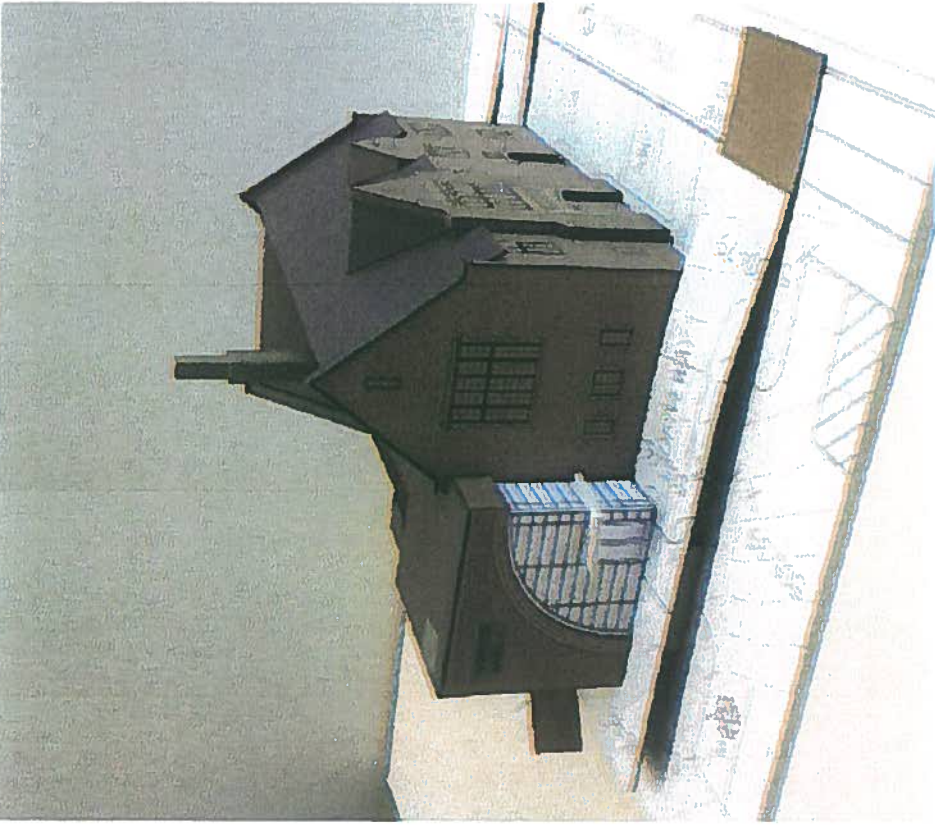
HANDICAP PARKING

FIRST FLOOR



--- ACCESSIBLE ROUTE

SECOND FLOOR - ACCESSIBLE ROUTE



EXISTING BUILDING AND ADDITION



EXISTING BUILDING



DOOR 211A



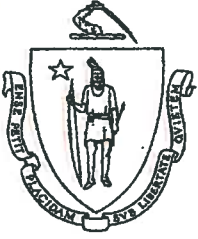
STAIR 1 HANDRAIL DETAIL



PORCH AREA



DOOR 121A



The Commonwealth of Massachusetts  
Department of Public Safety

Architectural Access Board  
One Ashburton Place, Room 1310  
Boston, Massachusetts 02108-1618

Phone 617-727-0660

Fax 617-727-0665

www.mass.gov/dps

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TO: Local Building Inspector  
Independent Living Center  
Local Commission on Disability  
Complainant

Docket Number C 13 032

FROM: Architectural Access Board

RE: Blackstone Lofts  
70 Winter Street  
Worcester

DATE: 5/30/2013

Enclosed please find a copy of the following material regarding the above location:

Application for Variance

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Correspondence

Letter of Meeting

Stipulated Order

First Notice

Second Notice

The purpose of this memo is to advise you of action taken or to be taken by this Board. If you have any information which would assist the Board in this case, you may call this office, or you may submit your comments in writing to the above address.

Thank you for your assistance.

## **Dempsey, Mark (DPS)**

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**From:** Spiro Stylianopoulos [spiro@raygreen.com]  
**Sent:** Tuesday, May 21, 2013 5:29 PM  
**To:** Dempsey, Mark (DPS)  
**Subject:** 70 Winter Street  
**Attachments:** DOC052113-05212013172346.pdf

Mark,

It was good to speak with you today. Per your request, I wanted to recap my comments to you in this email.

With regard to the attached letter:

I am not an attorney but I write to you on behalf of the Blackstone Loft Condominium Association. Due to a number of factors, we as the Association find ourselves to be in a transition period. Some of these factors are listed here:

1. It is our position that on July 26, 2012 the Developer of our condominium lost the rights to further develop 70 Winter Street. This is due to language within our condominium documents which set forth an expiration date to phase in additional units.
2. Since July 26, 2012, we as the Association have stepped up and have been dealing with the City of Worcester to correct serious construction deficiencies throughout 70 Winter caused by the Developer's failures. These consist mainly of improvements to the electric, sprinkler and fire alarm systems. This has been a giant undertaking for a condo association (after almost 11 months, we are nearly finished).
3. Sometime prior to July 26, 2012, the Developer supposedly entered into some sort of lease agreement with "The Boiler Room" which is a night club / lounge that operates in the basement of 70 Winter. I understand that The Boiler Room is operated by an individual by the name of Roger Bachur with a phone number of 508-826-7433 and a mailing address of 70 Winter Street, Worcester, MA 01604. The Boiler Room is not paying any rent and is the source of a thousand headaches for us (including the problems mentioned in the attached letter). Now that our work with the City is winding down, we intend to concentrate on a plan of action for the Boiler Room. If they correct the problems they have caused and begin to pay rent, we may consider retaining them as a tenant. Otherwise, we will probably begin an eviction process.

To recap my understanding of the issues raised in the attached letter: there is a handicapped elevator which provides access from the street level down to the basement level where the Boiler Room is located. The Boiler Room has blocked access to this elevator in order to create a locked room to store their liquor. We were aware of the elevator problem prior to receiving your letter, but thus far have not taken any action because (a) we have been concentrating on what we felt were more important life/safety issues (i.e. the fire alarm, sprinklers and electric systems) and (b) at this point, the Boiler Room is the only beneficiary of the elevator and we hesitate to take any action which might be construed as acknowledgement of their status as a valid tenant.

If I can provide any additional information, or if you recommend that we take any additional action at this time, please do not hesitate to contact me.

Thank you.

Spiro Stylianopoulos  
Raymond C. Green, Inc.  
111 Huntington Avenue, Suite 600  
Boston, MA 02199  
617-859-4599 x 4  
617-859-7694 (fax)

	<p><i>The Commonwealth of Massachusetts</i></p> <p><b>Department of Public Safety</b></p> <p><b>Architectural Access Board</b></p>	<p>Docket Number</p>
	<p><b>One Ashburton Place, Room 1310</b>  <b>Boston Massachusetts 02108-1618</b></p> <p>Phone: 617-727-0660  Fax: 617-727-0665  www.mass.gov/dps</p>	<p>(Office Use Only)</p>

**APPLICATION FOR VARIANCE**  
**Curb cuts/sidewalks**

In accordance with M.G.L., Chapter 22, Section 13A, I hereby apply for modification of or substitution for the rules and regulations of the Architectural Access Board as they apply to the location(s) described below on the grounds that literal compliance with the Board's regulations is impracticable in my case.

**PLEASE ENCLOSE:**

- 1) A filing fee of \$50.00 (Check/Money Order) made payable to the "Commonwealth of Massachusetts" and all supporting documentation (e.g. plans in 11" x 17" format, photographs, etc.). In addition, the complete package (including plans, photographs and the completed "Service Notice") must be submitted to all parties via compact disc.
- 2) The completed "Service Notice" form provided at the end of this application certifying that a copy of your *complete application* has been received by the Local Building Inspector, Local Disability Commission (if applicable), and Local Independent Living Center for the city/town that the property in question resides in. A list of the local entities can be found by calling the Architectural Access Board Office or the Local City/Town Clerk. For a list of the Local Independent Living Centers you can either call the Architectural Access Board Office or visit the Massachusetts Statewide Independent Living Council website at <http://www.masilc.org/membership/cils>.

1. State the name and address of the owner of the project:  
Jason Benoit  
MassDOT Highway Division 10 Park Plaza, Boston, MA 02166  
E-mail: Jason.benoit@state.ma.us  
Telephone: (617) 645-2637
2. State the exact location of the area in question (e.g. Northwest corner of Main St. and Broadway) (use additional sheets if necessary):  
Southwest corner of Wigwam Avenue and Lake Avenue in Worcester, MA  
Please see attached photographs and plan.



3. Describe the project (e.g. complete reconstruction of Rt. 20 from Main St. to Broadway):  
Replacement of the Burns Bridge (Route 9) over Lake Quinsigamond including roadway improvements on Route 9 from Alvarado Avenue in Worcester to North/South Quinsigamond Avenue in Shrewsbury and Lake Avenue from Wigwam Avenue to Regatta Park in Worcester.

4. Check the work performed or to be performed:  
 New Construction  Reconstruction/Alteration  Repair

5. Briefly describe the extent and nature of the work performed or to be performed (use additional sheets if necessary):

The Kenneth F. Burns Memorial Bridge Replacement project is part of the Massachusetts Department of Transportation's Accelerated Bridge program to repair or replace structurally deficient bridges throughout the Commonwealth of Massachusetts. The project was bid as design build venture led by The Middlesex Corporation with Fay Spofford and Thorndike as the lead designer. Use of the design build procurement process reduces the overall period for design and construction by allowing construction to begin early on elements of the project while the remaining portions are still in design development.

The majority of this project consists of a proposed replacement bridge constructed essentially on the same alignment as the existing bridge. The new bridge structure is comprised of five arch spans. The project will eliminate one arch span and the current island viaduct. When compared to the existing structure, the new bridge will provide wider openings for recreational boating, as requested by local residents, groups, and officials. Aesthetically, the arches will mimic the arches of the existing bridge, though with much longer spans. An overlook will be incorporated at each pier and gateway bump outs included at each abutment to give pedestrians a place to view the water and boats below. The new bridge structure will carry six through lanes of traffic, three in each direction, as opposed to the existing configuration which allowed for four travel lanes, two in each direction. The final configuration includes separate eastbound and westbound structures. The eastbound structure will consist of three 12-foot wide travel lanes, an inside shoulder, a bike lane, an outside shoulder, and a wide MAAB/ADA compliant sidewalk. The westbound structure will consist of three 12 foot wide travel lanes, an inside shoulder, a bike lane, an outside shoulder, right and left turn lanes and a wide MAAB/ADA compliant sidewalk.

A much smaller part of the project includes Roadway Improvements made on Route 9 from Alvarado Avenue in Worcester to Quinsigamond Avenue in Shrewsbury, a 0.5 mile portion of Lake Avenue in Worcester and a 500 foot section of South Road in Worcester. These improvements include mill and asphalt overlay of the existing roadway, new traffic signals and signs, MAAB/ADA compliant sidewalks and ramps and landscaping enhancements.

6. State each section of the Architectural Access Board's Regulations for which a variance is being requested:

6a. Check appropriate regulations:  
 1996 Regulations  2002 Regulations  2006 Regulations

**SECTION NUMBER**  
521 CMR 21.3 (Slope)

**LOCATION OR DESCRIPTION**  
Curb Cut at the southwest corner of the intersection of  
Wigwam Avenue and Lake Avenue in Worcester, MA

7. For each variance requested, state in detail the reasons why compliance with the Board's regulations is impracticable (use additional sheets if necessary), including but not limited to: the necessary cost of the work required to achieve compliance with the regulations (i.e. written cost estimates); and plans justifying the cost of compliance.

Currently there is an existing driveway at the southwest corner of the intersection of Wigwam Avenue and Lake Avenue in Worcester, MA. There is no existing pedestrian ramp and the driveway is being used to access the reciprocal ramp on the other side of this intersection. The driveway is actively used as an entrance and exit for the seven businesses at 50 Lake Avenue. The slope of Wigwam Avenue is approximately 13% in this location while the sidewalk through the driveway has a slope up to 24%.

The existing steep roadway grade and the necessity of maintain a driveway to access the abutting property limit the distance that can be used on the high side transition to the level landing. These two constraints, the naturally occurring topography and the driveway, create a situation where it is not possible to reduce the high side transition, on Wigwam Avenue, to a new level landing when travelling on Wigwam Avenue.

As a result of the steep existing grades and the need to maintain a driveway limiting what can be constructed at the southwest intersection of Lake Avenue and Wigwam Avenue, we are requesting a variance from the required 8.3 % maximum ramp slope specified under Section 21.3 of the Massachusetts 521 CMR.

Overall the project will improve accessibility through the construction of MAAB compliant sidewalks, the construction of 43 MAAB compliant pedestrian ramps, upgrading the traffic signs and installing new traffic signals. However there is difficulty with the one location that we are seeking a variance on. The construction of this curb cut on the southwest corner of Wigwam Ave and Lake Avenue will still substantially improve the accessibility at this location. Improvements will include the reconstruction of compliant sidewalk on both sides of Lake Avenue approaching the intersection with Wigwam Avenue, the construction of a MAAB compliant level landing, ramp, and low side transition at the southwest intersection and a fully MAAB compliant reciprocal curb cut on the northwest corner of the intersection. An additional improvement will be the separation of the curb cut from the active driveway, which currently serves as the location that pedestrians cross Wigwam Avenue.

Numerous options were investigated that would have effectively raised or lowered the existing southwest corner of Wigwam Avenue and Lake Avenue in excess of 6 inches (6"), which is not a feasible approach in a mill and asphalt overlay scenario as proposed. In general it is not possible to drastically change the existing steep topography approaching the location of this variance request within the project limits. Installation of retaining walls along with full depth reconstruction and extensive cuts and fills at the back could be incorporated with an order of magnitudes cost in the \$100,000 to \$150,000 range to make the subject ramp comply with the MAAB slope requirements. However, these measures would negatively impact the slopes of the remaining approaching sidewalk creating what would

likely be considered a worse MAAB compliant sidewalk area and adversely affect the rideability and safety on Lake Avenue and Wigwam Avenue.

8.	Has the project been out bid?	<u>Yes</u>
	Has the contract been awarded?	<u>Yes</u>
	8a. If the contract has been awarded, what date was it awarded?	<u>April 12, 2012</u>
	8b. Has the project been completed?	<u>No</u>
	8c. If work has been completed, state the date work began:	<u>N/A</u>
	Completion date:	<u>N/A</u>
9.	State the estimated cost of the total project:	<u>\$89,900,000</u>
10.	Has any other work been performed at this location within the past 36 months?	<u>Yes</u>
11.	Is this project funded by the Massachusetts Department of Transportation?	<u>Yes</u>
12.	Has the project been accepted by the City or Town?	<u>No</u>
	If yes, state the date that the project was accepted:	<u>N/A</u>
13.	To the best of your knowledge, has a complaint ever been filed on this project relative to accessibility?	<u>yes</u> <input checked="" type="checkbox"/> <u>no</u>

14. State the name and address of the architectural or engineering firm including the name of the individual architect or engineer responsible for preparing drawings of the project:  
Fred Moseley  
Fay Spofford and Thorndike – 5 Burlington Woods Burlington, MA 01803  
E-mail: fmoseley@fstinc.com  
Telephone: (781) 221-1000

15. State the name and address of the local or state building official responsible for overseeing this project:  
State the name and address of the owner of the project:  
Jason Benoit  
MassDOT Highway Division 10 Park Plaza, Boston, MA 02166  
E-mail: Jason.benoit@state.ma.us  
Telephone: (617) 645-2637

Date: May 29<sup>th</sup>, 2013

Jason Benoit  
Signature of owner or authorized agent

PLEASE PRINT:

JASON L. BENOIT  
Name

10 PARK PLAZA  
Address

BOSTON MA 02116  
City/Town State Zip Code

JASON.BENOIT@STATE.MA.US  
E-mail

1-617-645-2637  
Telephone

**ARCHITECTURAL ACCESS BOARD VARIANCE APPLICATION  
SERVICE NOTICE**

I, Jason Benoit, as contact person  
for the Petitioner Massachusetts Department of Transportation submit a variance application filed  
with the Massachusetts Architectural Access Board on \_\_\_\_\_  
2013 \_\_\_\_\_.

