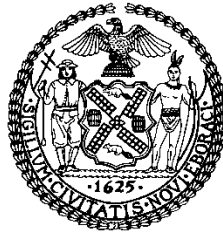


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## **THE COUNCIL**

### **COMMITTEE REPORT OF THE HUMAN SERVICES AND GOVERNMENTAL AFFAIRS DIVISIONS**

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### **COMMITTEE ON MENTAL HEALTH, MENTAL RETARDATION, ALCOHOLISM, DRUG ABUSE AND DISABILITY SERVICES**

Hon. G. Oliver Koppell, Chair

### **COMMITTEE ON CIVIL RIGHTS**

Hon. Deborah Rose, Chair

February 27, 2012

**PRECONSIDERED INT. NO.** \_\_\_\_ : By Council Member Rose

**TITLE:** To amend the administrative code of the city of New York, in relation to requiring a sign at the main entrance of any place or provider of public accommodation giving directions to the nearest accessible entrance for persons with disabilities when such an entrance exists.

**ADMINISTRATIVE CODE:** Adds a new chapter 12 to title 8.

## **INTRODUCTION**

On February 27, 2012, the Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse and Disability Services, chaired by Council Member G. Oliver Koppell, and the Committee on Civil Rights, chaired by Council Member Deborah Rose, will conduct a joint hearing on Preconsidered Int. No. \_\_\_\_\_, in relation to requiring a sign at the main entrance of any place or provider of public accommodation giving directions to the nearest accessible entrance for persons with disabilities when such an entrance exists. Representatives from the Mayor's Office for People with Disabilities and the New York City Commission on Human Rights, as well as advocates, and other concerned members of the community have been invited to testify.

## **BACKGROUND**

### *Legal Protections for People with Disabilities*

There are a variety of protections that ensure that individuals with disabilities will be able to access businesses. Federal, State and City laws protect people with disabilities from discrimination in employment, housing and public accommodations. Businesses throughout New York City are deemed as public accommodations and, accordingly, are covered by these laws.

Title III of the Americans with Disabilities Act (ADA) prohibits places of public accommodations from discriminating against individuals on the basis of any disability.<sup>1</sup> Public accommodations include hotels, restaurants, bars, theaters, grocery stores, and clothing stores.<sup>2</sup> Under the ADA, individuals with disabilities are entitled to equal enjoyment of goods, services,

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<sup>1</sup> 42 U.S.C. § 12182

<sup>2</sup> 42 U.S.C. § 12181

facilities, privileges, advantages, or accommodations in any place of public accommodation and it is unlawful to deny equal enjoyment, provide an unequal service, or a separate service.<sup>3</sup>

Public accommodations must provide their services in the most integrated settings possible and may not utilize eligibility criteria that tend to screen out individuals with disabilities. Public accommodations must remove architectural and communication barriers that are structural in nature, in existing facilities, where such removal is readily achievable.<sup>4</sup> Where such removal is not readily achievable, goods, services, facilities, privileges, advantages and accommodations must be made available through alternative methods, if such methods are readily achievable.<sup>5</sup>

Further, under the ADA, all new public accommodations and commercial facilities built for first occupancy after January 26, 1993 must be designed and constructed to be readily accessible to and usable by individuals with disabilities.<sup>6</sup> When a facility or portion thereof is altered in a manner that affects or could affect the usability of the facility, the alterations must be made in such a manner that the altered portion of the facility is accessible and usable by individuals with disabilities to the maximum amount feasible.<sup>7</sup>

It is also considered to be an unlawful discriminatory practice under New York State Law for places of public accommodation to refuse, withhold from or deny any accommodations, advantages, facilities or privileges of an accommodation to a person because of their disability.<sup>8</sup> The law defines a “discriminatory practice” as (i) the refusal to make reasonable modifications in policies, practices or procedures, (ii) the refusal to take the necessary steps to ensure that individuals with a disability are not excluded or denied services because of the absence of

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<sup>3</sup> 42 U.S.C. § 12182

<sup>4</sup> 42 U.S.C. § 12182

<sup>5</sup> 42 U.S.C. § 12182

<sup>6</sup> 42 U.S.C. §12183

<sup>7</sup> 42 U.S.C. §12183

<sup>8</sup> NY Exec. Law §296(2)(a).

auxiliary aids and services, and (iii) the refusal to remove architectural barriers and communications where such removal is readily achievable.<sup>9</sup> When determining whether something is “readily achievable” under State law, the accommodation must be able to be carried out without much difficulty or expense.

New York City’s Human Rights Law prohibits discrimination in a public accommodation on the basis of a person’s actual or perceived disability.<sup>10</sup> An individual that provides goods, services or facilities to the public is deemed a “public accommodation.”<sup>11</sup> As such, stores, theaters, restaurants, hair salons, health clubs, and banks located within the five boroughs are all considered to be public accommodations and are covered by the City’s Human Rights Law.<sup>12</sup> The City’s Human Rights Law requires providers of public accommodations to make reasonable efforts to grant access and services to everyone. A “reasonable accommodation may require structural change, such as constructing a ramp or providing accessible parking spaces, or it may require a change in policy, such as permitting service animals to accompany a disabled person into a restaurant.”<sup>13</sup> The City’s Department of Buildings will generally waive the building permit and fee requirements when businesses make minor structural alterations in an effort to accommodate people with disabilities.<sup>14</sup> Further, the City’s Building Code guides business owners on the proper way to provide accessibility and usability for people who have physical disabilities.<sup>15</sup>

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<sup>9</sup> NY Exec. Law §296(2)(c).

