



CITY OF CAMBRIDGE

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January 4, 1991

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: City Council Order #40
Date of Order: July 30, 1990
Subject: The effect of the Americans with Disabilities
Act on the City of Cambridge

Dear Mr. Healy:

You have asked this office to respond to Council Order No. 40, dated July 30, 1990, which seeks a report on the effect of the Americans with Disabilities Act (hereinafter "ADA") on the City of Cambridge. Since the Act was signed into law on July 26, 1990, an enormous amount of literature has been published endeavoring to answer the same questions with regard to all cities and towns across the country. Many conferences and seminars have been organized by agencies throughout the nation in both the private and the public sector. In addition to the many issues still being identified by those analyzing the ADA, any assessment of the Act's impact on the City remains incomplete until regulations are promulgated by the appropriate agencies. This is because under the Act itself, there are numerous and different deadlines for the

various administrative agencies to promulgate regulations by which the local and private sector will be guided to compliance. What follows is the best summary analysis that we are able to provide at this time.

The ADA is a comprehensive statute which prohibits discrimination against disabled individuals in employment, public accommodations, public transportation, state and local government services and telecommunications. It essentially supplements those areas not covered by the Civil Rights Act of 1964 or the Rehabilitation Act of 1973. Its remedies are generally limited to injunctive relief, reinstatement, back pay and attorney's fees. The definition of an individual with a disability is essentially the same as the definitions under the Rehabilitation Act: one who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or who is perceived as having such an impairment. Current users of illegal drugs are excluded from this definition. (Current alcoholics who are not able to perform the duties of their job or who pose a threat to the property or safety of others are already excluded from protection under the Rehabilitation Act.

The Act consists of five (5) titles as follows: Title I - Employment, Title II - Public Services, Title III - Public Accommodation, Title IV - Telecommunications and Title V - Miscellaneous Provisions. Each title has its own effective date ranging from immediately to twenty (20) years hence. It is projected that Titles I, II, and III will present the most

significant challenges for cities and towns.

Title I, which is enforced by the Equal Employment Opportunity Commission (EEOC) prohibits employment discrimination against qualified disabled individuals. A qualified disabled person is an individual who can perform the essential functions of a particular job with or without reasonable accommodation. Employers must make reasonable accommodations unless the employer can show that such accommodation would result in undue hardship. This part of the ADA has two (2) effective dates: July 26, 1992 for employers with 25 or more employees and July 26, 1994 for employers with 15 to 24 employees. EEOC must promulgate regulations by July 26, 1991. Once these regulations are issued, we will be more able to determine which concrete steps can be taken to ensure compliance.

Title II prohibits both discrimination against qualified individuals with disabilities and exclusion of such persons from the services, programs or activities of public entities. The Department of Justice (DOJ) must promulgate regulations for compliance with this title with the exception of public transportation, by July 26, 1991. It then becomes effective January 26, 1992. Newly constructed state and local government buildings, including transit facilities, must be accessible effective January 26, 1992 and the Department of Transportation (DOT) must issue its regulations for public transportation by July 26, 1991. Both the DOJ and DOT must issue regulations which are consistent with the Minimum Guidelines and Requirements for Accessible Design (MGRAD), which must be supplemented by the

Architectural and Transportation Barriers Compliance Board (ATBCB) by April 26, 1991. Generally, however, alterations to existing state and local government buildings must be made in an accessible manner. When alterations could affect accessibility to "primary function" areas of a facility, an accessible path of travel must be provided to the altered areas. The restrooms, drinking fountains, and telephones serving the altered areas must also be accessible, to the extent that the additional accessibility costs are not disproportionate to the overall alteration costs. Then there are various target dates from 1993 to 2020 for the purchase or lease of new or used vehicles, including buses and rail vehicles, to assure accessibility to and use by persons with disabilities.

Title III, which essentially becomes effective on January 26, 1992, will also affect certain aspects of cities and towns in that it prohibits discrimination on the basis of disability in places of public accommodations, such as restaurants, hotels, theaters, auditoriums, convention centers, stores, museums, libraries, parks, places of education, day care centers, zoos, social service centers, golf courses, galleries, food banks, etc. (You will recall from previous reports from this office that residential accommodations are covered by the Federal Fair Housing Act and religious organizations and entities which are controlled by religious organizations are exempt from this title, as are those private clubs and establishments which would be exempt under Title II of the Civil Rights Act of 1964). Again, as in Title II above, the DOJ, DOT, and MGRAD supplemented by ATBCB must issue

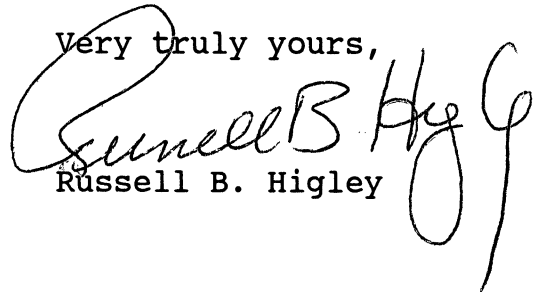
regulations by the same dates. Generally, however, physical barriers in existing public accommodations must be removed if readily achievable. If this is not possible, then alternative methods of providing services must be offered, if those methods are readily achievable. Facilities designed and constructed for first occupancy after January 26, 1993 must be accessible, except where it is structurally impractical to do so under the regulations which will be issued under this Title III. However, elevators are not required to be installed in facilities that are less than three (3) stories or have less than three thousand (3,000) square feet, except shopping centers and malls, and the offices of professional health care providers. The Attorney General must issue regulations by July 26, 1991 to implement these provisions which are consistent with the ATBCB. Title III may be enforced by the Attorney General or by private lawsuit.

Title III also prohibits operators of public accommodations to impose applications or eligibility criteria that screen out individuals with disabilities. And, reasonable modifications and "auxiliary aides" in policies, practices and procedures must be made to afford such persons access to and use of public accommodations. The Courts are empowered to order an entity to make facilities accessible, provide "auxiliary aides" or services, modify policies, and pay attorney's fees. Money damages and civil penalties, however, may only be imposed in lawsuits which are filed by the Attorney General and not by private individuals.

The ADA is a far reaching, comprehensive enactment meant to

improve the quality of life of millions of Americans and finally put an end to the ongoing problem of disability discrimination. However, the specific regulations which will control the details of compliance with the Act are still in the process of promulgation by the various agencies. This office will continue to closely monitor and participate in the national debate on how best to regulate and ensure compliance. As the specific regulations are made public, we will inform you and the Council of what they are and how they affect the City of Cambridge.

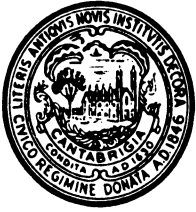
Very truly yours,

A handwritten signature in dark ink, appearing to read "Russell B. Higley", with a large, stylized flourish extending from the end of the signature.

Russell B. Higley

RBH/jab

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CITY OF CAMBRIDGE
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TEL 349-4300
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EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

January 7, 1991

To The Honorable, The City Council:

Attached, please find a response to Awaiting Report Item No. 33, regarding the effect of the Americans with Disabilities Act on the City of Cambridge, received from Russell B. Higley, City Solicitor.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy
City Manager

RWH/mev
attachment

Agenda # 59

S- 49

Awaiting Report Item Number 33 regarding
the effect of the Americans with
Disabilities Act on the City of Cambridge.

In City Council,

January 7, 1991

Placed on file