**HEREBY CERTIFY UNDER THE PAINS AND PENALTIES OF PERJURY THAT I SERVED OR CAUSED TO BE SERVED, A COPY OF THIS VARIANCE APPLICATION ON THE FOLLOWING PERSON(S) IN THE FOLLOWING MANNER:**

	<u>NAME AND ADDRESS OF PERSON OR AGENCY SERVED</u>	<u>METHOD OF SERVICE</u>	<u>DATE OF SERVICE</u>
1	Center for Living and Working, Inc. Ms. Ann Ruder, Executive Director 484 Main Street, Suite 345 Worcester, MA 01608	Certified Mail	5/31/13
2	Office on Disabilities Ms. Jayna Turcheck, Director City Hall - 455 Main Street Room 303 Worcester, MA 01608	Certified Mail	5/31/13
3	John R. Kelly Building Commissioner 25 Meade Street Worcester, MA 01608	Certified Mail	5/31/13

**AND CERTIFY UNDER THE PAINS AND PENALTIES OF PERJURY THAT THE ABOVE STATEMENTS TO THE BEST OF MY KNOWLEDGE ARE TRUE AND ACCURATE.**

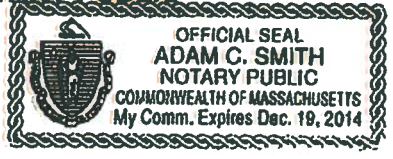
Jason Benoit  
Signature: Appellant or Petitioner

On the 29<sup>th</sup> Day of May 20 13  
PERSONALLY APPEARED BEFORE ME THE ABOVE NAMED

JASON L. BENOIT  
(Type or Print the Name of the Appellant)

Adam C. Smith  
NOTARY PUBLIC

Dec 19<sup>th</sup> 2014  
MY COMMISSION EXPIRES

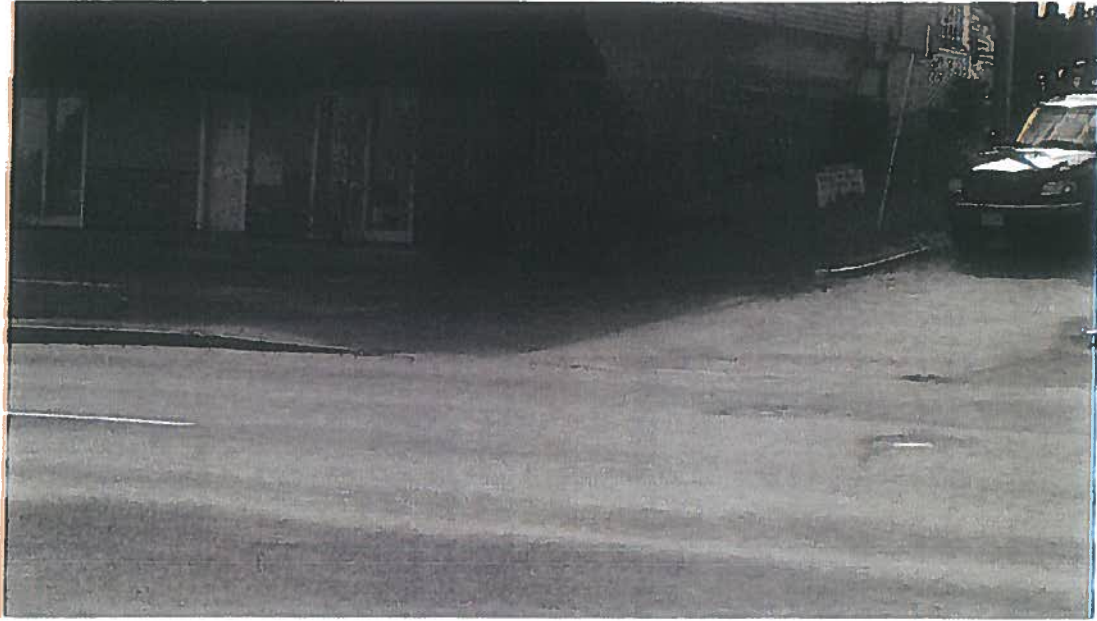




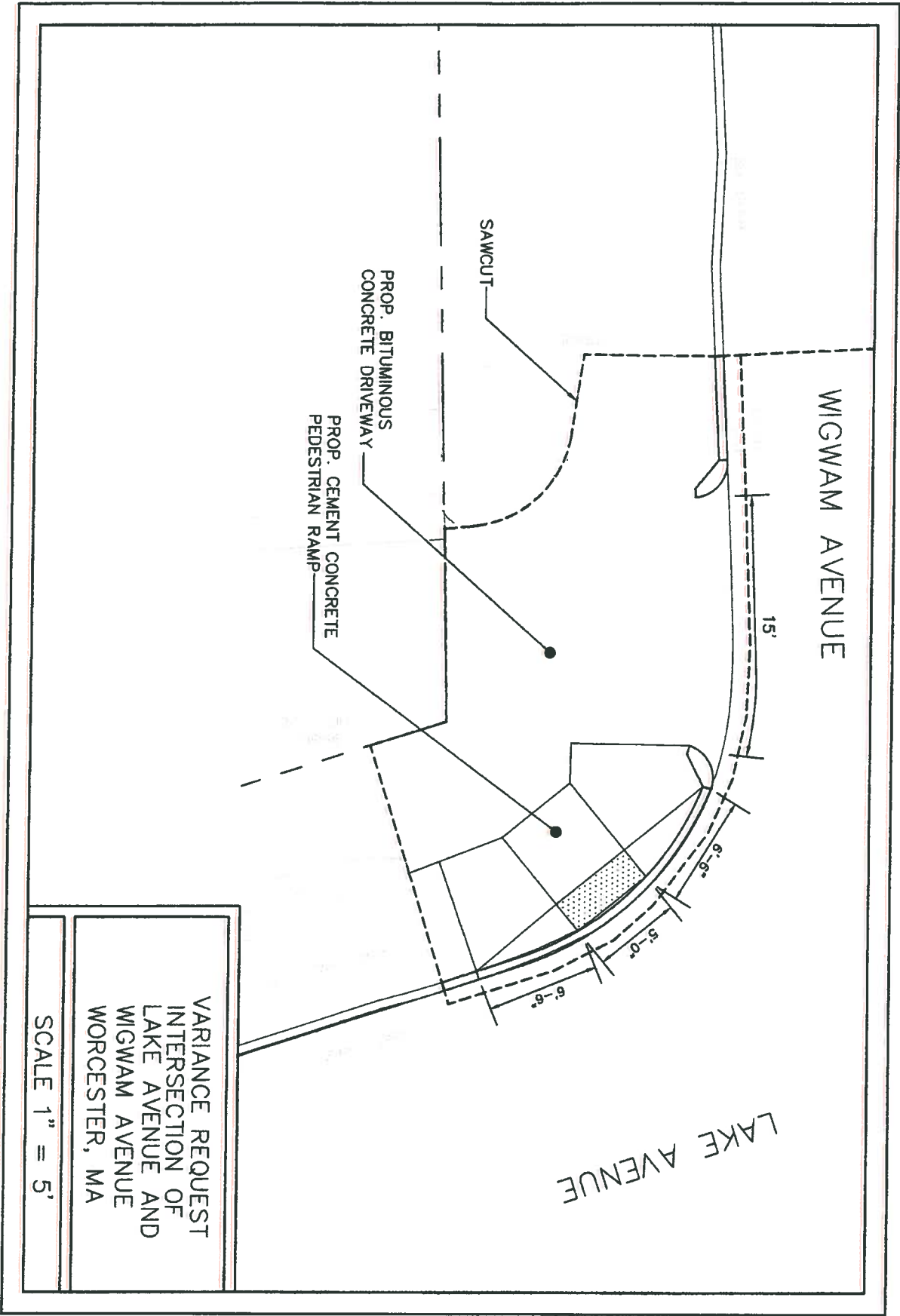
Southwest Corner of Wigwam Avenue at Lake Avenue



Southwest Corner of Wigwam Avenue at Lake Avenue



Southwest Corner of Wigwam Avenue at Lake Avenue



WIGWAM AVENUE

LAKE AVENUE

SAWCUT

PROP. BITUMINOUS  
CONCRETE DRIVEWAY

PROP. CEMENT CONCRETE  
PEDESTRIAN RAMP

15'

6'-6"

5'-0"

6'-6"

VARIANCE REQUEST  
INTERSECTION OF  
LAKE AVENUE AND  
WIGWAM AVENUE  
WORCESTER, MA

SCALE 1" = 5'



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INTEROFFICE MEMORANDUM

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TO: MEMBERS  
COMMISSION ON DISABILITY  
JAYNA TURCHEK  
DIRECTOR, OFFICE ON HUMAN RIGHTS AND  
DISABILITIES  
DAWN CLARK  
DISABILITY INTAKE COORDINATOR

FROM: RACHEL SHANNON BROWN  
CHAIR, COMMISSION ON DISABILITY

SUBJECT: DRAFT COMMISSION ON DISABILITY ANNUAL  
REPORT

DATE: JUNE 18, 2013

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The Worcester Commission on Disability is pleased to submit this annual report to the City Manager to discuss our undertakings, accomplishments, conclusions and recommendations over the past year.

As in previous years, the Commission on Disability has had numerous opportunities to review and weigh in on issues that are before the Massachusetts Architectural Access Board (AAB). Among other AAB requests and correspondence, the Commission was able to review variance requests pertaining to the elevators located at 60 Franklin Street and 240 Main Street, WPI's petition for a variance for a curved ramp, and reviewed proposed renovations at Worcester Academy, to name but a few.

Our Commission has continued to provide educational opportunities to our Commissioners and to the public at large. In August, we had a Commission training regarding Asperger's Syndrome. In September, we welcomed Steve Meredith from the Massachusetts Department of Developmental Services, who shared information about what that agency does and how it serves Worcester and the surrounding towns via that agency's Central Massachusetts regional office. Later, we welcomed Pam Callahan and Jeannie Michelson from the City of Worcester who instructed Commissioners on procedural motions using Robert's Rules of Order. In January, the Commission co-sponsored along with the Elder Affairs Commission a training on "What to do if you suspect abuse or neglect of persons with disabilities or elders." In May, some Commissioners participated in an introductory architectural plan reading workshop. In June, others participated in field-based training workshop led by the New England ADA center.

We have also had a heavy focus on collaborating with, and providing feedback to, various City departments. For example, in November, we met with Deputy Chief Sean Fleming for a conversation about snow removal in the city in both the public and private sectors. The Commission appreciates any future outreach that can be done by the City to remind our citizens of the City's snow removal ordinance and that violations thereof should be reported to the City's Customer Service line. We also met with Wei Jeng Chu and Joel Wentworth from the Worcester Public Library to discuss library accessibility issues, including the need for accessible computers at the main library. We are pleased to report that, since our meeting with library staff, additional accessible parking spaces have been added along Library Lane.

This spring, we met with Matthew L. Moison, the golf professional at Green Hill Municipal Golf Course, in order to review the Course's policies and procedures for golfers with disabilities. In addition to helping approve a policy, we are also pleased to note that the Course has

requested that an accessible golf cart be added to the Course's fleet. In addition, we met with David Clemons, Director of Emergency Management, to discuss emergency preparedness in the City. During that meeting, we provided feedback on how to better integrate the City's Alert Worcester and Voluntary Emergency Preparedness Registry programs. We also met with Lieutenant Annie Picket from the Worcester Fire Department to learn how the Department's Education Unit works with the public.

We also had the pleasure of meeting with William Wallace, the Executive Director of the Worcester Historical Museum, in order to provide feedback on a plan to make the front entrance of that museum more accessible. Although it is our understanding that construction plans on that entrance have since been halted, we look forward to future conversations with the Museum about its plans to improve its accessibility.

In April, the Commission welcomed Troy Thompson from the "No Evil Project," which is a community photography project aimed at eliminating hurtful stereo types. Several members of the Commission have since opted to participate in that project.

We have continued to provide feedback on planned projects for the City. For example, this year the Commission had the opportunity to meet with Robert C. Antonelli, Jr., the Assistant Commissioner of Parks, and Caesar Valiente, the Clerk of Work, in order to provide feedback on eight different Worcester parks. Additionally, we hosted a public meeting in January to help the public to review the City's Open Space and Recreation Plan. We also met with Paul Moosey (from the Department of Public Works) in order to provide feedback on the City's Downtown Sidewalk Master Plan, Timothy McGourthy (the Chief Development Officer) in order to provide feedback on the Streetscape Policy and Urban Guidelines for the Downtown and Canal Districts, and

Roberta Brien (the President of the Worcester Business Development Corporation) in order to discuss the Master Plan for the Theater District. The Commission appreciates the opportunity to have weighed in on so many plans for the City of Worcester over the last year; however, the Commission requests the support of the City Manager in requiring City officials to seek Commission comment on such projects in the future.

In response to public inquiry, the Commission reviewed the exterior accessibility of John Street Church. We are delighted to report that a tree that used to be a barrier to wheelchair accessibility is no longer blocking the sidewalk in front of that location.

The Commission on Disability and the Office of Human Rights and Disabilities have continued to collaborate on a regular basis. For example, we provided general feedback regarding the types of intakes that the Office has been handling. We also provided input as the Office has worked to develop its outreach and referral contacts. The Office was also able to formalize a procedure through which disability-related groups could apply for free uses of Union Station. The Commission was able to weigh in on a Union Station use application that was submitted by the Center for Living and Working.

The Commission is pleased that the City was able to amend its dog ordinance so that the definition of “service dog” now complies with the Americans with Disabilities Act. We do, however, note that our original recommendation was that the license waiver be expanded to apply to disability-related companion animals as defined under fair housing laws.

The Commission has started its brainstorming process for future outreach, including a planned “disability etiquette” video that will be created in conjunction with City Cable Services. Although we are still generating the script for that video, we hope to complete the video in its entirety in the next year.

We also hope that the next year will allow the City to finish updating its Americans with Disabilities Act Transition Plan, and we look forward to collaborating with the Office on Human Rights and Disabilities as needed on that project. Additionally, the Commission continues to receive inquiries about a proposed policy that would address accessibility at temporary events in the City of Worcester. We forwarded a sample policy to the City Manager's office last year for consideration, and we hope that the City will finalize such a policy in the near future.

In closing, we thank the City for moving the Office of Human Rights and Disabilities to City Hall, and for increasing the Director's position to full-time. Although we appreciate that the Office was able to obtain an intern for this summer, we note that the permanent staffing for the Office is still less than what was available when the two offices (the Office of Human Rights, and the Office of Disabilities) were separately maintained. We hope that the City will continue to make every effort to provide support to people with disabilities by staffing the Office as fully as possible.

Respectfully submitted,

Rachel Shannon Brown

Chair, Worcester Commission on Disability

## Chapter 2 • Action Steps

Title II of the Americans with Disabilities Act requires that state and local government entities do not discriminate against people with disabilities in their programs, services, and activities. State and local governments must take steps to examine their programs and establish a plan for compliance with the law. Chapter 1 discusses the legal requirements and the regulations for Title II. This chapter discusses the five action steps required to bring a public entity into compliance with the regulations:

- STEP ONE: Designate a Responsible Employee**
- STEP TWO: Provide Notice of ADA Requirements**
- STEP THREE: Establish a Grievance Procedure**
- STEP FOUR: Conduct a Self-Evaluation**
- STEP FIVE: Develop a Transition Plan**

§35.107(a) *Designation of responsible employee. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.*

**Public Entity:** *The definition of a public entity includes any non-federal unit of governments such as states, cities, towns, counties, parishes, authorities, boroughs, commissions and others.*

**Employees:** *Part-time employees are included in the definition of employees but contractors are not.*

## STEP ONE: Designate a Responsible Employee

Any public entity with fifty or more employees must designate at least one employee to coordinate ADA compliance. The regulation refers to this person as the responsible employee; however, because most entities call this person the *ADA coordinator*, we will use this title throughout the *Action Guide*.

The purpose of this requirement is to ensure that when the public deals with state and local government agencies, they are easily able to identify a person who is familiar with the requirements of the ADA and who can communicate these requirements to other individuals in the agency who may be unaware of their responsibilities. In order to ensure that individuals can easily identify the ADA coordinator, the public entity must provide the ADA coordinator's name, office address, and telephone number to the general public. This can be done through the notice described on pages 39–40.

The ADA coordinator is the key player in ensuring ADA compliance. The coordinator's role includes:

- planning and coordinating overall compliance efforts
- ensuring that the five action steps are achieved
- receiving and investigating grievances on programs, services, practices, and employment

The coordinator must have the authority, knowledge, and motivation to implement the regulations effectively.

Only public entities with fifty or more employees are required to designate an ADA coordinator. In order to ensure that Title II nondiscrimination, accessibility, and other requirements are met, however, entities with fewer than fifty employees might also find it useful to designate an ADA coordinator.

## STEP TWO: Provide Notice of ADA Requirements

All public entities—regardless of size—must provide information to applicants, participants, beneficiaries, employees, and other interested parties regarding the rights and protections afforded by Title II, including information about how the Title II requirements apply to its particular programs, services, and activities.

It is the responsibility of the head of the governmental entity to determine the most effective methods for making individuals in the community aware of their rights and protections. A sample notice that can be adapted for different organizations and formats is provided on the next page. Note that in order to ensure effective communication, the information is presented in clear, straightforward English, avoiding legal and bureaucratic idioms. The sample notice also serves to notify the public of the appointment of the ADA coordinator and includes the coordinator's name, office address, and telephone number.

The public entity must provide this information not just once, but on an ongoing basis. Below are some of the ways in which this information can be provided on a regular basis to applicants, participants, and the general public.

In order to reach:	Provide the information through:
applicants or potential applicants	<ul style="list-style-type: none"> <li>• newspaper advertisements</li> <li>• inclusion with applications</li> <li>• radio and/or captioned television public service announcements</li> </ul>
participants	<ul style="list-style-type: none"> <li>• postings at all program sites</li> <li>• program handbook</li> <li>• regular mailings</li> <li>• announcements at program, service, or activity meetings</li> </ul>
public at large	<ul style="list-style-type: none"> <li>• newspaper legal notice</li> <li>• posting at all facilities</li> <li>• radio and/or captioned television public service announcements</li> </ul>

*§35.106 Notice. A public entity shall make available to applicants, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such manner as the head of the entity finds necessary to apprise such persons of the protections against discrimination assured then by the Act and this part.*

One of the ways public sector organizations have traditionally notified the public of equal opportunity policies is through the use of graphic symbols in notices and advertisements. These logos can effectively communicate a message regarding your agency's nondiscrimination policies and practices. The International Symbol of Accessibility is the wheelchair logo. The federal Fair Housing Amendments Act has adopted a house with an equal (=) sign in it as a symbol of non-discrimination. There are also standard symbols for the availability of TDDs, sign language interpreters, amplified telephones, and assistive listening systems.



Public entities are also required to provide Title II information in alternative formats to ensure that the information is accessible to people with disabilities. Examples of alternative formats include:

- radio reading services
- providing a large print notice on bulletin boards
- advertising in newspapers that have a large print edition
- open- or closed-captioned public service announcements (PSAs) on television
- audio tape
- ASCII computer diskette
- Braille

### Sample Notice

(Public Entity) does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. (Public Entity) does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990.

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to (Public Entity's) designated ADA Compliance Coordinator.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Office Address: \_\_\_\_\_

Phone Number: Voice \_\_\_\_\_ TDD \_\_\_\_\_

Days/Hours Available: \_\_\_\_\_

Individuals who need auxiliary aids for effective communication in programs and services of (Public Entity) are invited to make their needs and preferences known to the ADA Compliance Coordinator.

This notice is available in large print, on audio tape, and in Braille, from the ADA Compliance Coordinator.

### STEP THREE: Establish a Grievance Procedure

All public entities with fifty or more employees must adopt and publish grievance procedures providing for prompt and equitable resolution of grievances arising under Title II. Public entities with fewer than fifty employees may also find it useful to establish a grievance procedure because all public entities—regardless of size—are subject to complaints that might best be resolved internally. One of the responsibilities of the ADA coordinator is to receive and investigate complaints.

The purpose of the grievance procedure is to provide a mechanism for the resolution of discrimination issues at the state or local level, rather than require the complainant to resort to the federal complaint process (see Chapter 1, "How Is Title II Enforced?" page 11).

The Title II regulations do not stipulate procedures for the grievance procedure. The public entity may use a grievance procedure that is already in place; there is no need to reinvent the wheel or duplicate existing procedures. If the organization does not already have a grievance procedure, one must be established. This requirement has been effective since January 26, 1992.

This *Action Guide* recommends that a grievance procedure include the following components:

- a detailed description of the procedures for submitting a grievance
- a two-step review process that allows for appeal
- reasonable time frames for review and resolution of the grievance
- good record-keeping for all complaints submitted and documentation of steps taken towards resolution

The following provides a sample grievance procedure for municipalities that incorporates these four components. The sample procedures can easily be adapted for other types of entities.

