
 Cambridge Police Department	POLICY & PROCEDURES		No. 480	
	Subject/Title: Public Accommodation for Service Animals			
	Issuing Authority:  Robert C. Haas Police Commissioner		Review Date: December 13, 2012	
			Issue Date: August 5, 2013	
		Effective Date: August 19, 2013		
		Rescinds: Rescinds Policy #506		
References/ Attachments: M.G.L. c. 272, § 92A, 98, & 98A; M.G.L. c. 129, § 39F; 804 CMR 5.04; 5.05; 5.06; 5.07; 28 C.F.R. 36 Training Memo #12-8 (09/24/2012)		Accreditation Standards:		

I. PURPOSE:

This policy is intended to provide guidance for officers who are called upon to respond to incidents involving disabled persons with service animals at places of public accommodation.

II. POLICY:

The Cambridge Police Department is committed to safeguarding the statutory and civil rights of all persons with disabilities, including those persons who rely upon service animals. Accordingly, the department shall strictly enforce all federal and state statutes and regulations that prohibit discrimination in any and all places of public accommodation.

III. DEFINITIONS:

- A. Place of Public Accommodation:** Any place that is open to and accepts or solicits the patronage of the general public, as defined by M.G.L. c. 272, § 92A. *See also* 804 C.M.R. 5.04(9).¹
- B. Disability:** A physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment. *See* 804 C.M.R. 5.04(2).
- C. Service animal:** Any guide dog or other animal trained to do work or perform tasks for the benefit of an individual with a disability,² including but not limited

¹ This policy is modeled upon the regulations proposed by the Massachusetts Commission Against Discrimination (MCAD), as well as M.G.L. c. 272, §§ 92A, 98, and 98A.

² This includes physical, sensory, psychiatric, intellectual, or mental disability.

to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. The definition also includes any companion animal trained to provide emotional support to an individual with a disability. *See* 804 C.M.R. 5.04 (13). Note that animals may be considered service animals if they have been individually trained to provide assistance to an individual with a disability, regardless of whether licensed or certified as such by a state or local government.³

IV. GENERAL CONSIDERATIONS AND GUIDELINES:

Massachusetts law prohibits discrimination in places of public accommodation on the basis of physical or mental disability. The law prohibits discrimination not only in terms of access to businesses or services, but also the goods or services the entity provides. *See* M.G.L. c. 272, §§ 92A, 98A and 98.

Also prohibited is discrimination against a blind, deaf, hard of hearing person, or any other person with a disability, who uses a support or guide dog. Individuals who rely upon service animals are entitled to any and all accommodations, advantages, facilities, and privileges of all public conveyances, public amusements, and places of public accommodation within the Commonwealth, to which others not accompanied by service animals are entitled. The law also protects individuals who are training service animals from discrimination. *See* G.L. c. 129, § 39F.

It should also be noted that the Americans with Disabilities Act (ADA), a federal civil rights law, confers individuals with disabilities using service animals with additional federal rights, beyond those specified within state law. Although these legal rights are not enforceable by members of this department, it does expose individuals who deny persons with disabilities seeking to exercise their federal protections to additional liabilities. Although the Cambridge Police Department has no enforcement authority under the ADA, officers should ensure that all reported violations of the ADA are captured within a police report so as to protect the rights of all those involved.

³ Officers should be aware that the revised Americans with Disabilities Act regulations relating to service animals specifically include the use of miniature horses that have been individually trained to do work or perform tasks for people with disabilities. *See* 28 C.F.R. §36.302 (c)(9).

V. SERVICE ANIMALS AND PLACES OF PUBLIC ACCOMMODATION:

A. Requirement to Provide Reasonable Accommodation: A place of public accommodation is required to provide a reasonable accommodation to an individual with a disability when it is necessary in order to provide that individual with full and equal use and enjoyment of goods, services, facilities, privileges, advantages or accommodations, subject to certain defenses. A place of public accommodation is not required to provide the best accommodation available, or the accommodation specifically requested by the individual. It must provide an accommodation that is effective for its purpose. *See* 804 C.M.R. 5.06(2)(a).

With respect to service animals in particular, a person, business owner, or entity is required to modify policies, practices, or procedures to permit the entry and use of a service animal by a disabled individual. *See* 804 C.M.R. 5.06 (2)(b)(ii).

B. Responsibilities of Persons, Business Owners, or Entities: If a dispute arises between a disabled person and a business owner or entity concerning a service animal, police officers should be aware of, and communicate the following guidelines to the parties, where appropriate:

1. Generally, a person, business owner, or entity shall modify its policies, practices or procedures to permit the use of a service animal by an individual with a disability. *See* 28 C.F.R. § 36.302 (c)(1); 804 C.M.R. 5.06 (2)(b)(ii).

