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August 15, 2008

ADA NPRM
P.O. Box 2846
Fairfax, VA 22031-0846

To the Attention of: the Honorable Janet L. Blizard, Deputy Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice

RE: Comments on ADA NPRM: Nondiscrimination on the Basis of Disability by Public Accommodations and in Public Facilities (and Correction); Nondiscrimination on the Basis of Disability in State and Local Government Services (and Correction)

Dear Deputy Chief Blizard:

The following comments are submitted on behalf of the City of Madison's Department of Civil Rights (DCR). The City of Madison is particularly proud of its progressive heritage of protecting the rights of all members of society, regardless of their ability levels. Indeed, the City of Madison Equal Opportunities Commission, a unit within the DCR and a contracted agent for the U.S. EEOC, has a forty-five year history of promoting equal opportunity for all. It is against this august and esteemed background that these comments are submitted on behalf of the City of Madison Department of Civil Rights.

Basis for support of expanded accessibility:

The proposed regulations state that up to six percent of the adult population will use wheelchairs and other mobility devices such as walkers, crutches, canes and scooters by 2010. Therefore, an increased level of accessibility for those with mobility impairments is necessary at all levels of government. The DCR recognizes that as the employee workforce ages, the numbers of those with disabilities is likely to increase. With this increase, any accessible features would have to be retrofitted if not built into the facility. The new regulations assist city governments in anticipating accommodations by building them into new facilities rather than pursuing more complex and costly retrofits at some point in the future.

Impact on City of Madison departments:

These proposed changes are likely to impact several city departments, including our Parks Department, Comptroller's purchasing division, facilities management, public housing office, transportation/bus company, municipal court, and fire and police departments. These changes will also impact any City department that is remodeling or building facilities. Although the proposed rules may result in additional costs to the City, the DCR believes that these costs must be incurred in order to have truly accessible

programs, facilities and services. Additionally, the DCR believes that the increased specificity of these regulations will reduce uncertainty regarding certain applications of the ADA and in the end, will result in economic savings through reduced legal and litigation costs.

Support for Specific Regulations:

The DCR generally supports those regulations that expand accessibility requirements. The DCR supports the increased level of specificity in these guidelines, such as those for employee circulations paths, playgrounds, golf courses, recreational facilities (including boating slips and piers and fishing piers and platforms and swimming pools), judicial facilities, courtrooms and detention facilities. The DCR also supports the proposed regulations that increase the percentage of housing with mobility features in non-HUD funded residential facilities and the provision of accessible exercise machines. It also appreciates the clarification of the 1991 guidelines, such as the requirements that employee common rooms (break rooms, toilets cafeterias and corridors to exits) and free-standing equipment (copy machines used by the public and needed by employees with disabilities) be accessible.

The DCR also supports the expansion of the definition of “wheelchair” to include other powered mobility devices. This has been an area of interest for our Commission on People with Disabilities, a citizen panel that keeps the City abreast of important issues affecting this segment of our community. They have long advocated for a broader definition of wheelchair. This proposal may require new policies to address the challenges some of these devices present—such as the Segway (Sec.35.137). However, these regulatory clarifications are welcome and provide certainty as to the level of accommodations required by the ADA.

Furthermore, the DCR supports the proposed the lowered reach ranges; increased numbers of accessible entrances; increased accessibility features in all elevators; the modified requirements regarding accessible routes (to coincide with the general area as the general circulation path); that evacuation elevators and standby power for platform lifts are available as part of an accessible means of egress; increases to the number of van accessible spaces and accessible passenger loading zones; that all direct connections from parking structures must be accessible; that mechanical access parking garages having accessible passenger loading zones; that new construction stairways that are a means of egress comply with requirements for accessible stairs; increases in ambulatory accessible men's toilets; requirements for assistive listening devices in spaces where communication is integral to the space and anytime audio amplification is provided; requirements for line of sight viewing comparable to viewing angles available to all other spectators in assembly areas (including sports arenas, and concert halls); requirements for accessible dressing, fitting and locker rooms in sports or recreation facilities; standby power requirement for automatic doors; lowered height requirements for door thresholds; and requirements for enunciators or tones on elevators to indicate whether the elevator is going up or down.

The DCR Objects to Those Elements of the Proposal that Would Relax Current Requirements

The DCR objects to the proposals that weaken or relax the accessibility requirements set forth in the 1991 guidelines. For example, the proposed rules would relax the designated handicapped parking requirements for small parking lots. While we do not see a need or a benefit to relax such requirements, we do see that doing so would undermine the ability of persons with disabilities to access and enjoy the many small businesses that are unique to each and every community. The vast majority of business these days is conducted by small entrepreneurs. Surely, they should welcome the business of persons with disabilities and many of these entrepreneurs have disabilities of their own. However, by relaxing these parking standards the Department of Justice may actually decrease the number of locations in which

disabled entrepreneurs and their customers may conduct their business.

The DCR also objects to other provisions that appear to relax the standards recognized in the 1991 guidelines. For example, The DCR objects to the proposal to delay the retrofitting of visible fire alarms from the current requirement that they be installed upon alteration of the facility to, instead, the point in time when a new or upgraded fire alarm system is installed. The rule amendments should not create an economic disincentive to installing these visible fire alarms or to upgrading current alarm systems. Yet, by linking this requirement to only the replacement or upgrading of alarms, that is precisely what the rules will do.

The DCR also opposes the proposed accessible playground exception for small playgrounds. Many small playgrounds are located in neighborhood parks. It would indeed be unfortunate if the playground nearest a disabled child was such that it sent the message that the disabled child is a second class citizen. How much more visible a message can we send to a child than the one that this playground is not for you? Or that “those children” (children with disabilities) aren’t allowed on “our” playground? Let’s build playgrounds such that (to paraphrase from Dr. King) all children can play together in harmony and understanding. A playground, regardless of its size, should welcome all children, regardless of their abilities.

The DCR can recite other examples of where the proposed rules would relax or even eliminate requirements under the 1991 guidelines. However, as other commentators have already raised those specific objections, the DCR will not repeat those arguments herein. Suffice it to say that the DCR is opposed to any relaxing or elimination of those standards.

Finally, the DCR opposes the proposed narrow definition of service animals. The proposed definition would exclude any animal whose function is to provide emotional support, comfort, therapy, companionship, therapeutic benefits, or to promote emotional well-being of its human companion. For many years now our local Equal Opportunities Ordinance has defined a service animal in such broad fashion so as to include all of these functions. The DCR has not experienced any practical difficulties (other than awareness of this definition) with this definition. Furthermore, the ADA was meant to protect the rights of all persons with disabilities persons, not simply those of the physically disabled population.

Sincerely,

Roger A. Allen
Assistant City Attorney

cc: Mr. Larry Studesville, Acting Director, DCR