*§35.107(b) Complaint procedure. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.*

### Sample Municipal Grievance Procedure

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs, or benefits by (Name of Municipality).

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

(Name of ADA coordinator)  
(Phone number)  
(Address)

Within 15 calendar days after receipt of the complaint, (Name of ADA coordinator) will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting, (Name of ADA coordinator) will respond in writing, and, where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of (Name of Municipality) and offer options for substantive resolution of the complaint.

If the response by (Name of ADA coordinator) does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision of the ADA coordinator within 15 calendar days after receipt of the response to the mayor or his or her designee.

Within 15 calendar days after receipt of the appeal, the mayor or his or her designee will meet with the complainant to

*continued*

*continued*

discuss the complaint and possible resolutions. Within 15 calendar days after the meeting the mayor or his or her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by (Name of ADA coordinator), appeals to the mayor or his or her designee, and responses from the ADA coordinator and mayor or his or her designee will be kept by (Name of Municipality) for at least three years.

**§35.105 Self-evaluation.**

(a) A public entity shall, within one year of the effective date of this part, evaluate its current services, policies, and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such services, policies, and practices is required, the public entity shall proceed to make the necessary modifications.

(b) A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the self-evaluation process by submitting comments.

(c) A public entity that employs 50 or more persons shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A list of the interested persons consulted;
- (2) A description of the areas examined and any problems identified; and
- (3) A description of any modifications made.

(d) If a public entity has already complied with the self-evaluation requirement of a regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this section shall apply only to those policies and practices that were not included in the previous self-evaluation.

**STEP FOUR: Conduct a Self-Evaluation**

All public entities—regardless of size—must conduct a self-evaluation. The self-evaluation is a comprehensive review of the public entity's current policies and practices, including communications and employment. Through the self-evaluation, the public entity must:

1. **identify** any policies or practices that do not comply with the Title II requirements; and
2. **modify** policies and practices to bring them into compliance.

The self-evaluation was to have been completed by January 26, 1993, and public entities have been liable for non-compliance with Title II since January 26, 1992. Therefore, if discriminatory policies or practices are identified during the review process, they should be modified immediately.

The regulations require that the public entity provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the self-evaluation. However, the Department of Justice strongly encourages governmental entities to involve people with disabilities actively in the planning process. Chapter 3 describes a suggested approach to conducting a self-evaluation that provides for positive involvement of people with disabilities. Worksheets for the self-evaluation are provided beginning on page 89.

Public entities with fifty or more employees must keep the following self-evaluation information on file and available for public inspection for at least three years:

- a list of interested persons consulted about the self-evaluation
- a description of the areas examined and any problems identified
- a description of any modifications made

### Relationship Between the ADA Self-Evaluation and the Self-Evaluation Required Under Section 504 of the Rehabilitation Act of 1973

Public entities that have completed a Section 504 self-evaluation for their federally funded programs are required to review only (1) non-federally funded programs, (2) any federally funded programs established since the Section 504 self-evaluation was conducted, and (3) new or modified policies or practices that were not included in an earlier self-evaluation.

However, because most self-evaluations were done five to twelve years ago, the Department of Justice expects that many public entities will have to reexamine all of their policies and programs. Programs and functions may have changed, and actions that were supposed to have been taken to comply with Section 504 may not have been fully implemented or may no longer be effective. Furthermore, many Section 504 self-evaluations focused on facilities access and did not sufficiently emphasize effective communications.

Public entities that were required to have completed Section 504 self-evaluations, and have not done so, may meet this obligation by including federally funded programs in the ADA self-evaluation. The deadlines for programmatic and structural modifications required under the ADA *cannot* be substituted for the Section 504 deadlines, however. Federally funded state and local entities must meet both the Section 504 and the ADA compliance deadlines. If the public entity has not completed the Section 504 review or made the necessary modifications to policies and procedures, it might prioritize modifications to federally funded programs in order to ensure Section 504 compliance as quickly as possible.

**§35.150(d) Transition plan.**

(1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, a public entity that employs 50 or more persons shall develop, within six months of January 26, 1992, a transition plan setting forth the steps necessary to complete such changes. A public entity shall provide an opportunity to interested persons, including individuals with disabilities or organizations representing individuals with disabilities, to participate in the development of the transition plan by submitting comments. A copy of the transition plan shall be made available for public inspection.

(2) If a public entity has responsibility or authority over streets, roads, or walkways, its transition plan shall include a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs, giving priority to walkways serving entities covered by the Act, including State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas.

(3) The plan shall, at a minimum—

(i) Identify physical obstacles in the public entity's facilities that limit the accessibility of its programs or activities to individuals with disabilities;

(ii) Describe and detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

**STEP FIVE: Develop a Transition Plan**

Public entities with fifty or more employees must develop a transition plan when structural changes to existing facilities are necessary in order to make a program, service, or activity accessible to people with disabilities. However, all public entities—regardless of size—may find a transition plan useful whenever structural changes are required to bring the organization into compliance.

The regulations require that, at a minimum, the transition plan:

- identify physical obstacles that limit the accessibility of the public entity's programs, services, or activities to people with disabilities
- describe the methods to be used to make the facilities accessible
- provide a schedule for making the access modifications; provide a yearly schedule for making the modifications if the transition plan is more than one year long
- indicate the public official responsible for implementation of the transition plan

Public entities with fifty or more employees that have responsibility for or authority over streets, roads, or walkways, must include in the transition plan a schedule for providing curb ramps or other sloped areas where pedestrian walks cross curbs. Priority must be given to those walkways serving entities covered by the ADA, such as state and local government offices and facilities, transportation, places of public accommodation, and employers. Public entities that have responsibility for or authority over streets, roads, or walkways but have fewer than fifty employees must adhere to provisions concerning curb ramps or other sloped areas where pedestrian walks cross curbs.

The regulations require that the governmental entity provide an opportunity for people with disabilities and other interested individuals or organizations to review and comment on the transition plan as well as the self-evaluation. As discussed previously, public entities may find it more useful to involve people with disabilities and/or disability expertise earlier on in the planning process. When the transition plan is completed, it must be made available for public inspection.

The transition plan was to have been developed by July 26, 1992. Any structural changes outlined in the transition plan were to have been completed by January 26, 1995.

**Relationship Between the ADA Transition Plan  
and the Transition Plan Required Under Section 504  
of the Rehabilitation Act of 1973**

Public entities that have completed a Section 504 transition plan for federally funded programs, are required to include in the ADA transition plan only those facilities that were not previously evaluated. This would include all facilities that receive only state and local funds as well as facilities serving federally funded programs that have been leased or developed since the Section 504 transition plan was conducted.

The deadlines for structural modifications required under the ADA *cannot* be substituted for the Section 504 deadlines. Facilities that house federally funded programs must continue to meet the Section 504 requirements as well as ADA requirements. Public entities that have completed a Section 504 transition plan for federally funded programs should review the plan and determine whether all required structural changes were made. If the structural changes outlined in the Section 504 transition plan were not made, these might be prioritized in the ADA transition plan.

*(4) If a public entity has already complied with the transition plan requirement of a Federal agency regulation implementing section 504 of the Rehabilitation Act of 1973, then the requirements of this paragraph (d) shall apply only to those policies and practices that were not included in the previous transition plan.*



**SUMMARY: Title II Requirements and Effective Dates****REQUIREMENTS**

Action Step	Entities required to comply
1. Designate Responsible Employee	50 or more employees
2. Provide Notice	All entities
3. Establish Grievance Procedure	50 or more employees
4. Conduct Self-Evaluation	All entities
5. Develop Transition Plan	50 or more employees

By the time this edition of the handbook is available, the deadlines in Title II for the required steps will have passed. The best protection against complaints and litigation and the best assurance of cost-effective use of public funds is a quality compliance effort. The next chapter describes one approach to completing these action steps, which can enable public entities to move forward without sacrificing the thoroughness essential to effective compliance.

**EFFECTIVE DATES**

Requirement	Effective Date
1. Designate Responsible Employee	Required as of Jan. 26, 1992
2. Provide Notice	Required as of Jan. 26, 1992
3. Establish Grievance Procedure	Required as of Jan. 26, 1992
4. Conduct Self-Evaluation	Completed by Jan. 26, 1993
5. Develop Transition Plan	Completed by July 26, 1992
6. Complete Structural Changes	Completed by Jan. 26, 1995



# Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

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## #1 - Overview of Revised Title II and Title III Regulations



The Department of Justice (DOJ) has amended its regulations implementing Title II and Title III of the Americans with Disabilities Act (ADA), which apply to public/state and local government entities and private businesses/places of public accommodation, respectively. These revised regulations took effect on March 15, 2011, with some exceptions. Fact Sheets in this series are available on each of these topics.

### Summary of Changes:

#### Fact Sheet #2 - Effective Communication

- Companions with disabilities must be provided with effective communication.
- Video Remote Interpreting (VRI) services are now considered an auxiliary aid that may be used to provide effective communication.
- A covered entity shall not rely on an adult or minor child accompanying an individual with a disability to provide interpreting services except in an emergency or if the deaf individual wants the accompanying adult to interpret if appropriate.
- A qualified reader is an individual who is able to read effectively, accurately and impartially using any specialized vocabulary.

#### Fact Sheet #3 - Examinations and Courses

- If an entity requires documentation of disability before granting an accommodation request, then the documentation requirement needs to be reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested.
- Prior modifications received in similar situations should be granted considerable weight
- A covered entity must respond in a timely manner to requests for modifications.

#### Fact Sheet #4 - Places of Lodging

- Effective March 15, 2012, these regulations will impact the definition of place of lodging, reservation processes, information provided through reservation systems regarding accessible features, holding accessible guest rooms, third party reservation providers and scoping for accessible guest rooms.

#### Fact Sheet #5 - Service Animals

- Service Animal is now defined as a dog that has been individually trained to do work or perform tasks for an individual with a disability.
- Other animals, whether wild or domestic, do not qualify as service animals.
- Reasonable modifications in policies must also be made to allow individuals with disabilities to use miniature horses, with some restrictions, if they have been individually trained to do work or perform tasks for individuals with disabilities.

#### Fact Sheet #6 - Ticketing

- Guidance is now provided on the sale of tickets for accessible seating, information covered entities must provide about accessible seating, ticket prices, options for purchasing multiple tickets, hold and release of tickets for accessible seating, ticket transfer, the secondary ticket market, and prevention of fraud.

#### Fact Sheet #7 - Wheelchairs and Other Power-Driven Mobility Devices (OPDMDs)

- Wheelchairs must be permitted in all areas open to pedestrian use.
- OPDMDs- any mobility device powered by batteries, fuel or other engines, used by individuals with disabilities as their mobility device of choice, whether designed primarily for use by individuals with disabilities or not (such as the Segway® PT)- must be permitted unless the covered entity can demonstrate that such use would fundamentally alter its business/operations, create a direct threat, or create a safety hazard.

#### Fact Sheet #8 - Detention and Correctional Facilities

- Qualified inmates or detainees with disabilities shall not be excluded from participation in, or be denied the benefits of, the services, programs or activities of a public entity in the most integrated setting appropriate.
- Requires three percent of newly constructed or altered cells to be accessible.

#### Fact Sheet #9 – Overview of the 2010 ADA Standards for Accessible Design

- DOJ has adopted revised ADA design standards as found in the U.S. Access Board's 2004 ADA/ABA Accessibility Guidelines.
- On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations. In the period between September 15, 2010 and March 15, 2012, covered entities may choose between the 1991 Standards or the 2010 Standards. *Note: Title II entities can also choose the Uniform Federal Accessibility Standards (UFAS).*
- "Safe Harbor": facilities that were built or altered in compliance with 1991 Standards or the UFAS do not have to be brought into compliance with 2010 Standards unless the facility undergoes an alteration on or after March 15, 2012.

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# #2 - Effective Communication



The Department of Justice (DOJ) has issued revised Americans with Disabilities Act (ADA) Title II and Title III regulations which took effect March 15, 2011. These regulations affect the obligations of Title II public entities (state and local government entities) and Title III private businesses (a.k.a. places of public accommodation) to furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities. (§35.104, §35.160, §36.104, §36.303) This includes an obligation to provide effective

communication to companions who are individuals with disabilities. The term “companion” means a family member, friend, or associate with whom the public entity or private business would typically communicate.

### Providing Auxiliary Aids and Services

Examples of common auxiliary aids and services include qualified sign language interpreters in person or through video remote interpreting (VRI) services; note takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices and systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones or equally effective telecommunications devices; videotext displays; qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; and accessible electronic and information technology.

The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, complexity of the communication involved; and the context in which the communication is taking place. A private business should consult with individuals with disabilities whenever possible to determine what type of auxiliary aid is needed to ensure effective communication, but the ultimate decision as to what measures to take rests with the private business, provided that the method chosen results in effective communication. However, public entities must give primary consideration to the request of the individuals with disabilities.

- To be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.
- A public entity or private business is financially responsible for the cost of the auxiliary aid or service provided unless it can demonstrate that it would be an undue financial burden in light of the overall financial resources of the entire entity, including any parent corporation if applicable. It cannot impose a surcharge on an individual with a disability to cover the costs of the auxiliary aid or service provided. Even if it is determined that a particular auxiliary aid or service is an undue financial burden, the entity must still provide effective communication utilizing a different auxiliary aid or service.

### **Sign Language Interpreters**

Public entities and private businesses cannot require an individual with a disability to bring another individual to interpret for him or her. A public entity or private business shall not rely on an adult accompanying an individual to interpret or facilitate communication, except:

- In an emergency involving imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- When the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for assistance is appropriate under the circumstances.

A public accommodation shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

### **Telecommunications**

When a public entity or private business uses an automated-attendant system, including, but not limited to, voicemail and messaging, or an interactive voice response system, for receiving and directing incoming telephone calls, that system must provide effective real-time communication with individuals using auxiliary aids and services, including text telephones (TTYs) and relay services, including Internet-based relay systems. A public entity or private business shall respond to telephone calls from a relay service in the same manner that it responds to other telephone calls. A public entity or private business may use relay services in place of direct telephone communication for receiving or making telephone calls incident to its operations.

A public entity or private business that offers a customer, client, patient, or participant the opportunity to make outgoing telephone calls using their equipment on more than an incidental convenience basis shall make available accessible public telephones, TTYs, or other telecommunications products and systems for use by an individual who is deaf or hard of hearing, or has a speech impairment.

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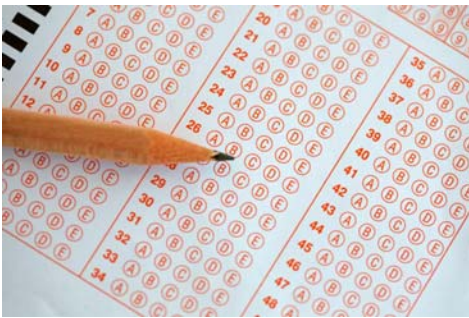
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### #3 - Examinations and Courses



The Department of Justice (DOJ) has issued revised ADA Title III (private businesses, a.k.a. places of public accommodation) regulations regarding examinations and courses. (§36.309) These regulations took effect March 15, 2011 and affect exams and courses related to applications, licensing, certification or credentialing for secondary or postsecondary education or professional or trade purposes. The general rule has not changed from the original ADA:

covered entities must continue to offer exams and courses in a location and manner that is accessible to individuals with disabilities or offer alternative accessible arrangements, and examinations should be administered so that the results accurately reflect the individual's aptitude or achievement level, not the impairment. What DOJ has done is move some of the language from the original ADA preamble into the regulatory text. This change affects three areas in particular:

#### **Requests for Documentation Must Be “Reasonable and Limited”**

- If an entity requires documentation of disability before granting an accommodation request, then the documentation requirement needs to be reasonable and limited to the need for the modification, accommodation, or auxiliary aid or service requested.
- In general, when testing entities receive documentation provided by a qualified professional who has made an individualized assessment of an applicant that supports the need for the modification, accommodation, or aid requested, the entity should accept that documentation and provide the accommodation.
- What is considered “acceptable” documentation will depend on the nature of the disability and the specific modification or aid being requested. Possible forms of acceptable documentation may include a recommendation from a qualified professional, a psycho-educational evaluation, history of a diagnosis, participation in a Special Education program, or a prior accommodation from another standardized testing agency.

- A “qualified professional” is one who is licensed or otherwise credentialed and who possesses expertise in the disability for which the modifications or accommodations are sought. Examples of a qualified professional may include a doctor, psychologist, nurse, physical, occupational or speech therapist, vocational rehabilitation specialist, school counselor, or licensed mental health professional. Testing entities should ask qualified professionals in the pertinent field to evaluate the request and materials presented by the individual requesting the accommodation.
- An “individualized assessment” means that a qualified professional has individually and personally evaluated the candidate rather than only reviewed documents about the candidate. Personal familiarity with the candidate will always outweigh not having personal knowledge of the candidate.

### **Prior Modifications Received in Similar Situations Should Be Granted “Considerable Weight”**

- When considering requests for modifications, covered entities need to give considerable weight to documentation of past modifications that were received in similar testing situations (e.g., if an accommodation was granted when the individual took the SAT’s, then it should also be granted when that same individual takes GRE’s, if requested).
- Entities should also give considerable weight to documentation of modifications that were provided in response to an Individualized Education Plan (IEP) or a Section 504 Plan because the history of testing accommodations determined through the rigors of a process required by Federal law is useful and instructive.

### **Covered Entity Must Respond to Requests for Modifications in a “Timely Manner”**

- Covered entities need to respond to requests for modifications, accommodations, or aids in a timely manner to ensure the same level of opportunity and access for individuals with disabilities that exists for persons without disabilities.
- If testing entities fail to act quickly and/or they seek unnecessary documentation, then it could result in an extended delay, thereby denying equal opportunity or equal treatment in an examination setting, creating possible grounds for disability discrimination.

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# #4 - Places of Lodging



The Department of Justice (DOJ) has issued revised ADA Title III (private businesses, a.k.a. places of public accommodation) regulations regarding places of lodging. These regulations include several significant provisions designed to enable individuals with disabilities to make reservations at places of lodging as effectively as others. [§36.104, §36.302(e)] They also include new facility standards for places of lodging within the 2010 Standards for Accessible Design. [§36.406(c)] All of these provisions related to lodging take effect March 15, 2012.

### Who Must Comply?

An entity that owns, leases, leases to, or operates a place of lodging must follow these new requirements. Places of lodging include traditional hotels, motels and inns, as well as facilities that provide guest rooms for sleeping for stays that are primarily short-term (generally 30 days or less), where occupants do not have the right to return to a specific room or unit after the conclusion of their stay, and which provide guest rooms under conditions and with amenities similar to a traditional hotel, motel, or inn. Such conditions and amenities include the following:

- On- or off-site management and reservations service;
- Rooms available on a walk-up or call-in basis;
- Availability of housekeeping or linen service;
- Acceptance of reservations for a room type without guaranteeing a particular room or unit until check-in, and without a prior lease or security deposit.

