



CITY OF CAMBRIDGE

BOARD OF ELECTION COMMISSIONERS

51 Inman Street, Cambridge, Massachusetts 02139-1732 • Telephone 617-349-4361 • TTY: 617-492-0235
Fax: 617-349-4366 • Email: Elections2@cambridgema.gov • Website: www.cambridgema.gov/election

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Peter Sheinfeld
Larry W. Ward

EXECUTIVE DIRECTOR

Tanya L. Ford

ASSISTANT DIRECTOR

Lesley Waxman

To: Robert W. Healy, City Manager

From: Ethridge A. King, Jr., Election Commissioner

Date: October 10, 2012

Re: Response to Council Request, September 25, 2012 – Broken Elevator at Maria L. Baldwin School on Thursday, September 6, 2012 (State Primary)

In response to the Council Request reference above, I report the following:

On Thursday, September 6, 2012 during the State Primary Election, the elevator in need of service, located at the Maria L. Baldwin School, 28 Sacramento Street, Cambridge, Ward 7, Precincts 1 and 2 was first reported to the poll workers by the police officer who delivered the ballots that morning. When the Election Commission staff made their routine morning phone calls to all the polling locations, the issue of the broken elevator was communicated to a staff member. The Warden indicated that someone was on their way to repair it. The matter escalated later that morning when the Executive Director received communication that a candidate had made a complaint with the City Manager's office and the Office of the Commission for Person with Disabilities. The Executive Director contacted the Wardens (Presiding Officers) at the polling location. One Warden was not aware of the issue of a broken elevator and suggested that the Director speak with the Warden of the other precinct. The Director spoke with the informed Warden and was apprised of the situation. In the absence of the viability of seeking an alternative polling location on Election Day a temporary procedure to allow voting for disabled and elderly voters was instituted.

First, the Warden was instructed to follow the procedures according to the September 6, 2012 Manual for Wardens and Clerk, Instructions and Assistance to Voters, Contingency Arrangements for Disabled Voters (See attached), and more specifically the procedure of providing the voter a ballot and privacy sleeve outside the poll area. According to the manual "If access to the polling place for persons with disabilities is inoperable and a disabled vote is unable to enter the polling place to cast a ballot, the following alternative arrangements should be offered to the voter:

- The voter should be assured that access will be restored, if possible, and that he/she may return later to vote.
- The voter should be offered the chance to go to the Election Office to vote. Call the election Office to uniform staff to expect voter.
- The Warden or Clerk may provide a ballot and privacy sleeve to the voter outside the poll area.”

A poll worker was assigned to the entrance of the Maria L. Baldwin School to assist physically challenged voters consistent with the instructions given by the Executive Director. The intended purpose for stationing a poll worker at the entrance was not to assist voters up and down the stairs. The poll worker was assigned to check in physically challenged voters on the check-in list, get them the appropriate ballot based on their party registration and a privacy sleeve so they can vote, walk the ballot down the stairs and insert the ballot through the AccuVote scanner, proceed to the check-out table and then return to the voter outside to confirm voting process. Based on my conversations with the Warden and the Clerk from 7-1, one voter was brought down by elevator by the building custodian. Evidently, the custodian was able to operate the elevator with a key, but to operate it otherwise prior to being repaired could have resulted in someone getting stuck in the elevator. The other voter was assisted by a Clerk down the stairs to vote, this clearly being a violation of policy.

Secondly, the Executive Director communicated this matter to me and I went directly to the polling location to make certain that proper procedures and protocol were being followed. Signs were added to the sandwich boards notifying voters of the broken elevator and a poll worker with a check-in list was stationed at the door. Simultaneously, the Executive Director instructed the Assistant Director to contact the appropriate school facilities personnel regarding the elevator. The Assistant Director was informed that they were unaware of a broken elevator at the Maria L. Baldwin School and would tend to the issue immediately. The school official contacted the Election Commission and informed the staff that the elevator would be repaired immediately. Shortly thereafter the elevator was repaired. The elevator was repaired at approximately 12:00 p.m. while Commissioner King was still on site.

In response to possible future incidents an “Incident Report Form” has been created and will be utilized by the Commissioners, Election Commission staff and election workers during Election Day. The form will include information pertaining to the description of the incident, time reported, complainant, authorities/personnel contacted, response to incident etc. The plan is to create a sense of ownership of responsibility and stress the importance of conducting elections in a lawful and orderly manner and guaranteeing all voters their right to vote.

The Warden should place the Certificate of Confidential Registration in the Check List Envelope.
DO NOT RELEASE THE NAME AND ADDRESS OF ANY VOTER WITH A CONFIDENTIAL REGISTRATION CERTIFICATE.