<sup>10</sup> Admin. Code §8-107(4).

<sup>11</sup> HRL section 8-102(9)

<sup>12</sup> NYCCHR, Equal Access It’s the Law, 4 <http://www.nyc.gov/html/cchr/pdf/equalbookEng.pdf> (last visited Oct. 26, 2011).

<sup>13</sup> NYCCHR website, “Public Accommodations” <http://www.nyc.gov/html/cchr/html/public.html> (last visited Oct. 26, 2011).

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.* at 9.

## *Accessible Entrances*

In New York City, it is estimated that there are 889,219 individuals with disabilities, making up 11% of the population.<sup>16</sup> Regarding the type of disability, 183,651 individuals have a serious hearing difficulty, 210,903 have serious vision difficulties, and 535,840 individuals have difficulty walking or climbing stairs.<sup>17</sup> It estimated that 60,000 New Yorkers are wheelchair users. Although the ADA has improved access for people with disabilities, many barriers still exist. There are an estimated 23,499 restaurants,<sup>18</sup> 5,111 grocery stores<sup>19</sup> and endless department stores and hotels in New York City. However, people with disabilities may only be able to use a fraction of these facilities, unless business and building owners make efforts to accommodate people with disabilities.

In order to be able to utilize places of public accommodation, people with disabilities need to be able to enter them. This is often problematic due to stairs or other barriers such as poles to prevent the theft of grocery store carts. These and other barriers may make it impossible for a wheelchair user to enter a business, yet many New York City businesses still have these conditions. Advocates have stated that public accommodations often have multiple entries but no indication which is accessible. This can lead individuals with disabilities to believe that there is no accessible entrance.

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<sup>16</sup> Center for Independence of the Disabled, *Disability Matters, Unequal Treatment and the Status of People with Disabilities in New York City and New York State 7* (2011) (on file with committees) (last visited Oct. 26, 2011).

<sup>17</sup> *Id.* at 31-37.

<sup>18</sup> NYCgo.com, NYC statistics, <http://www.nycgo.com/articles/nyc-statistics-page> (last visited Oct. 26, 2011).

<sup>19</sup> Urban Research Labor Market Information Services, *Industry Group Profile: Employment in New York City Grocery Stores*, May 2009, [http://www.urbanresearch.org/docs/lmis\\_pubs/NYCLMIS%204451%20Grocery%20Stores\\_final.pdf](http://www.urbanresearch.org/docs/lmis_pubs/NYCLMIS%204451%20Grocery%20Stores_final.pdf) (last visited Oct. 26, 2011).

## **ANALYSIS**

Section one of Preconsidered Int. No. \_\_\_ would amend Title 8 of the Administrative Code of the City of New York (the Code) by adding a new Chapter 12. Subdivision a of new section 8-1201 would define “Office” as the Mayor’s Office for People with Disabilities or such other office of the mayor or agency designated by the mayor. Subdivision b of the new section 8-1201 would define “place or provider of public accommodation” as having the same meaning as provided in subdivision 9 of section 8-102 of the Code.

New section 8-1202 would require a sign to be posted in one or more conspicuous locations at the main entrance of every place or provider of public accommodation giving directions to the nearest accessible entrance for persons with disabilities when such an entrance exists. The sign would be required to be readily visible to persons with disabilities and of such size, height, width, spacing, and color as prescribed by the rules of the Office.

New section 8-1203 establishes penalties for violations of this new Chapter of the Code. Subdivision a of new section 8-1203 would make any person that violates the provision of this new chapter 12 liable for a civil penalty of fifty dollars for the first violation. Subdivision b of new section 8-1203 would deem every day that a violation is continued as a continuous violation subject to an additional penalty of fifteen dollars per day.

Section two of this legislation would provide that this local law take effect one hundred and twenty days after its enactment into law.

Preconsidered Int. No.

By Council Member Rose

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring a sign at the main entrance of any place or provider of public accommodation giving directions to the nearest accessible entrance for persons with disabilities when such an entrance exists.

Be it enacted by the Council as follows:

Section 1. Title 8 of the administrative code of the city of New York is amended by adding a new chapter 12 to read as follows:

**Chapter 12**

**Accessible Entrance Signs**

**§ 8-1201 Definitions**

**§ 8-1202 Accessible entrance signs**

**§ 8-1203 Penalties**

§8-1201 Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

a. “Office” shall mean the mayor’s office for people with disabilities or such other office of the mayor or agency designated by the mayor.

b. “Place or provider of public accommodation” shall have the same meaning as provided in subdivision 9 of section 8-102 of this code.

§8-1202 Accessible entrance signs. A sign shall be posted in one or more conspicuous locations at the main entrance of every place or provider of public accommodation giving directions to the nearest accessible entrance for persons with disabilities when such an entrance exists unless such main entrance is an accessible entrance for persons with disabilities. Such sign shall be readily visible to persons with disabilities and of such size, height, width, spacing, and color as shall be prescribed by the rules of the office.

§8-1203 Penalties. a. Any person that violates any of the provisions of this chapter shall be liable for a civil penalty of fifty dollars for the first violation.

b. Each day a violation is continued shall be deemed a continuous violation and shall be subject to an additional penalty of fifteen dollars per day.

§2. This local law shall take effect one hundred and twenty days after its enactment into law.

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JW