This does not include facilities that contain no more than five rooms for rent and that actually are occupied by the proprietor of the establishment as the residence of the proprietor.

### Reservation Systems

- All of these provisions apply with respect to reservations made by telephone, in-person, or via a website.
- Individuals with disabilities must be able to make reservations for accessible guest rooms during the same hours and in the same manner as others.



- Places of lodging must identify and describe accessible features of the facility and the guest rooms offered through its reservations service in enough detail to reasonably permit individuals with disabilities to assess independently whether a given facility or guest room meets his or her accessibility needs. Information, including photos or other images, may be posted on websites or included in brochures or other materials. Customer service staff should also be trained to respond to specific inquiries about the features of the facility, including accessible routes to and through the facility; details about the configuration of accessible guest rooms and bathrooms; the availability of accessibility equipment or features such as bath benches, or visual alarm and alert devices for guests who are deaf or hard of hearing; and the accessibility of common spaces such as meeting rooms, lounges, restaurants, swimming pools, or fitness centers.
- Accessible guest rooms must be held for use by individuals with disabilities until all other guest rooms of that type have been rented.
- When a reservation is made for an accessible guest room, the *specific* accessible guest room reserved must be held for the reserving customer and the room must be removed from the reservation system.
- Places of lodging that make rooms available for reservations through third parties (e.g., Expedia or Orbitz) must provide accessible rooms to at least some of the third parties and must provide information about the accessible features of the facility and the guest rooms.

### **New Requirements for Places of Lodging from the 2010 Standards**

- In general, lodging built after March 15, 2012 will have to comply with the 2010 ADA Standards [Sections 224, 806 as well as §36.406(c)] which include a new section with standards for recreational spaces, including but not limited to swimming pools and spas (Sections 242, 1009), exercise equipment (Sections 206, 236, 1004), golf courses (Section 238, 1006), boating facilities (Sections 235, 1003), and playgrounds (Sections 240, 1008). The 2010 ADA Standards also include new scoping provisions for the number of guest rooms that must be provided with features for mobility access and for communication access.
- Existing lodging built before March 15, 2012 will need to remove architectural barriers, when readily achievable, to recreational facilities, which include but are not limited to swimming pools and spas, exercise equipment, golf courses, boating facilities, and playgrounds.

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## #5 - Service Animals



The Department of Justice has issued revised ADA Title II (state and local government programs) and Title III (private businesses, a.k.a. places of public accommodation) regulations which took effect March 15, 2011. These regulations revise the definition of service animal and add additional provisions. (§35.104, §35.136, §36.104, §36.302)

### Definition

A service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not considered to be service animals. The work or tasks performed by a service animal must be directly related to the handler's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping individuals with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks and as such do not meet the definition of a service animal.

### Miniature Horses

A public entity or private business shall make reasonable modifications in policies, practices, or procedures to permit the use of a miniature horse as a service animal by an individual with a disability if the miniature horse has been individually trained to do work or perform tasks for the benefit of the individual with a disability subject to an assessment of the type, size, and weight of the miniature horse and whether the facility can accommodate these features. The same provisions that apply to service dogs also apply to miniature horses.

### Inquiries

To determine if an animal is a service animal, a public entity or a private business may ask two questions: 1) Is this animal required because of a disability? 2) What work or task has this animal been trained to perform? These inquiries may not be made if the need for the service

animal is obvious (e.g., the dog is guiding an individual who is blind or is pulling a person's wheelchair.) A public entity or private business may not ask about the nature or extent of an individual's disability. They also may not require documentation, such as proof that the animal has been certified, trained or licensed as a service animal, or require the animal to wear an identifying vest.

### **When and Where a Service Animal is Allowed Access**

Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of public facilities and private businesses where members of the public, program participants, clients, customers, patrons, or invitees are allowed to go. If a service animal's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation, they can be excluded from the facility (e.g., from a surgery or intensive care unit in a hospital in which a sterile field is required.)

A public entity or a private business may ask an individual with a disability to remove a service animal from the premises if the animal is not housebroken or if the animal is out of control and the handler does not take effective action to control it. A handler shall use a harness, leash or other tether with their service animal unless either the handler is unable to do so because of a disability or unless the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks. In these cases, the service animal must be under the handler's control through voice control, signals, or other effective means. If a service animal is excluded, the individual with a disability must still be offered the opportunity to obtain goods, services, and accommodations without having the service animal on the premises.

### **Other Provisions**

- A public entity or private business is not responsible for the care and supervision of a service animal.
- A public entity or private business shall not ask nor require an individual with a disability to pay a surcharge or deposit, even if people accompanied by pets are required to pay such fees.
- If a public entity or private business normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal.

### **Relationship to Other Laws**

These provisions related to service animals apply only to entities covered by the ADA. The Fair Housing Act covers service animal provisions for residential housing situations and the Air Carrier Access Act covers service animal provisions for airline travel. The definition of a service animal under each of these laws is different than the definition under the ADA.

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## #6 -Ticketing



Previously, ticketing had not been addressed specifically in the ADA or in its implementing regulations. Entities that sell tickets were always covered by the ADA, but there was no specific guidance for the myriad of situations related to ticketing. All that changed when the Department of Justice issued ticketing regulations which took effect on March 15, 2011. [§36.302(f), §35.138] These regulations apply to Title II (state and local government programs) and Title III (private businesses, a.k.a. places of public accommodations).

### General Requirements

An entity that sells tickets for a single event or a series of events shall modify its policies, practices, or procedures to ensure that individuals with disabilities have an equal opportunity to purchase tickets for accessible seating:

- During the same hours as others;
- During the same stages of ticket sales, including but not limited to, pre-sales, promotions, lotteries, waitlists, and general sales;
- Through the same methods of distribution;
- In the same types and numbers of ticketing sales outlets, including telephone service, in-person ticket sales at the facility, or third-party ticketing services, as other patrons; and
- Under the same terms and conditions as other tickets sold for the same event or series of events.

### If a ticketing entity is asked, it must:

- Inform individuals with disabilities, their companions, and third parties purchasing tickets for individuals with disabilities of the locations of all unsold or otherwise available accessible seating for any ticketed event at the facility;

- Identify and describe the features of available accessible seating in enough detail to reasonably permit an individual with a disability to decide independently whether a given accessible seating location meets his or her accessibility needs; and
- Provide materials, such as seating maps, plans, brochures, pricing charts, or other information, that identify accessible seating with the same text or visual representations as other seats, if such materials are provided to the general public.

### **Ticket Prices**

The price of tickets for accessible seating must not be higher than the price of other tickets in the same seating section for the same event. Tickets for accessible seating must be made available at all price levels for every event. If tickets for accessible seating at a particular price level cannot be provided because barrier removal in an existing facility is not readily achievable, then the percentage of tickets for accessible seating that should have been available at that price level if it weren't for the barriers must be offered for purchase, at that price level, in a nearby or similar accessible location. The percentage is determined by the ratio of the total number of tickets at that price level to the total number of tickets in the assembly area.

### **Purchasing Multiple Tickets**

For each ticket for accessible seating purchased by or for an individual with a disability, an entity must make available for purchase three additional tickets for seats in the same row that are contiguous with the wheelchair space, provided that the seats are available at the time of purchase. Such seats may include wheelchair spaces. If patrons are allowed to purchase at least four tickets, and there are fewer than three additional contiguous seats available for purchase, an entity must offer the available contiguous seats and also must make up the difference by offering tickets for seats that are as close as possible to the accessible seats. If ticket sales for a particular event or venue are limited to fewer than four seats per patron, then entities must offer as many seats to patrons with disabilities, including the ticket for the wheelchair space, as would be offered to patrons without disabilities. If patrons are allowed to purchase more than four tickets, then patrons with disabilities must be allowed to purchase up to the same number of tickets, including the ticket for the wheelchair space. If a group includes one or more individuals who need to use accessible seating because of a mobility disability, or because the disability requires the use of the accessible features that are provided in accessible seating, the group must be placed in a seating area with accessible seating so that, if possible, the group can sit together. If it is necessary to divide the group, it should be divided so that the people in the group who use wheelchairs are not isolated from the group.

### **Hold and Release of Tickets for Accessible Seating**

Tickets for accessible seating may be released for sale to individuals without disabilities in certain limited circumstances. However, a facility is never required to release tickets for accessible seating to individuals without disabilities.

Unsold tickets for accessible seating may be released only under the following circumstances:

- When all non-accessible tickets (excluding luxury boxes, club boxes, or suites) have been sold;
- When all non-accessible tickets in a designated seating area have been sold and the tickets for accessible seating are being released in the same designated area; or
- When all non-accessible tickets in a designated price category have been sold and the tickets for accessible seating are being released within the same designated price category.

When series-of-events tickets are sold out and the entity releases and sells accessible seating to individuals without disabilities for a series of events, a process must be established that prevents the automatic reassignment of the accessible seating to such ticket holders for future seasons, future years, or future series, so that individuals with disabilities who require the features of accessible seating, and who become newly eligible to purchase tickets when these series-of-events tickets are available for purchase, have an opportunity to do so.

When series-of-events tickets with an ownership right in accessible seating areas are forfeited or otherwise returned to an entity, reasonable modifications in policies, practices, or procedures must be made in order to afford individuals with mobility disabilities, or individuals with disabilities that require the features of accessible seating, the chance to purchase such tickets in accessible seating areas.

### **Ticket Transfer**

Individuals with disabilities who hold tickets for accessible seating must be permitted to transfer tickets to third parties under the same terms and conditions, and to the same extent, as other spectators holding the same type of tickets, whether they are for a single event or a series of events.

### **Secondary Ticket Market**

Policies, practices, or procedures must be modified to ensure that individuals with disabilities may use a ticket acquired in the secondary ticket market under the same terms and conditions as other individuals who acquired their tickets through the secondary ticket market for the same event or series of events.

If an individual with a disability acquires a ticket or series of tickets to an inaccessible seat through the secondary market, the individual should be allowed to exchange his ticket for one to an accessible seat in a comparable location, if accessible seating is vacant at the time the individual presents the ticket to the public accommodation.

## **Prevention of Fraud**

Individuals with disabilities may not be required to provide any proof of disability, such as a doctor's note. For the sale of single-event tickets, sellers can ask whether the individual purchasing the tickets for accessible seating has either a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating, or is purchasing the tickets for such a person. For series-of-events tickets, sellers can ask the individual purchasing the tickets for accessible seating to attest in writing that the accessible seating is for a person who has a mobility disability or a disability that requires the use of the accessible features that are provided in the accessible seating. An investigation may take place regarding the potential misuse of accessible seating where there is good cause to believe that such seating has been purchased fraudulently.

## **New Requirements for Assembly Areas from the 2010 Standards**

- In general, new construction or alterations on or after March 15, 2012 must comply with the 2010 ADA Standards. [Sections 221, 802 as well as §35.151(g) and §36.406(f)]
- Vague requirements for lines of sight and dispersion have been replaced with specific standards.
- Reduced scoping for large venues with more than 500 seats.
- New requirements for location of accessible seating in stadium-style movie theaters.
- Lawn seating will be required to be on an accessible route.

**Call your Regional ADA Center at 1.800.949.4232 for more information on Ticketing and to get other Fact Sheets in our nine part series!**



## Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

Call us toll-free:

**1-800-949-4232**

Find your regional center at:

[www.adata.org](http://www.adata.org)

# #7 - Wheelchairs and Other Power-Driven Mobility Devices

The Department of Justice has issued revised ADA Title II (state and local government programs) and Title III (private businesses, a.k.a. places of public accommodation) regulations which took effect March 15, 2011. These regulations provide a definition of a wheelchair and other power-driven mobility devices and add additional provisions identifying where they can be used. (§35.104, §35.137, §36.104, §36.311)

### **Wheelchair**

A wheelchair is a manually operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor, or of both indoor and outdoor, locomotion. Individuals with mobility disabilities must be permitted to use wheelchairs and manually powered mobility aids, i.e., walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian traffic.

### **Other Power-Driven Mobility Device (OPDMD):**

An OPDMD is any mobility device powered by batteries, fuel, or other engines that is used by individuals with mobility disabilities for the purpose of locomotion, whether or not it was designed primarily for use by individuals with mobility disabilities. OPDMDs may include golf cars, electronic personal assistance mobility devices, such as the Segway<sup>®</sup> Personal Transporter (PT), or any mobility device that is not a wheelchair, which is designed to operate in areas without defined pedestrian routes.



Covered entities must make reasonable modifications in their policies, practices, or procedures to permit individuals with mobility disabilities to use OPDMDs unless the entity can demonstrate that the class of OPDMDs cannot be operated in accordance with legitimate safety requirements adopted by the entity.



Covered entities must assess the following factors to determine whether a particular OPDMD can be allowed in a specific facility as a reasonable modification:

- The type, size, weight, dimensions, and speed of the device.
- The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year).
- The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user).
- Whether legitimate safety requirements can be established to permit the safe operation of the OPDMD in the specific facility.
- Whether the use of the OPDMD creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

### **Inquiries**

Covered entities shall not ask an individual using a wheelchair or OPDMD questions about the nature and extent of the individual's disability. Covered entities may ask a person using an OPDMD to provide a credible assurance that the mobility device is required because of the person's mobility disability. If the covered entity permits the use of a class of OPDMDs by individuals with mobility disabilities, they shall accept the following as credible assurance:

- Presentation of a valid, State-issued, disability parking placard or card, or other State-issued proof of disability. A valid disability placard or card is one that is presented by the individual to whom it was issued and is otherwise in compliance with the State of Issuance's requirements.
- A verbal statement, not contradicted by observable fact, that the OPDMD is being used for a mobility disability.

**Call your Regional ADA Center at 1.800.949.4232 for more information on Wheelchairs and OPDMDs and to get other Fact Sheets in our nine part series!**



## Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

Call us toll-free:

1-800-949-4232

Find your regional center at:

[www.adata.org](http://www.adata.org)

# #8 – Detention & Correctional Facilities



The Department of Justice (DOJ) has issued revised Americans with Disabilities Act (ADA) Title II regulations which took effect March 15, 2011. These regulations affect the obligations of Title II public entities (state and local government entities) that are responsible for the operation or management of adult and juvenile justice jails, detention and correctional facilities, and community correctional facilities, either directly or through contractual, licensing, or other arrangements with public or private entities, in whole or part, including private correctional facilities. (§35.151(k) and §35.152)

### **Overarching Obligation**

The revised regulations state that public entities shall ensure that qualified inmates or detainees with disabilities shall not, because a facility is inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of, the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

### **Integrated Setting**

Inmates or detainees with disabilities must be housed in the most integrated setting appropriate to the needs of the individuals. This means there needs to be accessible housing in all security classifications and/or program levels of a facility. Also, qualified inmates or detainees with disabilities should have access to all programs to which they would otherwise be entitled, including educational, vocational, work release, employment, and religious programs, whether mandatory or voluntary. Unless it is appropriate to make an exception, public entities shall not place inmates with disabilities:

- In inappropriate security classifications because no accessible cells or beds are available;
- In medical areas unless they are actually receiving medical care or treatment;
- In facilities that do not offer the same programs as facilities where they otherwise would be housed; and
- In distant facilities where they would otherwise not be housed that would deprive them of visitation with family members.

### **Minimum Requirements from the 2010 Standards (§35.151(k))**

New construction of jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards, effective March 12, 2012, except that public entities shall provide mobility features for at least 3%, but no fewer than one, of the total number of cells in such a facility. Cells with mobility features shall be provided in each classification level.

As required by the 2010 Standards, at least 2%, but no fewer than one, of the total number of general holding cells and general housing cells equipped with audible emergency alarm systems and permanently installed telephones within the cell shall provide communication features. Within this requirement, where audible emergency alarm systems are provided to service the occupants of cells, visible alarms shall be provided; however, visible alarms shall not be required where inmates or detainees are not allowed independent means of egress. Telephones, where provided within cells, shall have volume controls. (Sections 232 and 807, 2010 Standards)

Alterations to jails, prisons, and other detention and correctional facilities shall comply with the 2010 Standards, effective March 12, 2012, except that public entities shall provide accessible mobility features for a minimum of 3%, but no fewer than one, of the total number of cells being altered until at least 3%, but no fewer than one, of the total number of cells in the facility provide mobility features. Altered cells with mobility features shall be provided in each classification level.

However, when alterations are made to specific cells, facilities may satisfy their obligation to provide the required number of cells with mobility features by providing the required mobility features in substitute cells (cells other than those where alterations are originally planned), provided that the substitute cell is located within the same prison site, is integrated with other cells to the maximum extent feasible, and has equal physical access as the altered cells to areas used by inmates or detainees for visitation, dining, recreation, educational programs, medical services, work programs, religious services, and other offered programs. If it is technically infeasible to locate a substitute cell within the same prison site, the substitute cell must be provided at another prison within the same system.

With respect to medical and long-term care facilities in jails, prisons, and other detention and correctional facilities, public entities shall apply the 2010 ADA Standards technical and scoping requirements for those facilities whether those facilities are licensed or not.

**Call your Regional ADA Center at 1.800.949.4232 for more information on Detention and Correctional Facilities and to get other Fact Sheets in our nine part series!**



## Americans with Disabilities Act Title II & Title III Revised Regulations Fact Sheet Series

Call us toll-free:

1-800-949-4232

Find your regional center at:

[www.adata.org](http://www.adata.org)

# #9 - Overview of the 2010 Standards for Accessible Design



The Americans with Disabilities Act (ADA) requires the U.S. Department of Justice (DOJ) to publish ADA design standards that are consistent with the guidelines published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). The DOJ has adopted revised ADA design standards that include the relevant chapters of the Access Board's 2004 ADA/ABA Accessibility Guidelines as modified by specific provisions of the DOJ's revised rules implementing Title II and Title III of the ADA. To minimize compliance burdens on

entities subject to more than one legal standard, these design standards have been harmonized with the Federal standards implementing the Architectural Barriers Act and with the private sector model codes adopted by most states. The changes to the design guidelines were adopted by the Access Board as a series of separate rules that were combined in the 2004 ADA/ABA guidelines. These rules addressed a variety of facilities and the revision of the Access Board's 1991 guidelines. These changes have been adopted, with some modifications, as the 2010 Standards for Accessible Design.