Exceptions: A person, business owner, or entity may ask an individual with a disability to remove a service animal from the premise if:

- (1) The animal is out of control and the animal’s handler does not take effective action to control it;⁴ or
- (2) The animal is not housebroken. *See* C.F.R. §36.302 (c)(2).

If a person, business owner, or entity properly excludes a service animal under preceding paragraph, it shall give the individual with a disability the opportunity to participate in the service, program, or activity without having the service animal on the premises. *See* 28 C.F.R. § 36.302 (c)(3).

2. A person, business owner, or entity shall not ask about the nature or extent of a person’s disability, but may make two limited inquiries to determine whether an animal qualifies as a service animal:

- (1) If the animal is required because of a disability; and

⁴ A service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash or other tether, or the use of a harness, leash or other tether would interfere with the service animal’s safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler’s control (e.g., voice control, signals, or other effective means). *See* 28 C.F.R. § 36.302 (c)(4).

(2) What work or task the animal has been trained to perform.

A person, business or entity shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a public entity may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person’s wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability). *See* 28 C.F.R. § 36.302 (c)(6).

3. A person, business owner, or entity must permit a service animal to accompany the disabled individual to all areas of the facility where customers are ordinarily allowed to go. An individual with a service animal may not be segregated from other customers. *See* 28 C.F.R. § 36.302 (c)(7).⁵
4. A person, business owner, or entity may not exclude a service animal from entry into an establishment even if there is a clearly posted “no pets” policy at the facility. Establishments that sell or prepare food must allow service animals in public areas even if state and local health codes prohibit animals on the premises.
5. A person, business owner, or entity shall not ask or require an individual utilizing a service animal to pay a deposit or maintenance surcharge, even if people accompanied by pets are required to pay fees, or to comply with other requirements generally not applicable to people without pets. If a public entity normally charges individuals for the damage they cause, an individual with a disability may be charged for damage caused by his or her service animal. *See* 28 C.F.R. § 36.302 (c)(8).
6. A person, business owner, or entity is not responsible for the service animal while in their facility or business. The care and supervision of a service animal is solely the responsibility of the owner. *See* 28 C.F.R. § 36.302 (c)(5).
7. A person, business owner, or entity may exclude a service animal from their business or facility when that animal’s behavior poses a direct threat to the health or safety of others. A “direct threat” means “a significant risk of substantial harm to the health or safety of others that cannot be eliminated by a reasonable accommodation.” *See* 804 C.M.R. 5.07(1); 28 C.F.R. § 36.104. Each situation must be considered individually. *See* 804 C.M.R. 5.07(1); 28

⁵ “For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal’s presence may compromise a sterile environment.” *See* “Revised ADA Requirements: Service Animals” issued by the U.S. Department of Justice, Civil Rights Division, Disability Rights Section.

C.F.R. § 36.208. The disabled person should be given the option of continuing to enjoy the goods or services at the business or facility without the service animal on premises.

8. A person, business owner or entity may refuse to accommodate a service animal on its premises if it can demonstrate that making the accommodation would result in an undue burden (i.e., significant difficulty or expense). The disabled person should be provided an alternative reasonable accommodation that is effective in providing a disabled individual with the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations offered to non-disabled individuals. *See* 804 C.M.R. 5.07(1).
9. Any person, business owner, or entity may be liable for a civil or criminal penalty under Massachusetts or federal law for discriminating against an individual on the basis of disability, or for failing to take remedial action once put on notice of such conduct. *See* M.G.L. c. 272, §§ 92A, 98, 98A; and 804 C.M.R. 5.05. This applies to landlords/tenants, as well as employers/employees.

C. Investigating Officer’s Responsibilities: Whenever an officer is dispatched or involved in a situation where there is a complaint regarding a service animal, the officer should take the following steps:

1. Attempt to resolve the complaint or disagreement by advising the parties involved as to the requirements of the law.
2. If there are no exceptions whereby the persons, business owner, or entity may exclude an individual who is the company of a service animal, the officer should warn the person, business owner, or entity that denial of such reasonable accommodation to a disabled person could result in civil or criminal penalties under Massachusetts or federal law.
3. While an officer may not order a person, business owner, or entity to admit a disabled person into their establishment, he or she may, in appropriate circumstances, seek a criminal complaint against the owner of a business or entity for failing to admit a disabled person into their establishment, in violation of M.G.L. c. 272, § 98A.
4. The officer should complete a police report on all such incidents, noting the circumstances of dispute, the actions taken by the officer, and how the matter was finally resolved. The incident report should capture the identities of all parties and witnesses involved.