

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

950 CMR 51.00: POLLING PLACE ACCESSIBILITY FOR ELDERLY AND HANDICAPPED VOTERS

Section

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51.01: Purpose

950 CMR 51.00 implements the federal Voting Accessibility for the Elderly and Handicapped Act, 42 USC §§ 1973ee through 1973ee-6, and Amended Article 114 of the Massachusetts Constitution and applies to all Massachusetts elections. The purpose of 42 USC 42 USC §§ 1973ee through 1973ee-6, Amended Article 114 of the Massachusetts Constitution and 950 CMR 51.00 is to promote the fundamental right to vote by improving access for handicapped and elderly individuals to polling places and the voting process.

51.02: Accessibility Defined

Section 3(a) of the Act, 42 U.S.C. § 1973ee-1(a), requires every city and town to assure that all polling places for federal elections are accessible to handicapped and elderly voters, unless the Secretary exempts them. A polling place is "accessible" to handicapped and elderly voters, for the purpose of sections 3(a) and 8(1) of the Act, 42 U.S.C. §§ 1973ee-1(a), 1973ee-6(1), only if all of the following requirements are met:

(1) Site Access. A clear, reasonably lit, unobstructed path of travel must be provided from the designated spaces in the parking lot, and from the street, to the accessible entrance to the building where the polling place is located. Such path of travel shall have a continuous common surface, not interrupted by steps or abrupt changes in level greater than 1/2 inch.

(2) Parking. If a parking lot is available on the premises of the polling place, then the following requirements apply:

(a) Pursuant to the Americans With Disabilities Act (ADA) Accessibility Guidelines (4.1.2 (5)), the number of required handicapped parking spaces is:

| <u>Total No. of Parking Spaces</u> | <u>No. of Handicapped Required</u> |
|------------------------------------|------------------------------------|
| 1 - 25                             | 1                                  |
| 26 - 50                            | 2                                  |
| 51 - 75                            | 3                                  |
| 76 - 100                           | 4                                  |
| 101 - 150                          | 5                                  |
| 151 - 200                          | 6                                  |
| 201 - 300                          | 7                                  |
| 301 - 400                          | 8                                  |
| 401 - 500                          | 9                                  |
| 510 - 1,000                        | 2% of total                        |
| 1,001 and over                     | 20 plus 1 for each 100 over 1,000  |

(b) For parking lots striped prior to September 1, 1996:

1. The handicapped parking spaces shall be eight feet wide and have an adjacent four foot access aisle which is painted or striped yellow. The lot shall be reasonably lit.
2. Identification of handicapped spaces shall be by a sign at each space or pair of spaces. The signs shall be at a height of not less than five feet nor more than eight feet to the top of the sign. The sign shall also contain the International Symbol of Accessibility and may include wording identifying its use.

(c) For parking lots striped after September 1, 1996:

1. The handicapped parking spaces shall be eight feet wide and have an adjacent five foot access aisle which is marked by high contrast painted lines or other high contrast delineation. The lot shall be reasonably lit.

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2. There shall be at least one "van accessible" space, but not less than one, per eight accessible spaces. The van accessible space shall be eight feet wide and have an adjacent eight foot wide access aisle which is marked by high contrast painted lines or other high contrast delineation. The lot shall be reasonably lit.

3. Identification of handicapped spaces shall be by a sign at each space or pair of spaces. The signs shall be at a height of not less than five feet nor more than eight feet to the top of the sign. The sign shall also contain the International Symbol of Accessibility and may include wording identifying its use. Van accessible spaces shall include the words "Van Accessible."

(d) If a sidewalk is provided at such parking spaces, a curb cut (sidewalk ramp) shall be installed at each space or pair of spaces. The slope of the curb cut shall not exceed 1:12.

(e) If no parking lot is available on the premises of the polling place, at least one on-street parking place in front of the polling place must be at least temporarily designated as a handicapped parking space. Identification of the handicapped space shall be by the sign provided in 950 CMR 51.02(2)(c)3.

(3) Entrance.

(a) At least one entrance to the building must be accessible to physically disabled persons. If the main entrance to the building is not accessible, signs must be posted directing persons from the ordinary path of travel to the accessible entrance.