On March 15, 2012, compliance with the 2010 Standards will be required for new construction and alterations. In the period between September 15, 2010 and March 15, 2012, covered entities may choose between the 1991 Standards or the 2010 Standards. Note: Title II entities can also choose the Uniform Federal Accessibility Standards (UFAS). Under the "safe harbor" provision, facilities that were built or altered in compliance with the 1991 Standards or the UFAS do not have to be brought into compliance with 2010 Standards unless the facility undergoes an alteration on or after March 15, 2012. Elements for which there were no 1991 standards are not eligible for safe harbor.

### Summary of Areas and Facilities Impacted by the Changes:

#### A. Recreation Facilities:

- Amusement rides (Sections 234, 1002)
- Recreational boating facilities (Sections 235, 1003)
- Exercise machines and equipment (Sections 206, 236, 1004)
- Fishing piers and platforms (Sections 237, 1005)

- Golf facilities (Sections 238, 1006)
  - Miniature golf (Sections 239, 1007)
  - Play areas (Sections 240, 1008)
  - Saunas and steam rooms (Sections 241, 612)
  - Swimming pools, wading pools, and spas (Sections 242, 1009)
- B. Public Facilities:
- Judicial facilities (Sections 231, 807, 808)
  - Detention and correctional facilities (Sections 232, 807)
  - Residential dwelling units (Sections 233, 809)
- C. Changes to the 1991 Standards: the 2010 ADA Standards for Accessible Design contain more than incremental changes. These changes are addressed in detail in Appendix B to the Title III regulations and in the DOJ's regulatory impact analysis. A few examples of areas impacted by these changes are:
- Children's standards (optional)
  - Slope of clear floor space and cross slopes maximum 1:48 (Sections 305, 403)
  - Standard knee and toe clearance used for all fixtures (Section 306)
  - Reach range requirements (Section 308)
  - Door surface (Section 404)
  - Maneuvering clearance required at automatic doors (Section 404)
  - Curb ramp level landings (Section 406)
  - Limited Use/Limited Application elevators instead of platform lifts (Section 408)
  - Van parking spaces (Section 502)
  - Passenger loading zones at the same level as the vehicle (Section 503)
  - Stair handrail extension no longer required (Sections 504, 505)
  - Drinking fountain knee clearance and spout height for those standing (Section 602)
  - Clustered single user toilet rooms (Sections 213, 603)
  - Single user toilet door swing (Section 603)
  - Water closet clearances and center lines (Section 604)
  - Ambulatory accessible toilet compartments (Section 604)
  - Urinals, reduced scoping (Sections 213, 605)
  - Lavatories and sinks (Section 606)
  - Bathtub seat height and width (Section 607)
  - Shower compartment thresholds and controls (Section 608)
  - Washing machines and clothes dryers (New – Section 611)
  - Detectable warnings (Section 705)
  - Automatic Teller Machines and fare machines (Section 707)
  - Assembly areas (Sections 221, 802)
  - Kitchens and kitchenettes (New – Section 804)
  - Common use circulation paths in employee work areas (Sections 203.9, 206.2.8)
  - Location of both accessible routes and accessible routes to stages (Section 206)
  - Transient lodging guest rooms (Sections 224, 806)
  - Benches, size and side transfer (Section 903)

**Call your Regional ADA Center at 1.800.949.4232 for more information on the 2010 Standards for Accessible Design and to get other Fact Sheets in our nine part series!**

# Tax Incentives for Improving Accessibility



*Fact Sheets in this series:*

- Fact Sheet 1. Who Has Obligations Under Title III?
- Fact Sheet 2. Providing Effective Communication
- Fact Sheet 3. Communicating with People with Disabilities
- Fact Sheet 4. Tax Incentives for Improving Accessibility**
- Fact Sheet 5. Alternatives to Barrier Removal
- Fact Sheet 6. Resources for More Information

*To obtain additional copies of any **fact sheet** in this series, contact your Disability and Business Technical Assistance Center. To be automatically connected to your regional center, call 1-800-949-4232. This **fact sheet** may be copied as many times as desired by the Disability and Business Technical Assistance Centers for distribution to small businesses but may not be reproduced in whole or in part and sold by any other entity without written permission from the authors.*

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# Tax Incentives for Improving Accessibility

Two tax incentives are available to businesses to help cover the cost of making access improvements. The first is a **tax credit** that can be used for architectural adaptations, equipment acquisitions, and services such as sign language interpreters. The second is a **tax deduction** that can be used for architectural or transportation adaptations.

(NOTE: A *tax credit* is subtracted from your tax liability after you calculate your taxes, while a *tax deduction* is subtracted from your total income before taxes, to establish your taxable income.)

## Tax Credit

The **tax credit**, established under Section 44 of the Internal Revenue Code, was created in 1990 specifically to help small businesses cover ADA-related “eligible access expenditures.” A business that for the previous tax year had either revenues of \$1,000,000 or less or 30 or fewer full-time workers may take advantage of this credit.

The credit can be used to cover a variety of expenditures, including:

- provision of readers for customers or employees with visual disabilities
- provision of sign language interpreters
- purchase of adaptive equipment
- production of accessible formats of printed materials (i.e., braille, large print, audio tape, computer diskette)
- removal of architectural barriers in facilities or vehicles (alterations must comply with applicable accessibility standards)
- fees for consulting services (under certain circumstances)

Note that the credit cannot be used for the costs of new construction. It can be used only for adaptations to existing facilities that are required to comply with the ADA.

The amount of the tax credit is equal to 50% of the eligible access expenditures in a year, up to a maximum expenditure of \$10,250. There is no credit for the first \$250 of expenditures. The maximum tax credit, therefore, is \$5,000.

## Tax Deduction

The **tax deduction**, established under Section 190 of the Internal Revenue Code, is now a maximum of \$15,000 per year a reduction from the \$35,000 that was available through December 31, 1990.

A business (including active ownership of an apartment building) of any size may use this deduction for the removal of architectural or transportation barriers. The renovations under Section 190 must comply with applicable accessibility standards.

Small businesses can use these incentives in combination if the expenditures incurred qualify under both Section 44 and Section 190. For example, a small business that spends \$20,000 for access adaptations may take a **tax credit** of \$5,000 (based on \$10,250 of expenditures), and a **deduction** of \$15,000. The deduction is equal to the difference between the total expenditures and the amount of the credit claimed.

**EXAMPLE:** A small business’ use of both tax credit and tax deduction:

\$20,000	Cost of access improvements (rest room, ramp, 3 doors widened)
<u>-\$5,000</u>	Maximum credit
\$15,000	Remaining for deduction

**FACTSHEET 2**  
**Providing Effective Communication**

## **Annual Incentives**

The tax credit and deduction can be used **annually**. You may not carry over expenses from one year to the next and claim a credit or deduction for the portion that exceeded the expenditure limit the previous year. However, if the amount of credit you are entitled to exceeds the amount of taxes you owe, *you may carry forward the unused portion of the credit to the following year.*

For further details and information, review these incentives with an accountant or contact your local IRS office or the national address below.

## **FOR MORE INFORMATION...**

Request IRS Publications 535 and 334 for further information on tax incentives, or Form 8826 to claim your tax credit.

### **Internal Revenue Service**

#### *Publications & Forms*

(800) 829-3637 voice

(800) 829-4059 TTY

#### *Questions*

(800) 829-1040 voice

(800) 829-4059 TTY

#### *Legal Questions*

Office of the Chief Counsel

P&SI:6

1111 Constitution Avenue, NW, Room 5112

Washington, D.C. 20224

(202) 622-3110 voice



Massachusetts Office on Disability

# DISABILITY RIGHTS LAWS IN MASSACHUSETTS



*Sidewalk Sam*

Deval L. Patrick, Governor  
Timothy P. Murray, Lt Governor  
Myra Berloff, Director



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# INTRODUCTION

The Massachusetts Office on Disability (MOD) was created in 1981 under Chapter 6, Section 185 of the Massachusetts General Laws. One of the goals of the Office is to increase awareness of the rights of persons with disabilities. It is our hope that this Disability Laws booklet will be a helpful tool for people with disabilities as well as the larger community.

Other goals of the Office include:

- The elimination of discrimination against persons with disabilities;
- The creation of a barrier free environment;
- The improvement of the state's services delivery system for persons with disabilities, and
- The creation of fully integrated and accessible education, housing, transportation and employment in the public and private sectors.

To achieve its goals, MOD engages in activities such as the following:

- Monitors the performance of state and local governments in order to improve the treatment of persons with disabilities;
- Operates an information and referral system, the Client Services Program, and advocates for the rights of individuals attempting to obtain services to which they are entitled and for those who are attempting to enforce their civil rights;
- Operates a Community Services Program which focuses on improving access to public and private facilities in the Commonwealth, and which works with many individuals, community organizations, and municipalities to provide education and technical assistance to assure disability rights are enforced.

For further information about the Office on Disability, the details of the laws discussed in this pamphlet, or to obtain

assistance in asserting your rights, visit the MOD web site at <http://www.mass.gov/mod>, or call [617] 727-7440 or toll free at [800] 322-2020.

**Notes:**

- The materials contained in this pamphlet **ARE NOT** under a © copyright. The pamphlet may be quoted or photocopied without consent. However, attribution is requested.
- This book is not intended to be comprehensive. It offers only an overview of the most frequently referenced laws related to disability.
- Laws and regulations are changed frequently. The summaries in the pamphlet reflect the laws and regulations **in effect on July 1, 2011**. Please refer to the laws and regulations directly for the actual, current text.

# ***ABUSE, NEGLECT & TREATMENT CONDITIONS***

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## **Massachusetts Disabled Persons Protection Act**

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### **[G.L. c. 19c](#)**

This statute protects disabled persons, including persons with mental retardation, physical disabilities, and head injuries, who are between the ages of 18 and 59, and who, as a result of a disability, are dependent on others to meet their daily living needs. Anyone suspecting abuse can contact the Disabled Persons Protection Commission (DPPC). “Mandated reporters” (physicians, dentists, nurses, teachers, day care workers, etc.) must report cases of suspected abuse. After the suspected abuse is reported, the DPPC investigates allegations of abuse by caretakers only. In some cases, those investigations are referred to an agency within the Executive Office of Health and Human Services for intervention and further investigation. After the investigation (which should be completed within 24 hours if the call is an emergency and 10 days if it is not) protective services are delivered if appropriate

### **For more information or to report a case of abuse:**

Disabled Persons Protection Commission

300 Granite Street, Suite 404

Braintree, MA 02184

617-727-6465

888-822-0350 TTY

**Website:** <http://www.mass.gov/dppc>

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## Massachusetts Mental Illness or Mental Retardation, Rights of Persons Receiving Treatment Act

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### [G.L. c. 123, § 23](#)

Individuals receiving treatment for mental illness or mental retardation are entitled to certain rights and privileges, such as sending and receiving mail, receiving visitors, using telephones and living in a humane psychological and physical environment.

### [G.L. c. 123, §12](#)

Central to these rights is the limitation of the number of days people may be confined to a hospital without a court order.

**Enforcement:** Notice of the rights created under this law is to be prominently posted in all programs and facilities. Those notices include information about where and how to appeal violations of these rights.

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## Civil Rights of Institutionalized Persons Act

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### [42 U.S.C. §1997, et seq.](#)

The Civil Rights of Institutionalized Persons Act (CRIPA) authorizes the U.S. Attorney General to investigate conditions of confinement at state and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions for people with psychiatric or developmental disabilities. Its purpose is to allow the Attorney General to uncover and correct widespread deficiencies that seriously jeopardize the health and safety of residents of institutions.

The Attorney General does not have authority under CRIPA to investigate isolated incidents or to represent individual institutionalized persons. The Attorney General may initiate civil law suits where there is reasonable cause to believe that conditions are "egregious or flagrant," that they are subjecting residents to "grievous harm," and that they are part of a "pattern or practice" of resistance to residents' full enjoyment of constitutional or Federal rights, including Title II of the ADA and section 504 of the Rehabilitation Act.

**Enforcement:**

U.S. Department of Justice, Civil Rights Division  
950 Pennsylvania Avenue, N.W. , Room 5028  
Special Litigation Section - PHB  
Washington, D.C. 20530  
(877) 218-5228 (Voice/TTY) or (202) 514-6255  
**Website:** <http://www.usdoj.gov/crt/split>



# ARCHITECTURAL ACCESS

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## Massachusetts Architectural Access Board

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### [G.L. c. 22, § 13A](#)

The Architectural Access Board (AAB) is a regulatory agency whose mandate is to develop and enforce regulations designed to make public buildings accessible to, functional for and safe for use by persons with disabilities. See [521 C.M.R.](#) In addition to writing regulations, the Board decides on variance requests, provides training on its regulations, issues advisory opinions and makes decisions on complaints. Local building inspectors are responsible for enforcing the regulations which are a specialized section of the Massachusetts Building Code. See [780 C.M.R.](#)

The construction, reconstruction, remodeling, alteration, or change of use of a building or facility that is open to the public triggers the authority of the AAB. New construction must fully comply.

For renovation, remodeling, or alteration:

- The work being done must comply with the regulations.
- If the work done in any 36-month period is greater than \$100,000, the “work being performed” is required to comply. In addition, an accessible entrance and an accessible toilet room, telephone and drinking fountain (if toilets, telephones and drinking fountains are provided) shall also be provided.

- If the work done in a 36-month period is more than 30% of the “full and fair cash value” of the building,<sup>1</sup> the entire building must come into compliance.

**Enforcement:** Anyone can file a complaint with the Board. The Board has the authority to issue variances and/or impose fines of up to \$1000 per violation per day of noncompliance with its order.

Call the AAB or go online for the appropriate complaint or variance forms.

Architectural Access Board  
One Ashburton Place, Room 1310, Boston, MA 02108  
(617) 727-0660  
**Website:** <http://www.mass.gov/aab>

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<sup>1</sup> This is usually the assessed value established by the city or town. See [521 C.M.R. § 5.38](#) for details about establishing value where no assessment exists.

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## Federal Architectural Barriers Act

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### [42 U.S.C. § 4151, et seq.](#)

The Architectural Barriers Act (ABA) requires that buildings and facilities that are designed, constructed or altered with federal funds, or leased by a federal agency, comply with federal standards for physical accessibility. [41 C.F.R. §101-19.6](#). ABA requirements are limited to architectural standards in new and altered buildings and in newly leased facilities. They do not address the activities conducted in those facilities. U.S. Postal Services facilities are also covered by the ABA.

#### **Enforcement:**

The United States Architectural and Transportation Barriers Compliance Board

1331 F Street, NW, Suite 1000

Washington, D.C. 20004-1111

(800) 872-2253 (Voice) / (800) 993-2822 (TTY)

**Website:** <http://www.access-board.gov> <http://www.access-board.gov/adaag/about/index.htm>

The United States Architectural and Transportation Barriers Compliance Board was created pursuant to Section 502 of the Federal Rehabilitation Act of 1973. See the *Federal Laws* section herein for more information.

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## **Americans with Disabilities Act Accessibility Guidelines (ADAAG)**

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The [Federal Access Board](#) created the ADAAG in 1991, under authority granted by the Americans with Disabilities Act. The ADAAG, enforced by the United States Department of Justice, establishes uniform federal building standards for new construction and renovations. Pursuant to Section 35.151(c), the 2010 Standards became fully effective on March 15, 2012.

Both the 1991 ADAAG and 2010 Standards are online at:  
<http://www.access-board.gov/ada>

### **Enforcement:**

U.S. Department of Justice, Civil Rights Division  
950 Pennsylvania Avenue, N.W. , Room 5028  
Special Litigation Section - PHB  
Washington, D.C. 20530  
(877) 218-5228 (Voice/TTY) or (202) 514-6255

**Website:** <http://www.usdoj.gov/crt/split>

## ***AUTOMOBILES & TRANSPORTATION***

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### **Americans with Disabilities Act: Title IIB Transportation**

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#### **[42 U.S.C. § 12141, et seq.](#)**

Public Transportation services, such as buses, subways and rail transit systems, may not discriminate against people with disabilities in the ways they provide their services. New public transit buses and rail vehicles ordered after August 26, 1990 must be wheelchair accessible. Transit authorities that operate fixed route bus or rail systems must provide comparable paratransit or other special transportation services to individuals with disabilities who cannot use fixed route bus services, unless an undue burden would result. As of July 26, 1995, existing rail systems were required to have one accessible car per train. Key stations in rapid, light and commuter rail systems should have been made accessible by July 26, 1992, with extensions up to 20 years for commuter rail and 30 years for rapid and light rail for stations needing extraordinarily expensive structural changes. As of July 26, 2010, all existing Amtrak stations must be accessible. Private businesses that provide public transportation services have the same requirements as public transit agencies, except for automobiles. As of July 26, 1996 or 1997, depending on the size of the business, new over-the-road buses (Greyhound-type) must be accessible. Private businesses that provide transportation (such as hotels) must ensure disabled persons a level of service equivalent to that provided to the general public.

Under Title III, [42 U.S.C §12183, et seq.](#), the ADA also imposes restrictions on private transportation providers that offer their services to the public. Specifically, they may not impose or apply eligibility criteria that screen out or tend to

screen out an individual with a disability. They must make reasonable modifications to their policies, practices, and procedures, provide auxiliary aids and services and remove physical barriers to participation. In some circumstances, private transportation providers must also comply with requirement for the purchase or lease of new accessible vehicles.

**Enforcement:**

U.S. Department of Transportation  
Federal Transit Administration  
Kendall Square, 55 Broadway, Suite 920  
Cambridge, MA 02142-1093  
Phone: (617) 494-2055  
Fax: (617) 494-2865

**Website:** [http://www.fta.dot.gov/about\\_FTA.html](http://www.fta.dot.gov/about_FTA.html)

Individuals may also file private lawsuits

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## **Federal Air Carrier Access Act**

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### **49 U.S.C. § 41705**

Domestic air carriers may not refuse persons with disabilities transportation because of their disability. Some of the provisions include the following: Air carriers may not:

- limit the number of persons with disabilities on a flight,
- require special services (such as advance boarding),
- require advance notice except for certain accommodations,
- require travel with an attendant except in limited circumstances,
- charge for accommodations required by the law.

In addition, air carriers must:

- provide boarding assistance and assistance within the cabin, and
- give priority to storage of wheelchairs.

New aircraft over certain sizes must have movable armrests, accessible lavatories and space for storing wheelchairs (the larger the aircraft the more access is required).