If no confidential registration number can be found, the Warden or Clerk should call the Election Office immediately.

C15 YOU MAY REQUEST IDENTIFICATION

If instructed by the Election Commission, you may request identification from any voter. Identification requests should not discriminate in any way, but should be entirely random or based on reasonable suspicion.

Suitable identification includes a driver's license, recent utility bill, rent receipt, lease, or any other printed identification that contains the voter's name and address.

C16 IF VOTER FAILS TO PRESENT SUITABLE ID WHEN REQUESTED

Voter must still be allowed to vote, but the Warden or any other person may challenge that person's right to vote. (See C32.)

C17 INSTRUCTION AND ASSISTANCE TO VOTERS

A. Instruct Voters

In accordance with the law, an election officer may, if asked, answer questions and instruct the voter on the proper method of marking the ballot. This is done outside the voting booth.

B. Instruction is Different from Assistance

Instruction consists of informing the voter on the proper method of marking a ballot.

C. Assistance to Voters

Assistance is actually marking the ballot for a voter. Except as the law permits, a voter must mark his/her ballot in secret. Election workers must protect the voters' privacy when assisting.

D. Voter May Choose Assistance

A voter who asks for assistance in marking a ballot because of blindness, physical disability, or inability to read English may be assisted by a voter of his/her own choosing, or by two election officers of different parties.

E. Contingency Arrangements for Disabled Voters

If access to the polling place for persons with disabilities is inoperable and a disabled voter is unable to enter the polling place to cast a ballot, the following alternate arrangements should be offered to the voter:

- The voter should be assured that access will be restored, if possible, and that he/she may return later to vote.
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To: Robert W. Healy, City Manager

From: Tanya L. Ford, Executive Director

Date: October 10, 2012

Re: Response to Council Order, September 25, 2012 – Accessibility at the Ward 3 Precinct 1, King Open School

In response to the Council Order, September 25, 2012, I report the following:

Several things are to be considered in assuring that all polling locations are accessible to handicapped and elderly voter in a polling place. The following generalized list must be met: (**Please see attached** - 950 CMR 51.00: Polling Place Accessibility for Elderly and Handicapped Voters for a detailed definition of accessibility & requirements)

- 1, Site access – There must be a clear unobstructed path to the accessible entrance of the building where the polling place is located.
2. Parking – Handicapped parking is provided at all locations.
3. Entrance – At least one entrance must be accessible to physically disabled persons. If the main entrance is not accessible signs must be posted directing the person to an accessible entrance. Leading to the entrance must be paved or have a ramp.
4. Ramp - If stairs at entrance a ramp must be provided.
5. Building interior – All interior doors, ramps etc. within the building to obtain access to the polling place must comply with 950 CMR 51.02(3) and (4).
6. Voting Equipment – Accessibility voting unit approved by the state secretary, Specimen ballot must be posted, marking shelf for paper ballots, privacy barriers on both sides of shelf.
7. Variances – City or Town application of variance from the accessibility requirements

8. **Time Accessibility Required – Non-exempt polling place must be accessible no later than three weeks before the first federal election of an even numbered year.**

According to the above requirements the Commission is unaware of an issue of accessibility at the Ward 3 Precinct 1, King Open School polling location to date. In the absence of reported accessibility issues at polling locations in the city within a sufficient amount of time prior to Election Day, the election workers have been instructed on Election Day to follow the policy as indicated in the Warden and Clerk Manual for Wardens and Clerk, Instructions and Assistance to Voters, Contingency Arrangements for Disabled Voters (See attached).

The Board of Elections Commissioners requests that if anyone is aware of an issue or possible issue of inaccessible polling locations in the City of Cambridge the individual report the location and the reasons of inaccessibility to the Office of the Elections Commission and which will also be to the City Manager, Commission for Person with Disabilities and the appropriate school authorities or building owner. If there are specific polling place accessibility concerns regarding Ward 3 Precinct 1, King Open School, 850 Cambridge Street, please do not hesitate to contact the Office of the Election Commission and Board of Election Commissioners.

950 CMR: OFFICE OF THE SECRETARY OF THE COMMONWEALTH

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

Section

- 51.01: Purpose
- 51.02: Accessibility Defined
- 51.03: Exemptions

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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51.02: continued

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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51.02: continued

(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) Variances. 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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51.03: continued

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.

The Warden should place the Certificate of Confidential Registration in the Check List Envelope.
DO NOT RELEASE THE NAME AND ADDRESS OF ANY VOTER WITH A CONFIDENTIAL REGISTRATION CERTIFICATE.

If no confidential registration number can be found, the Warden or Clerk should call the Election Office immediately.

C15 YOU MAY REQUEST IDENTIFICATION

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