1. If the main entrance to the building is not accessible, the path of travel to the accessible entrance shall be the same or a substantially similar distance as the path of travel to the main entrance.

2. If the main entrance is not the accessible entrance, the door to the accessible entrance shall be unlocked and capable of being operated without assistance during the hours the polling place is open and at the same hours as the main entrance.

(b) The approach to the accessible entrance shall be a paved walk or ramp with a non-slip surface, uninterrupted by steps or abrupt changes in level greater than 1/2 inch. Such entrance shall have a level space 60 inches from the door on the interior and exterior of the doors.

(c) Doors to such entrances shall be a minimum of 32 inches clear, measured at 90°. No door threshold shall be higher than 1/2 inch above the floor on either side. Lever handles or other accessible hardware must be provided on doors, so that they may be operated with a closed fist.

(4) Ramps.

(a) If the entrance has stairs, a ramp must be provided. A permanent ramp must comply with the following:

1. The slope of the ramp must be no steeper than 1:12.

2. The width of the ramp shall not be less than 48 inches.

3. Two pairs of handrails must be set on both sides of the ramp. Such handrails must be round or oval in shape and set in pairs, one at a height between 34 and 38 inches and a lower rail set at a height between 18 and 20 inches.

(b) If it is impractical to install a permanent ramp, portable ramps shall be provided. Portable ramps shall have a slope as close to 1:12 as possible, and if a portable ramp has no handrails or side walls, it must have wheel guards at least two inches high on both sides. Portable ramps may be used to gain access from the parking lot or street to the sidewalk as well as at the entrance to a building. Portable ramps shall be securely anchored.

(5) Building Interior.

(a) All interior doors, approaches, and ramps necessary within the building to obtain access to the polling place must comply with 950 CMR 51.02(3) and (4).

(b) An accessible route which provides a continuous unobstructed path at least 36 inches wide shall be maintained inside the polling place and shall coincide with the route for the general public.

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(6) Voting Equipment.

(a) For every state, federal, municipal election, preliminary or primary, either regular or special, each polling place shall have at least one accessible voting unit that is usable by people with disabilities. Any accessible voting unit must first be approved for use by the state secretary. Accessible voting units shall be located within a polling place so as to be readily available for use by voters during the voting hours.

(b) In every polling place, a specimen ballot must be posted at a height no greater than 48 inches.

(c) Where paper or punch-card ballots are used, at least one marking shelf at each polling place (at a primary where punch-card booklets are used, one for each party) must provide clear space under the shelf not less than 30 inches wide, at least 27 inches clear to the underside of the shelf, and not more than 32 inches in height to the top of the shelf, and must contain privacy barriers on both sides of the shelf. For this special marking shelf, the handle of any stylus used for punching punch-card ballots shall be at least one inch thick and at least three inches long.

(d) Where voting machines are used, a specimen ballot must be placed in at least one machine at each polling place, at a height no greater than 48 inches. For voting machines which have any levers higher than 48 inches above the floor, a "reacher" must be made available to assist disabled persons in reaching the upper levers.

(7) Variations. A city or town may apply to the Architectural Access Board, under 521 CMR 3.00(4.1.1), for a variance from the accessibility requirements of 950 CMR 51.02 or, to the extent that they apply to any polling place, from the requirements of the Architectural Access Board's regulations in 521 CMR 3.00. Notice of an application for any such variance shall be given in the manner required by 950 CMR 51.03(4)(b), and shall also be given to the Director of Elections. No such variance shall be allowed which substantially impairs the accessibility of a polling place to handicapped and elderly voters.

(8) Time Accessibility Required. All non-exempt polling places must be accessible no later than three weeks before the first federal election of an even-numbered year.

51.03: Exemptions

(1) Delegation to Director of Elections. The Secretary delegates to the Director of Elections (the Director) the authority to determine whether a polling place is exempt from the accessibility requirements under 42 U.S.C. 1973ee-1(b), § 3(b), and under 950 CMR 51.03.