**Enforcement:** Air carriers must establish their own compliance procedure, including “complaints resolution officials.” Complaints may also be filed with:  
Aviation Consumer Protection Div., Office of the General Counsel, U.S. Department of Transportation  
Suite W96-432 (West Building)  
1200 New Jersey Ave, S.E., Washington D.C. 20590  
(202) 366-2220 (Voice / TTY)

**Website:**

[http://www.faa.gov/passengers/prepare\\_fly/#disabilities](http://www.faa.gov/passengers/prepare_fly/#disabilities)

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## **Massachusetts Automobile Excise Tax Exemption**

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### **G.L. c. 60A, § I**

Exempts qualified disabled persons from excise tax requirements. The motor vehicle must be owned and registered by a person who has suffered loss or permanent loss of use of both legs or both arms or loss of vision of both eyes to a certain degree. The exemption applies to one motor vehicle per person, owned and registered for their personal, noncommercial use. Applications for exemptions are available from the local town assessor’s office.

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## **Massachusetts Automobile Sales Tax Exemption**

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### **G.L. c. 64H, § 6(U)**

This law exempts certain people with disabilities from the purchase and use tax of a motor vehicle. To qualify, a disabled

person must be the original registered owner of the motor vehicle and have the loss of two or more limbs or permanent loss of use of at least 80% of two or more limbs. Parents and others, who transport similarly disabled children or adults, who have been found incompetent to legally enter into contracts, may also be entitled to this exemption. See [DOR Directive 03-11](#). The Department of Revenue has clarified that a wheelchair lift used to make a van accessible may also be exempt even if purchased separately from the vehicle. In cases where the lift is purchased after the van, a physician's prescription may be needed to document this exemption. See [DOR Directive 00-7](#).

**Applications:**

Department of Revenue, Customer Service Bureau  
P.O. Box 7010, Boston, MA 02204  
617-887-MDOR (6367), Toll-free in Massachusetts 800-392-6089, 617-887-6140 (TTY)

**Website:** <http://www.mass.gov/dor>

Or

Mass. Registry of Motor Vehicles, Medical Affairs  
P.O. Box 55889, Boston, MA 02205-5889  
(617) 351-9222 (Voice); (877) 768-8833 (TTY)

**Website:** <http://www.mass.gov/rmv>

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## Massachusetts Gas Station Law

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### [G.L. c. 94, § 295CC](#)

Every gas station owner offering motor fuel for sale from both full-service and self-service pumps shall dispense fuel from the self-service pump for any owner-operator of a motor vehicle bearing handicapped person or disabled veteran number plates as described in section two of chapter ninety (see section on Massachusetts Handicapped Plate and Placard Law below for more information). The gas station must display signs in a prominent location stating its



compliance with the provisions of this law. The division of standards shall develop standards for such signs including, but not limited to, size, text, legibility and location.

**Note:** The Americans with Disabilities Act also directs gas stations assist people with disabilities. See [ADA: Assistance at Self-Serve Gas Stations](http://www.ada.gov/gasserve.htm) <http://www.ada.gov/gasserve.htm>.

**Enforcement:**

Executive Office of Consumer Affairs  
Division of Standards  
One Ashburton Place, Room 1115  
Boston, MA 02108  
(617) 727-3480

**Website:** <http://www.mass.gov/standards>

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## Handicapped Parking Laws

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Massachusetts Chapter 40 governs a variety of activities by cities and towns, including parking. The primary sections that deal with Accessible parking are:

### 1. Parking Lots:

**[G.L. c. 40 § 21, ¶ 23](#):** All parking lots and garages open to the public must comply with the parking regulations of the Architectural Access Board ([521 C.M.R.](#)), which are similar to but significantly different from the specifications of this accessible parking law. The law requires public or private parking areas that are used by the public to reserve designated parking spaces for vehicles, which bear an HP plate, placard or a disabled veteran plate. Standards under the Americans with Disabilities Act Accessibility Guidelines specify yet a third set of minimum number of spaces, and were revised effective March, 15, 2012. The minimum numbers for designated spaces are as follows:

<b>Total Spaces</b>	<b>AAB</b>	<b>1991 ADAAG</b>	<b>2010<sup>2</sup>Standards</b>
1 - 15	0	1	1
15 - 25	1	1	1
26 - 40	2	2	2
41 - 50	3	2	2
51 - 75	3	3	3
76 - 100	3	4	4
101 - 150	4	5	5
151 - 200	4	6	6
201 - 300	6	7	7
301 - 400	6	8	8
401 - 500	6	9	9
501 - 1,000	10	2 % of total	2 % of total
1001 and over	n/a	20, plus 1 for each 100 over 1000	20, plus 1 for each 100, or fraction thereof, over 1000
1,001 - 2,000	15		
2,001 - 5,000	20		
> 5,001	30		

The 2010 Standards also modified the number of van accessible spaces necessary in parking areas used by the public. While the 1991 ADAAG mandated that one (1) out of every eight (8) accessible parking spaces be van accessible, the 2010 Standards require that one (1) out of every six (6) accessible spaces be van accessible.

All accessible spaces must be as near as possible to the building entrance or walkway and adjacent to a curb ramp permitting sidewalk access. The spaces must have above grade signs which bear the words “Handicapped Parking:

<sup>2</sup> [28 C.F.R. Pt. 36, 2010 ADA Standards for Accessible Design, §208.2.](#) Section 35.151(c) makes the 2010 Standards fully effective on March 15, 2012. In the interim, see the standards for available choices.

Special Plate Required Unauthorized Vehicles May Be Removed at Owner's Expense”.

Note: In the table above, the most stringent standard is the one that must be followed to determine the number of accessible parking spaces needed. Therefore, in instances where federal law (the ADAAG) mandates a more stringent standard than Massachusetts law (the AAB), the ADAAG guidelines must be followed. With regard to van accessible spaces, any parking area used by the public and striped (or re-striped) after March 15, 2012, must follow the 2010 Standards.

Additionally, be aware that the crosshatched areas between designated spaces are not extra parking spaces. These crosshatched areas, sometimes also referred to as “access aisles”, allow sufficient space for wheelchair lifts and other mobility devices to be used when entering and leaving a vehicle. No one may park in the crosshatch areas.

## 2. **Parking Meter Fees**

**G.L. c. 40 § 22A**: In cities and towns that have parking meters, people who have an HP plate or display an HP placard are exempt from paying parking meter fees. However, this exemption only applies to meters, **not** any other type of pay to park system.

## 3. **Over Time Parking Limits**

**G.L. c. 40 §22**: People who have an HP plate or display an HP placard are exempt from the time limits on a parking space, such as 15 minutes or 1 hour only, etc. However, this does not exempt plate or placard users from fines or towing when “No Parking” restrictions are in effect, such as snow emergencies, and overnight parking bans.

## 4. **Reserved Spaces and Towing**

**G.L. c. 40 §22D**: A municipality may further regulate

parking by restricting certain on-street areas for vehicles bearing HP plates or placards. People who park blocking curb cuts or handicapped parking spaces can be towed.

**Enforcement:** Fines for parking in a handicapped parking space without a plate or placard range from one hundred dollars (\$100) to three hundred dollars (\$300). The municipality determines the exact amount. Also, violators may be towed. Enforcement is by the local police or traffic department.

**Website:** <http://www.mass.gov/cc> for individual city and town information.

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## Massachusetts Handicapped Plate and Placard Law

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### G.L. c. 90, § 2

HP plates and placards are issued through the Registry of Motor Vehicles to eligible people with disabilities. As discussed under the parking laws above, they entitle holders:

- to park in designated HP spaces,
- to park longer than usual time limits,
- to park at parking meters free of charge, and
- to make use of the gas station law.

**The rights, responsibilities and privileges of plate holders and placard holders are the same.** The Registry's Bureau of Medical Affairs determines eligibility according to physician's documentation. Only people who meet the disability definition and who are the registered owner of the vehicle and who are licensed drivers may receive plates. Anyone who meets the disability eligibility requirements can get a placard. Individuals who meet the disability eligibility requirements for both plates and placards can choose either a plate or a placard. The only practical difference between them is that a plate is permanently attached to one car, while a placard is a card that can easily be moved from one car to another. The Massachusetts Registry of Motor Vehicles also issues temporary placards in some circumstances.

The law allows eligible individuals to obtain both a placard and a plate. An individual who uses an HP placard without proper authorization is the individual who will be penalized, as opposed to the individual with a disability to whom the placard was issued.

A placard may be utilized for parking in association with the transportation of the authorized user of the placard. A driver

picking up or dropping off the authorized placard user, however, may not idle in an accessible parking space for more than ten minutes. The law allows workers with disabilities to use their placard when driving a commercial vehicle, but preserves the time limitations for the utilization of commercial spaces.

**Note:** Commercial vehicles do not include “livery” vehicles (i.e. limousines). Therefore, livery drivers and passengers with disabilities are prohibited from using an HP plate/placard on a livery vehicle.

The fines for unauthorized utilization of an HP placard are five hundred dollars (\$500) for the first offense and one thousand dollars (\$1,000) for subsequent offenses. License suspension for violation of this law run from 30 Days for a first offense to one year for a third or subsequent offense. The fines and penalties in this section are in addition to those specified in Section 37E of Chapter 266 for the fraudulent use of another's identity. If a plate or placard user voluntarily allows someone else to use his or her placard or plate, it can result in revocation of the placard or plate.

Also, [Chapter 90 Section 24B, ¶1](#) provides that:

Whoever falsely makes, steals, alters, forges or counterfeits or procures or assists another to falsely make, steal, alter, forge or counterfeit ... a special parking identification disability placard, ... or whoever has in his possession, or utters, publishes as true or in any way makes use of a falsely made, stolen, altered, forged or counterfeited ... special parking identification disability placard ... shall be punished by a fine of not more than five hundred dollars or by imprisonment in the state prison for not more than five years or in jail or house of correction for not more than two years.

**Applications** for plates and placards are available at the [Registry of Motor Vehicles Offices](#) or by contacting:  
Massachusetts Registry of Motor Vehicles, Medical Affairs,  
P.O. Box 55889, Boston, MA 02205-5889  
(617) 351-9222 (Voice) / (877) 768-8833 (TTY)

**Hand Deliveries to:**

Massachusetts Registry of Motor Vehicles  
25 Newport Avenue Extension, Quincy, MA 02171

**Website:** <http://www.mass.gov/rmv/medical>

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## **Massachusetts White Cane Law**

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### **[GL c. 90 § 14A](#)**

Whenever a blind pedestrian, guided by a guide dog or carrying a raised or extended cane that is white or white tipped with red, attempts to cross a street, drivers must stop for the dog or cane user. A person who owns an animal shall restrain and control such animal on a leash when in proximity to a guide dog that is on a public or private way. Violations of this law are punishable by a criminal fine of not less than one hundred and no more than five hundred dollars.

**Enforcement:** State and local police enforce the White Cane Law.

**Website for Municipalities:** <http://www.mass.gov/cc>

# DISABILITY COMMISSIONS

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## Massachusetts Disability Commissions

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### [G.L. c. 40, § 8J](#)

A city or town, which accepts the provisions of this Section, is authorized to establish a Disability Commission. Commissions work with the Office on Disability to carry out programs and activities designed to integrate people with disabilities into the community. The specific activities of a Commission depend on the needs of the disabled community in the particular city or town.

Commissions consist of five to nine members, and are appointed by the mayor or city manager in cities or by the selectmen or town manager in towns. The majority of members must be disabled, and one must be an immediate family member of a disabled person. One member of the Commission must be an elected or appointed official of the city or town. Members are initially appointed in staggered one, two and three year terms.

A Commission must have at least six meetings per year, keep records of its meetings and actions, and file an annual report. Commissions generally are authorized to receive gifts and other funds.

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## Administration of Handicapped Parking Program

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### [G.L. c. 40, § 22G](#)

For the benefit of persons with disabilities, cities and towns which have chosen to implement a Handicapped Parking Program may empower their Disability Commission to receive



and administer fines from violations of the Handicapped Parking Law.

Funds collected pursuant to this law must be kept in a separate account by the municipality's treasurer and shall be used solely for the benefit of persons with disabilities. Expenditures of money collected from the Handicapped Parking Program, including accrued interest, if any, should be approved in accordance with the accepted procedures of the municipality for the disbursement of funds.

For more information, contact the Massachusetts Office on Disability.

**Website:** <http://mass.gov/mod/MunicipalCommissionList.html>

# EDUCATION

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## Massachusetts Fair Educational Practices Law

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### G.L. c. 151C

Very limited protections are available in the area of education. Specifically, for “educational institutions,” it is illegal to exclude from admission any student because the student is blind or deaf or requires the use of a guide dog. Educational institutions are defined as:

any institution for instruction or training, including but not limited to secretarial schools, business schools, academies, colleges, universities, primary and secondary schools, which accept applications for admission from the public generally and which is not in its nature distinctly private ...

### GL c. 151C §1(d)

For “vocational schools,” disability is not mentioned as a protected classification. Vocational schools are defined as:

... any educational institution the primary purpose of which is to offer technical, agricultural, business or trade courses or courses of study leading to employment in recognized trades or occupations.

### G.L. c. 151C §1(d)

**Enforcement:** Complaints must be filed within six months of the alleged discrimination with:

Massachusetts Commission Against Discrimination:  
1 Ashburton Pl. #601, Boston, MA 02108  
(617) 994-6000

**Website:** <http://www.mass.gov/mcad>

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## Massachusetts Early Childhood Intervention Law

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### [G.L. c. 111G](#)

Under this law, the Department of Public Health (DPH) is responsible for the implementation and administration of early intervention services. Early intervention services are provided to children and the families of children who are between birth and three years of age and who have identified disabling conditions or who are at risk for developmental delays due to biological or environmental factors. Services focus on the family and include speech, occupational and physical therapy, social work, psychological, and nursing care. DPH must provide transportation whenever transportation to early intervention services is required.

Under this law, DPH is the lead agency for the coordination of all governmental funding for the provision of early intervention services, both state and federal. DPH is also responsible for administration of an advisory committee, which monitors and assesses the effectiveness of the administration of early intervention services.

#### **Enforcement:**

Department of Public Health  
Bureau of Family Health & Nutrition  
250 Washington Street, 5<sup>th</sup> Floor  
Boston, MA 02108

(617) 624-6060 (Voice) / (617) 624-5992 (TTY)

**Website:** <http://www.mass.gov/dph> and follow the Bureaus and Programs link.

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## Federal Individuals with Disabilities Education Act

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### 20 U.S.C. § 1400, et seq.

This federal law, modeled after the Massachusetts law Chapter 766, requires public schools to make available to all eligible children with disabilities a free and appropriate public education in the least restrictive environment appropriate to their individual needs. Any child who qualifies for special education services will receive services following an evaluation and the development of an Individualized Education Plan (IEP). A team of interested parties, which can include such people as educators, parents, physicians and advocates, develops the IEP.

**Enforcement:** If an agreement cannot be reached concerning a student's IEP or if the agreed upon plan is not being implemented, contact:

U.S. Department of Education  
Office for Special Education and Rehabilitation Services  
400 Maryland Ave., SW  
Washington, DC 20202-7100  
(800) 872-5327 or (202) 245-7100

**Website:** <http://www.ed.gov/about/offices/list/osers>

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## Massachusetts Public Education Law, Ch. 766<sup>3</sup>

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### G.L. c. 71B, §§ 1 - 14

This state law guarantees a "free and appropriate public education in the least restrictive environment" to all school-aged children (ages 3 to 22) regardless of disability. Any child who qualifies for special education services will receive

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<sup>3</sup> Although commonly referred to as "Ch. 766", this law is actually codified as Chapter 71B in the Massachusetts General Laws

services specified in an Individualized Education Plan (IEP). A team of interested parties, including educators, parents, physicians and advocates, develops the plan.

The law also mandates support for children with disabilities who may be bullied, providing that:

Whenever the evaluation of the Individualized Education Program team indicates that the child has a disability that affects social skills development or that the child is vulnerable to bullying, harassment or teasing because of the child's disability, the Individualized Education Program shall address the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing. (See: [Chapter 92 of the Acts of 2010, §7 \(5/3/2010\)](#))

**Enforcement:** If an agreement cannot be reached concerning a student's IEP or if the agreed upon plan is not being implemented, the Department of Education should be contacted.

Mass Department of Elementary and Secondary Education - Program Quality Assurance Unit  
75 Pleasant Street, Malden, MA 02148-4906  
(781) 338-3000 (Voice) / (800) 439-2370 (TTY)  
**Website:** <http://www.doe.mass.edu>

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## Massachusetts Braille Literacy Laws

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### [G.L. c. 6, § 133G](#)

Legally blind adults are afforded the right to learn Braille through the Massachusetts Commission for the Blind (MCB). MCB is required to offer instruction up to the grade two Braille

level.<sup>4</sup> Additionally, the vocational rehabilitation and independent living programs provided by MCB must evaluate the appropriateness of Braille instruction for each participant in the program. The assessment shall include: (i) the person's efficiency in reading and writing print as compared with a person of similar intellectual ability; (ii) the person's stamina in using print before fatigue occurs; and (iii) the person's prognosis for further sight loss.

### **G.L. c. 71B, § 3**

School-age children deemed legally blind<sup>5</sup> are entitled to receive Braille instruction as part of their school's special education services. As part of the broader special education evaluation conducted for children with disabilities, the school district must also assess the appropriateness of Braille instruction for the child. Such assessment shall include (i) the child's efficiency in reading and writing print as compared with children who do not have a disability; (ii) the child's stamina in using print before fatigue occurs; (iii) the child's prognosis for further sight loss; and (iv) the child's present competence in Braille and a detailed explanation as to whether instruction is appropriate. The evaluation must be conducted by a certified teacher of students with visual impairments. If the evaluation determines that Braille instruction is appropriate, it must be offered at a frequency and duration sufficient to meet fully the educational needs of the child.

#### **For further information contact:**

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<sup>4</sup> For purposes of this law, "grade two Braille" shall mean a system of Braille used by the Library of Congress for the production of Braille materials, in which short forms and contractions of words or groups of words are used regularly.

<sup>5</sup> G.L. c. 6, § 136 defines blindness as: Visual acuity with correction of 20/200 or less in the better eye, or the peripheral field of vision to have contracted to the ten degrees radius or less regardless of visual acuity.

Mass. Commission for the Blind, 600 Washington Street,  
Boston, MA 02111, (617) 727-5550 & (800) 392-6450  
(Voice), FAX (617) 626-7685; (800) 392-6556 (TTY)  
**Website:** <http://www.mass.gov/mcb>

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## **Federal Rehabilitation Act: Entities Receiving Federal Funds, §504**

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### **[29 U.S.C. § 794, et seq.](#)**

This law prohibits discrimination against people with disabilities under any program or activity receiving or benefiting from federal financial assistance, which often includes educational entities. For more information, see the Public Places and Parking Section of this book.