(2) Emergency Exemptions. In an emergency under 42 U.S.C. 1973ee-1(b)(1), § 3(b)(1), an exemption may be applied for and determined by telephone, but both the city or town and the Director shall confirm their communications in writing. Mere failure of the city or town to make adequate and timely plans and arrangements does not constitute an emergency. If an exemption is allowed, it applies only to one election, and the city or town must exercise its best efforts to find another accessible polling place, and if none is available, to provide whatever assistance is possible to handicapped and elderly voters. If an emergency exemption is allowed, handicapped or elderly voters assigned to such an emergency exempt polling place may vote by absentee ballot in the office of the city or town clerk or election commission without applying in advance. The procedures set forth in the second paragraph of M.G.L. c. 51, § 59 shall apply to such voters, except that the absentee ballot envelope shall be marked "Emergency Polling Place Exemption".

(3) Non-availability Exemptions: Standards. In determining under 42 U.S.C. 1973ee-1(b)(2)(A), § 3(b)(2)(A), that all potential places have been surveyed and that no accessible place is available, nor is the city or town able to make one temporarily accessible in the area involved, the Director shall consider the following factors:

(a) Whether each location has been studied by a trained person to determine whether or not it is accessible.

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1. Polling places should not be presumed to be accessible simply because there are no obvious barriers, but 950 CMR 51.02 must be applied.
  2. A trained person is one with knowledge of what constitute structural barriers to handicapped individuals.
  3. Handicapped persons, representatives of handicap groups or professionals who work with handicapped individuals should be consulted.
  4. If a location is inaccessible, then the city or town should either seek an alternative accessible location or seek to have the barriers removed.
- (b) Whether the owners or proprietors of the building have been consulted regarding the modifications. If the owners or proprietors are unwilling to make the modifications, then an alternative location should be sought. Possible locations include those which are currently accessible and those where the owners or proprietors are willing to make necessary modifications.
- (c) Whether an estimate of the cost to make the modifications has been obtained from a qualified person (construction contractor, carpenter), and whether different options for removing the barriers have been explored (e.g., temporary ramps).
- (d) With respect to polling places in inaccessible government buildings, whether the city or town has urged government officials to make the modifications necessary for the buildings to be accessible.
- (e) The record of the city or town's percentage of polling places in compliance in the past.
- (f) The city or town's expressed plans for providing an accessible polling place in the future.

(4) Non-availability Exemptions: Procedure.

- (a) The city or town body responsible for selecting polling places under M.G.L. c. 54, § 24 (city council, board of selectmen, or election commission) must apply in writing for any exemption under section 3(b)(2) of the Act, 42 U.S.C. § 1973ee-1(b)(2). The application must be filed with the Director of Elections, under the penalties of perjury and in a form prescribed by him, not later than 180 days before the first federal election of an even-numbered year.
- (b) Not later than the application deadline, the city or town must give notice that it has applied for the exemption, by posting notice on the principal bulletin board, sending copies to all local news media, and mailing copies to the local council on aging, to any municipal handicapped office or commission, to the state Office of Handicapped Affairs (One Ashburton Place, Room 1305, Boston, MA 02108), and to any additional organizations which the Director may prescribe. The notice shall state the designation and address of the polling place or places for which exemption is sought, the reasons for the application, the location at which a copy of the application may be inspected, and the fact that any person may file a written response within 30 days with the state Director of Elections, One Ashburton Place, Room 1705, Boston, MA 02108, telephone (617) 727-2828 or (800) 462-8683.
- (c) Any person may file with the Director a written response to an exemption application within 30 days after it is filed.
- (d) The Director may, in his discretion, seek further information from the city or town or hold an informal hearing before himself or his designee.
- (e) Not later than 90 days before the first federal election of an even-numbered year, the Director shall notify the city or town in writing whether an exemption is allowed and of the reasons for the decision. The period of an exemption shall be two calendar years, beginning with an even-numbered year. Renewal of the exemption requires a new application.

(5) Alternative Voting Methods. As required by section 3(b)(2)(B) of the Act, 42 U.S.C. § 1973ee-1(b)(2)(B), handicapped or elderly voters assigned to an exempt polling place may vote by absentee ballot, either by mail or in the office of the city or town clerk or election commission, if they previously apply in writing, under M.G.L. c. 54, §§ 86 through 103Q. Current state law prevents assigning such voters to another polling place, as well as "curbside voting" outside the polling place on election day.

## REGULATORY AUTHORITY

950 CMR 51.00: 42 USC §§ 1973ee to 1973ee-6; c.54, § 37.