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## **Massachusetts Transitional Planning Services, Turning 22 (Commonly Known as Chapter 688)**

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### **[G.L. c. 71 B, §§ 12A - C](#)**

This law provides a transitional planning process for eligible people with disabilities who will lose special education services upon graduation or upon turning 22. An assigned agency develops an Individual Transitional Plan describing the services needed. The Individual Transitional Plan must be agreed upon by the Department of Education, the Executive Office of Health and Human Services, and the person with disabilities or their guardian(s). The Bureau of Transitional Planning within the Department of Education monitors all Chapter 688 cases.

**Enforcement:** Questions and complaints are sent to:  
Bureau of Transitional Planning  
Executive Office of Health & Human Services

One Ashburton Place, Room 1109, Boston, MA 02108  
(617) 573-1600; **Website:**  
<http://www.doe.mass.edu/sped/links/transition.html>



# **EMPLOYMENT**

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## **Americans with Disabilities Act Title I: Employment**

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### **[42 U.S.C. § 12111, et seq.](#)**

The law prohibits employers from firing, refusing to hire or rehire, or otherwise discriminating, against a “qualified” person with a disability on the basis of disability. To be “qualified”, a person must be able to perform the essential functions of the job, either with or without a reasonable accommodation. Examples of work-place reasonable accommodations that may be appropriate include: a flexible work schedule, providing a reader, providing ergonomic or technological equipment, or transfer to an office in an accessible location. Employers are not required to provide an accommodation that would eliminate an essential function of an employee’s job or would pose an “undue hardship” for the employer. An accommodation is provided at the employer’s expense, unless the employer can demonstrate that it would pose an undue financial hardship. The law applies to employers with 15 or more employees.

This law was substantially revised by [the Americans with Disabilities Act Amendments Act \(ADAAA\)](#) of 2008. In enacting the ADAAA, Congress overturned several Supreme Court decisions that Congress believed had interpreted the definition of “disability” too narrowly, resulting in a denial of protection for many individuals with impairments such as cancer, diabetes, and epilepsy. The ADAAA states that the definition of disability should be interpreted in favor of broad coverage of individuals. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. With one exception (“ordinary eyeglasses or contact lenses”), the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating

measures, such as medication or hearing aids, Additionally, an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.<sup>6</sup>

Please be sure to review Massachusetts Employment Discrimination Law, which applies to employers with 6 or more employees. Also please consult Sections 501 and 504 of the Federal Rehabilitation Act and Massachusetts Executive Order 526.

**Enforcement:**

Equal Employment Opportunity Commission  
JFK Building, Rm. 475, Boston, MA 02203-0506  
(800) 669-4000 (Voice) (800) 669-6820 (TTY)  
(617) 565-3196 (Fax)

**Website:** <http://www.eeoc.gov>

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## Employment & the Federal Government

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Direct-Employment by the Federal Government: [29 U.S.C. § 791, et seq.](#)

Section 501 of the Federal Rehabilitation Act governs direct-employment by the federal government. This section of the law prohibits discrimination and requires adoption of affirmative action plans for hiring, placement, and advancement of individuals with disabilities within federal agencies and the U.S. Postal Service.

**Enforcement:** Complaints may be filed with the agency's Equal Employment Opportunity Counselor for informal review and resolution. If the matter is not

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<sup>6</sup> [Information about the Americans with Disabilities Act Amendments Act \(ADAAA\)](#) and its implementing regulations are available on the U.S. Equal Employment Opportunity Commission website: [http://www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](http://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm)

resolved satisfactorily within 21 days, a formal complaint may be filed with the agency head, the Director of Equal Employment Opportunity, an Equal Opportunity Officer, or other designated official.

## **Employment by Federal Contractors:**

### **[29 U.S.C. §793](#)**

Section 503 of the Federal Rehabilitation Act prohibits discrimination based on disability and requires affirmative action in hiring persons with disabilities when the employer has a contract or subcontract with the federal government in excess of \$10,000.

#### **Enforcement:**

The 503 regulations are written and enforced by the Department of Labor.

Complaints go to:

U.S. Department of Labor

Office of Federal Contract Compliance Programs

J.F.K. Building, Room E-235

Boston, MA 02203

(617) 624-6780 (Voice) / (877) 889-5627 (TTY)

**Website:** <http://www.dol.gov/ofccp/>

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## **Massachusetts Employment Discrimination Law**

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### **[G.L. c. 151B, 4, ¶ 16](#)**

This law prohibits any employer in Massachusetts who employs six or more people from firing, refusing to hire or rehire, or otherwise discriminating against a qualified disabled person based on disability. A “qualified” disabled person must be able to perform the essential functions of the job, either with or without a reasonable accommodation. Examples of work-place reasonable accommodations that may be

appropriate include: a flexible work schedule, providing a reader, providing ergonomic or technological equipment, or transfer to an office in an accessible location.

Employers are not required to provide an accommodation that would remove an essential function of an employee's job or would pose an "undue hardship" for the employer. An accommodation is provided at the employer's expense, unless the employer can demonstrate that it would pose an undue financial hardship.

**Enforcement:** The Massachusetts Commission Against Discrimination (MCAD) enforces the statute. A complaint must be filed at an MCAD office within 300 days of the discriminatory act:

1 Ashburton Pl. #601  
Boston, MA 02108  
(617) 994-6000

**Website:** <http://www.mass.gov/mcad>

# ***EQUAL RIGHTS***

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## **Americans with Disabilities Act**

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### **[42 U.S.C. § 12101, et seq.](#)**

The Americans with Disabilities Act (ADA) provides a comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The individual parts of the law are discussed in the corresponding subject matter sections of this booklet. Specifically, in the following areas:

- Architectural Access, see page 8,
- Employment, Title I, see page 32,
- State and local government, Title IIA, see page 50,
- Transportation, Title IIB, see page 12,
- Public accommodations, Title III, see page 51, and
- Telecommunications Title IV, see page 61.

The particular parts of the law became effective on various dates during the early 1990's.

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## **Federal Rehabilitation Act**

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### **[29 U.S.C. § 791, et seq.](#)**

In 1973, Congress passed the Rehabilitation Act in a national effort to end discrimination based on disability by agencies and organizations which receive or benefit from federal financial assistance. The five major components to the Rehabilitation Act of 1973, as amended, are:

- Section 501 – Employment by the Federal Government, see page 33,
- Section 502 – Architectural and Transportation Barriers Compliance, see page 10,
- Section 503 – Employment by Federal Contractors, see page 34,
- Section 504 – Entities Receiving Federal Funds, see page 52, *and*
- Section 508 – Access to Technology, see page 62.

Section 505 contains complaint procedures and remedies available to a complainant under 501 and 504. Among other remedies, it allows a court to award reasonable attorney's fees to a plaintiff who prevails in a discrimination case.

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## Massachusetts Constitutional Amendment

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### Article 114

The Massachusetts Constitution states:

“No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth.”

Article 114 is written broadly. It prohibits discrimination based on disability on any level within the state, not just for recipients of state or federal funds. For example, town meetings must be held in an accessible place with sign language interpreters provided if needed, and a small grocery store or a privately owned dinner theater cannot refuse to do business with an individual based on the person's disability.

**Enforcement:** Enforcement of this Amendment is through the courts. However, we have not seen its full impact because it has not been fully tested in the courts. If you

feel your rights have been violated under Article 114, contact the Massachusetts Office on Disability. If a resolution cannot be reached, MOD will help you file a complaint with the Civil Rights Division of the Office of the Attorney General.

(617) 727-2200 (Voice) / (617) 727-4765 (TTY)

**Website:** <http://www.mass.gov/ago>

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## Massachusetts Equal Rights Law

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### [G.L. c. 93 § 103](#)

Implementing Article 114 to the Massachusetts Constitution, the equal rights law guarantees persons with disabilities (with reasonable accommodation) the same rights as other persons, such as the rights to contract, to inherit, to purchase, to lease, to sell, to participate in law suits and to receive the full benefit of the law.

**Enforcement:** Complaints of violation of the equal rights law are made by filing a law suit in the superior court. Individuals who win their complaints are entitled to reimbursement for their reasonable attorney fees.

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## Massachusetts Executive Order 526

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### [EO 526](#)

Executive Order 526 prohibits discrimination and mandates affirmative action to ensure equal opportunity for people with disabilities by the Executive Department of the Commonwealth. The requirements of this Order apply to State executive agencies' internal policies and practices, such as

employment and the granting of licenses, and apply as well to recipients of state funding, including contract and grant recipients. Each agency under an executive office must create an affirmative action plan, which includes goals and methodology for the placement of people with disabilities in the state's work force. All state employment, services and facilities should be accessible and non-discriminatory based on disability. Some examples of programs and activities that must comply with EO 526 include: employment and training services, health care facilities licensed or chartered by the state, private educational institutions licensed or chartered by the state and those which receive state assistance or participate in state programs, or a person, corporation, or business which is licensed or chartered by the state.

**Enforcement:** Responsibilities for carrying out the requirements of Executive Order 526 are divided among three different agencies: Office of Diversity and Equal Opportunity (ODEO), the Massachusetts Commission Against Discrimination (MCAD) and the Massachusetts Office on Disability (MOD). Employment related complaints under EO 526 should be addressed to:

Office of Diversity and Equal Opportunity  
One Ashburton Place, #213  
Boston, MA 02108  
(617) 727-7441 (Voice), (617) 727-6015 (TTY)

**Website:** <http://www.mass.gov/hrd>

Or

Massachusetts Commission Against Discrimination  
1 Ashburton Pl. #601  
Boston, MA 02108  
(617) 994-6000

**Website:** <http://www.mass.gov/mcad>



All other disability related complaints about Executive Branch agencies should be directed to the ADA/504 Coordinator for the agency. A list of coordinators is available on the MOD website: <http://www.mass.gov/mod>

## **HATE CRIMES**

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Several Massachusetts laws address actions motivated by bigotry and bias including, but not limited to, a threatened, attempted or completed overt act motivated at least in part by disability based prejudice. It includes acts that deprive another person of his constitutional rights by threats, intimidation or coercion, or which seek to interfere with or disrupt a person's exercise of constitutional rights through harassment or intimidation. These are generally referred to as "hate crimes." [G.L. c. 22C, § 32](#).

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### **Violations of Constitutional Rights; Criminal Penalties**

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#### **[G.L. c. 265 § 37](#)**

Massachusetts law makes the following a crime:

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States.

Any person convicted of violating this provision may be fined up to one thousand dollars or imprisoned not more than one year or both. If bodily injury results, the punishment may be increased to a fine of up to ten thousand dollars or by imprisonment for up to ten years, or both.

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## Assault or Battery Re: Intimidation; Weapons

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### G.L. c. 265 § 39

- (a) An assault <sup>[7]</sup> or a battery <sup>[8]</sup> upon a person or damage to the real or personal property of a person with the intent to intimidate such person because of such person's disability is a crime. Punishable by a fine of up to five thousand dollars or by imprisonment in a house of correction for up to two and one-half years, or by both, a court may also order restitution to the victim in any amount up to three times the value of property damage sustained by the owner.
- (b) A battery in violation of this section and which results in serious bodily injury is punishable by a fine of up to ten thousand dollars or by imprisonment in the state prison for up to five years, or by both. If the offender is armed with a firearm, rifle, shotgun, machine gun or assault weapon, punishment may be increased to imprisonment in the state prison for up to ten years or in the house of correction for not more than two and one-half years. There is also a surcharge of one hundred dollars on a fine assessed against a defendant convicted of a violation of this section. The surcharge goes to the Diversity Awareness Education Trust Fund. In the case of convictions for multiple offenses, the surcharge is assessed for each conviction.

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<sup>7</sup> Words or actions that cause a person to fear for his or her safety.

<sup>8</sup> Actual touching

A person convicted of a battery under (b) section must also complete a diversity awareness program designed by the secretary of the Executive Office of Public Safety in consultation with the Massachusetts Commission Against Discrimination and approved by the Chief Justice for Administration and Management of the Trial Court. The program must be completed prior to release from incarceration or prior to completion of the terms of probation, whichever applies.

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## **Civil Actions by Attorney General to Enforce Constitutional and Legal Rights**

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### **G.L c.12, § 11H**

The attorney general may bring a civil law suit to protect the peaceable exercise or enjoyment of the right or rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the Commonwealth. This type of law suit is filed in Superior Court and must be based on evidence that a person or persons attempted to or actually interfered by threats, intimidation or coercion, with the exercise or enjoyment of civil rights by any other person or persons.

#### **Enforcement:**

Department of the Attorney General

Civil Rights Division

100 Cambridge Street

Boston, MA 02114

(617) 727-2200 (Voice) / (617) 727-4765 (TTY)

**Website:** <http://www.ago.state.ma.us>

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## Civil Damages For Civil Rights Violations

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### [G.L. 266, § 127B](#)

Any person incurring injury to his person or damage or loss to his property as a result of conduct in violation of section 39 of chapter 265, above, is entitled to file a civil law suit to ask the court to stop the violations and to obtain special and general damages, reasonable attorney fees and costs against the person whose conduct has violated section 39. Parents and legal guardians of un-emancipated minor children are liable for any judgment rendered against such minor under the provisions of this section.

#### **Enforcement:**

Individuals may file private lawsuits.

# HOUSING

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## Federal Fair Housing Act

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### 42 U.S.C. §§ [3535](#) & [3601-3620](#)

The Act extends civil rights protection to individuals with disabilities by prohibiting discrimination in the sale, rental or conditions of occupancy of a dwelling because of a person's disability. Owner-occupied dwellings of four or fewer units are exempt from this requirement. It is also unlawful to refuse to allow a person with a disability to make reasonable modifications at his/her expense to allow full use of the premises, unless the property owner can demonstrate that the accommodation would create an "undue hardship" for the owner. Tenants may be required to remove modifications and return the unit to the original condition upon moving. All new multi-family units, rental units and condominiums, in complexes of four or more units, available for first occupancy after March 13, 1991, have to be "adaptable." Adaptable units include features such as wide doorways, low outlets, reinforcements in walls for grab bars, useable bathrooms and kitchens, if there is an elevator in the building. If there is no elevator, only the ground floor units must be adaptable. All public and common areas have to be accessible.

#### **Enforcement:**

Department of Housing and Urban Development  
Office of Fair Housing and Equal Opportunity  
O'Neil Building, 10 Causeway Street, 3<sup>rd</sup> Floor  
Boston, MA 02222

(617) 994-8200 (Voice) (617) 565-5453 (TTY)

(800) 955-2232 (Voice) - Toll Free

(617) 565-6558 (FAX)

**Website:** <http://www.hud.gov/offices/fheo>

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## Massachusetts Housing Bill of Rights

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### G.L. c. 151B §4

This law largely mirrors the protections of the federal law. However, unlike federal law, it limits the owner occupied exemption to two-family units. It is illegal for a landlord to ask about a person's disability, except to ask about qualifications for a special type of unit ("Do you have a condition that qualifies you for a wheelchair accessible unit?"). Only medical opinions that address qualifications for a particular unit may be sought ("Does Jane Doe have a condition that qualifies her for a unit for people with mental retardation?"). If there are 3 or more units, reasonable modifications must be made to rules or policies if these modifications are needed for a person with a disability to use or enjoy the premises, unless the property owner can demonstrate that the modification would create an "undue hardship" for the owner. A person with a disability may make reasonable modifications to the premises at his/her own expense.

In publicly assisted housing, or housing with 10 or more units, the landlord is responsible for paying for reasonable modifications unless doing so would impose an "undue hardship." The law also requires that new construction of housing with 3 or more units ready for first occupancy after March 13, 1991 be adaptable consistent with AAB regulations. The Massachusetts Rehabilitation Commission administers a central registry to match accessible and adaptable housing units with persons who need them. Local Independent Living Centers can provide access to the Registry. Access the internet at: <http://www.massaccesshousingregistry.org/>

#### **Enforcement:**

Massachusetts Commission Against Discrimination  
1 Ashburton Pl. #601  
Boston, MA 02108

(617) 994-6000 (Voice); (617) 994-6196 (TTY)

**Website:** <http://www.mass.gov/mcad>

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## **Federal Pet Law**

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**[12 U.S.C. §1701 r-l](#); [24 C.F.R. §5.300, et seq.](#)**

This law allows persons with disabilities and persons who are elderly living in federally assisted non-family rental housing to own or keep common household pets (dogs, cats, birds, rabbits, fish or turtles).

### **Enforcement:**

Department of Housing and Urban Development  
Office of Fair Housing and Equal Opportunity  
10 Causeway Street, 3<sup>rd</sup> Floor  
Boston, MA 02222

617) 994-8200 (Voice) (617) 565-5453 (TTY)

(800) 955-2232 (Voice) - Toll Free

(617) 565-6558 (FAX)

**Website:** <http://www.hud.gov/offices/fheo>

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## **Guide Dogs and Hearing Dogs In Housing**

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**[G.L. c. 151B, §4, ¶6 \(b\)](#)**

Refusal to sell or rent housing because an individual uses a guide dog for the blind or a hearing assistance dog is specifically prohibited. General federal and Massachusetts anti-discrimination law, discussed above, will apply to others with services animals.

### **Enforcement:**

Massachusetts Commission Against Discrimination  
1 Ashburton Pl. #601  
Boston, MA 02108



(617) 994-6000 (Voice); (617) 994-6196 (TTY)

**Website:** <http://www.mass.gov/mcad>

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## Massachusetts Property Tax Exemptions

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### [G.L. c. 59, § 5](#)

Clause 37 provides an exemption of \$437.50 of property taxes to legally blind persons who own and occupy their own property. Applications must be made annually. The Commonwealth will reimburse the municipality \$87.50 for each exemption. Clause 37A increases the exemption to \$500, but is a local option. A vote of Town Meeting (towns) or City Council (cities) must adopt it. Clauses 22, 22A, 22B, 22C and 22E apply to veterans with varying levels of disability (the greater the disability, the larger the exemption).

**For more information contact:**

Massachusetts Department of Revenue  
Local Services, Real Estate Taxes, P.O. Box 9569  
Boston, MA 02114-9569

(617) 626-2300 and (800) 521-5536 (Voice)

**Website:** <http://www.mass.gov/dor>

**Note:** This is the only disability-specific, state-wide tax exemption. You may wish to check with your local city or town, however, to see if it offers an exemption or abatement program for individuals with disabilities.

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## Massachusetts Homestead Protection Act

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### G.L. c. 188, §1A

With some exception, the real property or manufactured home of a person with a disability can be protected against attachment, seizure or execution of a court judgment up to a value of \$500,000. The owner must occupy, or intend to occupy, the real property or manufactured home as his or her principal residence, and he or she must file a disabled person's declaration of homestead protection, along with proof of disability.

**For further information:** contact either the city or town clerk or the Massachusetts Registry of Deeds for the area in which the property is located.

**Website:** <http://www.sec.state.ma.us/rod/rodhom/homidx.htm>

# ***PUBLIC PLACES & PROGRAMS***

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## **Americans with Disabilities Act**

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### **State and Local Government, Title IIA**

#### **[42 U.S.C. § 12131, et seq.](#)**

Effective January 26, 1992, state, local and municipal governments must provide equal opportunity for persons with disabilities in programs, activities, services and employment practices. People using service animals must be allowed equal access. Effective communication must be ensured with persons who are deaf, hard of hearing and blind or who have cognitive disabilities through provision of auxiliary aids and services. Remedying actions might include the provision of sign language interpreters, the distribution of material in large print, braille or audio tape, holding meetings and hearings in accessible locations and ending discriminatory hiring practices. Under a concept called “programmatically access,” every part of every facility need not necessarily be accessible. Instead, the programs, activities and services when viewed in their entirety must be readily accessible to and useable by persons with disabilities.

#### **Enforcement:**

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Civil Rights Division

Disability Rights Section - NYA

Washington, D.C. 20530

(202) 514-0301 or (800) 514-0301 (Voice)

(800) 514-0383 (TTY)

**Website:** <http://www.usdoj.gov/crt/ada/adahom1.htm>

Individuals may also file private lawsuits.

## **Public Accommodations, Title III** **[42 U.S.C. § 12181, et seq.](#)**

Public accommodations such as restaurants, retail stores, parks, day care centers and homeless shelters, may not discriminate based on disability.

A place of public accommodation must make reasonable modifications to its policies, practices and procedures, to enable a person with a disability full and equal access to all of the activities, programs and services offered, unless the modifications would fundamentally alter the nature of the goods or services, or cause an “undue burden”<sup>9</sup>. Such modifications must include waiving any “no animals” policy to allow guide dogs and service animals to accompany their owner with a disability. Physical barriers in existing facilities must be removed if readily achievable (easily accomplishable and able to be carried out without much difficulty or expense). If not, alternative readily achievable methods of providing services must be offered. Auxiliary aids and services must be provided to individuals with vision or hearing impairments, unless an undue burden would result.

**Enforcement:** Complaints must be filed within 180 days of the alleged discriminatory act.

U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Civil Rights Division  
Disability Rights Section - NYA  
Washington, D.C. 20530  
(202) 514-0301 or (800) 514-0301 (Voice)  
(800) 514-0383 (TTY)

**Website:** <http://www.usdoj.gov/crt/ada/adahom1.htm>

Individuals may also file a private lawsuit

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<sup>9</sup> Undue burden means significant difficulty or expense. For more information: <http://www.ada.gov/reachingout/12factors.html>

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## Entities Receiving Federal Funds

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### [29 U.S.C. § 794, et seq.](#)

Section 504 of the Federal Rehabilitation Act prohibits discrimination against people with disabilities under any program or activity receiving or benefiting from federal financial assistance. It states that:

"No otherwise qualified handicapped individual in the United States ... shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service."

Organizations, such as colleges, public schools, libraries, hospitals, or cultural programs, which receive or benefit from federal financial funds, must provide equal opportunity for people with disabilities in their programs and activities. Remedying actions might include the provision of sign language interpreters, the distribution of material in large print or braille or moving a class to a physically accessible location. Every part of every building need not necessarily be accessible, but the program, when viewed in its entirety must not discriminate against or segregate persons with disabilities. Some examples of compliance with Section 504 may include:

- A hospital that receives Medicaid money must provide a qualified interpreter to someone who is deaf when communication is necessary. A hospital also must provide the use of a TTY<sup>10</sup> (telephone communication device for

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<sup>10</sup> This device is sometimes referred to as a TDD.

the deaf) to a deaf person who requires one to communicate on the telephone.

- A school or college that receives federal financial assistance cannot decline an application based on a person's disability. All programs and classes must be made available. For example, a class must be moved to an accessible location on campus if a person with a mobility impairment wants to attend, a qualified interpreter must be provided if one is needed for a deaf person to understand the instructor. Accommodations, such things as a note taker, large print books, books on tape, extended time to take tests or complete assignments may be requested and must be provided unless doing so would either fundamentally alter the nature of the goods or services, or cause an "undue burden".
- If a museum that receives federal funds conducts an arts program in an inaccessible location, the museum must make sure the same program is offered in an accessible place **if requested**.

**Enforcement:** Federal agencies, such as the Department of Education and the Department of Housing and Urban Development, have developed regulations under Section 504. Each federal agency providing the financial assistance is responsible for establishing an enforcement procedure. Some of the larger department contacts are:

U.S. Department of Education, Office of Civil Rights  
33 Arch Street, Suite 900,  
Boston, MA 02110-1491  
(617) 289-0111 (Voice) / (877) 521-2172 (TTY)

Or

U.S. Department of Health and Human Services  
Office of Civil Rights  
JFK Federal Building, Room 1875

Boston, MA 02203  
(617) 565-1340 (Voice) / (800) 537-7697 (TTY)

Or

U.S. Department of Housing and Urban Development  
Office of Fair Housing  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Room 321  
Boston, MA 02222-1092  
(617) 994-8300 (Voice) / (617) 565-5453 (TTY)

To find out which other agency would handle a particular type of complaint, contact:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
Disability Rights Section - NYAV  
Washington, D.C. 20530  
(800) 514-0301 (Voice) or (800) 514-0383 (TTY)  
**Website:** [www.ada.gov](http://www.ada.gov)

It may also be enforced through private law suits.

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## Massachusetts Public Accommodations Law

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### [G.L. c. 272, §§ 92A and 98](#)

Discrimination in places of public accommodation based on disability is prohibited. A public accommodation is defined as any place, which is open to and accepts the general public. The law prohibits discrimination not only in terms of building access but also in terms of the programs or services offered. For example, a bank cannot refuse to grant a loan to someone based on his/her disability and a restaurant cannot exclude a person because they have a disability. This law also prohibits discrimination against any person with a disability who uses a service or guide dog. At one time, this law allowed operators of public accommodations to require that a guide or service animal be muzzled and to demand special identification of service animals. As these provisions violated the Americans with Disabilities Act, they were repealed.

**Enforcement:** A complaint must be filed within 300 days of the alleged act at the

Massachusetts Commission Against Discrimination:

1 Ashburton Pl. #601

Boston, MA 02108

(617) 994-6000

**Website:** <http://www.mass.gov/mcad>

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## Sign Language Interpreters In Court

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### [G.L. c. 221, § 92A](#)

When a deaf or hearing impaired person is a party or a witness, this state law entitles the person to have a qualified interpreter in any court proceeding, juvenile proceeding, or



proceeding before an executive or legislative board, commission, agency, or any other body of the state or its political subdivisions. This law also entitles a deaf or hearing impaired person to have an interpreter during any proceeding that follows an arrest such as notification of rights, warnings, interrogation, or taking of a statement. The interpreter must be approved by the Massachusetts Commission for the Deaf and Hard of Hearing.

***For More Information:*** To hire an interpreter or for more information on the law contact:

MA Commission for the Deaf & Hard of Hearing  
600 Washington Street, Boston, MA 02111  
[617] 740-1600 (Voice), [617] 740-1700 (TTY)  
[800] 882-1155 (Voice), [800] 530-7570 (TTY)  
**Website:** <http://www.mass.gov/mcdhh>

## **SERVICE ANIMALS**

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### **Massachusetts Service Animal Law**

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#### **[G.L. c. 272, §§ 92A and 98A](#)**

Any person with a disability accompanied by a dog guide or service animal is entitled to any and all accommodations, advantages, facilities and privileges of all public conveyances, public amusements and places of public accommodation, within the Commonwealth, to which others not accompanied by dogs are entitled, subject only to the conditions and limitations applicable to all persons not accompanied by dogs. People training service animals are also protected. No service animal user may be required to pay any charge or fare for the service animal in addition to those lawfully chargeable for the user's own travel.

**Enforcement:** Violation of this law is punishable by a fine of not more than three hundred dollars, and the service animal user is entitled to damages. Complaints must be filed within 300 Days at

Massachusetts Commission Against Discrimination  
1 Ashburton Pl. #601  
Boston, MA 02108  
(617) 994-6000

**Website:** <http://www.mass.gov/mcad>

See also [Public Places and Programs](#) and [Housing](#)

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## Service Animal and Training Laws

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There are four laws in Massachusetts that directly address service animal training:

- **Hearing dog business licensing - [G.L. c. 129, § 39C](#)**

People engaged in the hearing dog business must be licensed. A hearing dog shall, for identification purposes, be fitted with a collar and leash that are of a bright color.

- **Hearing Dogs - [G.L. c. 129 § 39D](#)**

A person engaged in the hearing dog business, while actually engaged in the training process and activities of hearing dogs, has the same rights, privileges and responsibilities with respect to access to public facilities as those applicable to deaf persons.

- **General - [G.L. c. 129, § 39F](#)**

A person accompanied by and engaged in the raising or training of a service dog, including a hearing, guide or assistance dog, shall have the same rights, privileges and responsibilities as those afforded to an individual with a disability under the Americans with Disabilities Act, 42 U.S.C. sections 12101 et seq.

**For more information contact:**

MOD at [617] 727-7440 or toll free at [800] 322-2020 (both V/TTY).

Or

MA Commission for the Deaf and Hard of Hearing  
600 Washington Street, Boston, MA 02111

[617] 740-1600 (Voice), [617] 740-1700 (TTY)  
[800] 882-1155 (Voice), [800] 530-7570 (TTY)  
Website: <http://www.mass.gov/mcdhh>

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## Massachusetts Fair Educational Practices Law

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### [G.L. c. 151C](#)

“Educational institutions” may not exclude any student from admission because the student is blind or deaf or requires the use of a guide dog. See also [Education](#).

**Enforcement:** Complaints must be filed within six months of the alleged discrimination with:

Massachusetts Commission Against Discrimination  
1 Ashburton Pl. #601  
Boston, MA 02108s  
(617) 994-6000

**Website:** <http://www.mass.gov/mcad>

See also [Guide Dogs And Hearing Dogs](#) under the [Housing](#) section, above.

# TELECOMMUNICATION AND TECHNOLOGY

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## U.S. 21<sup>st</sup> Century Communications & Video Accessibility Act of 2010

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### [Pub.L. 111-260](#)

The goal of the legislation is to establish new safeguards for disability access to ensure that people with disabilities are not left behind as technology changes and the United States migrates to the next generation of Internet-based and digital communication technologies. Among other things, the law specifically:

- Mandates mobile phone companies to make web browsers, text messaging, and e-mail on smart phones fully accessible for individuals with vision loss.
- Restores and expands requirements for video description of television programs, in addition to requiring cable companies to make their program guides and selection menus accessible to people with vision loss.
- Provides \$10 million in funding each year for assistive technology for deaf-blind individuals.
- Ensures that Internet-enabled mobile phones are hearing aid compatible.

#### **Enforcement:**

#### **Federal Communications Commission**

445 12th Street SW

Washington, DC 20554

1-888-225-5322 (1-888-CALL FCC) Voice: toll-free

1-888-835-5322 (1-888-TELL FCC) TTY: toll-free

**Website:** <http://www.fcc.gov>

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## Federal Telecommunications Act

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### [47 U.S.C. § 225](#)

Originally enacted as part of the Americans with Disabilities Act, this law deals with telephone and television access for people with hearing and speech disabilities. Some examples of the requirements in this act are as follows. Companies producing televisions with screens at least 13" diagonally must be built in decoders to allow for opening of closed captions. Telephone companies must provide telecommunication Relay Services for people with hearing or speech impairments 24 hours a day, seven days a week, effective July 26, 1993. Relay Services enables callers who use telecommunication devices for the deaf (TTYs),<sup>11</sup> and those who use voice telephones to communicate with each other through a third party communication assistant. The Federal Communication Commission has set minimum standards for Relay Services. See [47 C.F.R. §§ 6 and 7](#) for details. Federally funded television public service announcements and emergency announcements must include captioning of the verbal content. Video programming distributors under the jurisdiction of the FCC must provide captioning for the lesser of an average of 1350 hours of captioned video programming or all of its new nonexempt video programming. As of January 1, 2006, and thereafter, 100% of the programming distributor's new nonexempt video programming must be provided with captions. See [47 C.F.R. § 79.1, et seq.](#) for details. Video description technology enables individuals to "hear what they cannot see" by providing verbal explanation of key visual elements in programming, inserted into natural pauses in the audio of programming. It is designed to make television programming more accessible to the many Americans who have visual disabilities. Under rules adopted by the FCC, broadcast stations and multi-channel video programming

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<sup>11</sup> This device is sometimes referred to as a TDD.

distributors must provide programming with video description.  
[47 C.F.R. § 79.3](#)

**Enforcement**

Federal Communication Commission  
445 12<sup>th</sup> Street, SW, Washington, DC 20554  
1-888-225-5322 (1-888-CALL FCC) Voice: toll-free  
1-888-835-5322 (1-888-TELL FCC) TTY: toll-free  
**Website:** <http://www.fcc.gov/cgb/dro>  
Individuals may bring private lawsuits.

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## Access to Technology at the Federal Level

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[29 U.S.C. § 794d, et seq.](#)

Section 508 of the Federal Rehabilitation Act requires federal agencies to ensure that information technology that is developed, purchased or used is accessible to people with disabilities. This includes both federal employees and members of the public.

**Enforcement:**

U.S. General Services Administration  
Center for IT Accommodation (CITA)  
1800 F Street, NW, Room 1234, MC: MKC  
Washington, DC 20405-0001  
(202) 501-4906  
Website: <http://www.section508.gov>

U.S. Architectural and Transportation Barriers Compliance Board  
1331 F Street, NW, Suite 1000  
Washington, D.C. 20004-1111  
(800) 872-2253 (Voice) / (800) 993-2822 (TTY)  
**Website:** <http://www.access-board.gov/508.htm>

## VOTING

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### Federal Voting for the Elderly and Handicapped Act

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#### [42 U.S.C. § 1973ee, et seq.](#)

In each state, political subdivisions responsible for conducting elections must assure that all polling places for federal elections are accessible to disabled and elderly voters. In Massachusetts, the Secretary of State's Office is responsible for ensuring that polling places are accessible. The "Massachusetts Voter's Bill of Rights" also guarantees the opportunity to use an accessible voting booth if necessary.<sup>12</sup>

#### **Enforcement:**

Voting Section, Civil Rights Division, Room 7254 - NWB  
Department of Justice  
950 Pennsylvania Ave., N.W. Washington, DC 20530  
(800) 253-3931 or (202) 307-2767 (Voice)  
(202) 305-0082 (TTY)

Secretary of the Commonwealth - Elections Division  
One Ashburton Place, Room 1705  
Boston, MA 02108  
(617) 727-2828 or (800) 462-VOTE (8683) (Voice)  
(617) 878-3889 (TTY)

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### Massachusetts Secretary of State, Election Division Regulations

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#### [950 C.M.R. §51](#)

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<sup>12</sup> For more information on the "Massachusetts Voter's Bill of Rights", see:  
[http://www.sec.state.ma.us/ele/ele10/ballot\\_questions\\_10/ma\\_voter\\_rights.htm](http://www.sec.state.ma.us/ele/ele10/ballot_questions_10/ma_voter_rights.htm)



In Massachusetts, the Elections Division of the Secretary of State's Office has written regulations that apply to site access, parking, entrances, voting equipment, etc. All municipalities are responsible for following these regulations. The position of the Secretary of State and the Massachusetts Attorney General is that all state and municipal elections must also be accessible to persons with disabilities.

**Enforcement:**

Secretary of the Commonwealth - Elections Division  
One Ashburton Place, Room 1705  
Boston, MA 02108  
(617) 727-2828 or (800) 462-VOTE (8683) (Voice)  
(617) 878-3889 (TTY)

If the Elections Division is unable to achieve voluntary compliance, the matter is referred to the Civil Rights Division of the Attorney General's Office. Individuals can also bring an action for declaratory or injunctive relief in the appropriate district court.

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## **Help America Vote Act (HAVA)**

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### **[42 U.S.C. §15301, §15545](#)**

The Help America Vote Act (HAVA) was signed by President Bush in October 2002 in an effort to improve voting across the country and in response to the problems that arose in the 2000 Presidential elections. This federal legislation makes changes in the election process and applies to all federal elections in the United States. The most significant areas impacted by the legislation include voting equipment standards, including accessibility, provisional voting, voter registration, and voter education.

HAVA requires that voting systems used after January 2006 be accessible to voters with disabilities, including voters with

vision impairments, in a manner that provides the same opportunity for access and participation (including privacy and independence), as is provided for other voters.

**Enforcement:**

Same as Federal Voting for the Elderly and Handicapped Act, above.

**For more information:**

Election Assistance Commission

1225 New York Ave., Suite 1100, Washington, DC 2005

(202) 566-3100 (Voice Only) / (866) 747-1471 (Voice Only)

**Web site:** <http://www.eac.gov>

Or

Voting Section, Civil Rights Division, Room 7254 - NWB

Department of Justice

950 Pennsylvania Ave., N.W. Washington, DC 20530

(800) 253-3931 or (202) 307-2767 (Voice)

(202) 305-0082 (TTY)

**Website:** <http://www.usdoj.gov/crt/voting/hava/hava.html>

## **WHEELCHAIRS**

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### **Massachusetts Wheelchair Lemon Law**

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#### **[G.L. c. 93, §107](#)**

Individuals who lease or purchase customized wheelchairs are entitled to have defects repaired or if not repairable refunds, plus interest paid. Failure to conform can result in fines to the manufacture of twice the cost to the consumer.

#### **Enforcement:**

Office of Consumer Affairs, Business Regulations  
10 Park Plaza, Suite 5170  
Boston, MA 02116  
(617) 973-8700

**Website:** <http://www.mass.gov/consumer>

# ZONING

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## Massachusetts Zoning Law, Access Ramps

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### [G.L. c. 40A § 3 ¶8](#)

No dimensional lot requirement of a zoning ordinance or by-law, including but not limited to, set back, front yard, side yard, rear yard and open space shall apply to handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person. The ramp must comply with [AAB standards](#).

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## Massachusetts Zoning Law, General and Community Residences

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### [G.L. c. 40A § 3 ¶4](#)

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination.

The provisions of this paragraph apply to every city or town.

## **Notes**

**Deval L. Patrick, Governor**  
**Timothy P. Murray, Lt Governor**  
**Myra Berloff, Director**



**1 Ashburton Place, # 1305**  
**Boston, MA 02108**  
**[617] 727-7440 (V/TTY)**  
**[800] 322-2020 (V/TTY)**  
**[617] 727-0965 FAX**

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