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April 29, 2020

**Via Electronic Mail**

Joseph A. Curtatone  
Mayor of Somerville  
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93 Highland Ave.  
Somerville, MA 02143  
mayor@somervillema.gov

Louis A. DePasquale  
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City of Cambridge  
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Cambridge, MA 02139  
citymanager@cambridgema.gov

Bernard Horowitz, Chair  
Sharon Cameron, Director  
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24 Lowell Street  
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Sharon.Cameron@peabody-ma.gov

Mayor Daniel Rivera  
City of Lawrence  
200 Common Street  
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Lawrence, MA 01840  
MayorRivera@cityoflawrence.com

Peter Spellios, Chair  
Town of Swampscott Board of Selectman  
Sean R. Fitzgerald  
Town Administrator  
22 Monument Avenue  
Swampscott, MA 01907  
<https://www.swampscottma.gov/user/56/contact>  
<https://www.swampscottma.gov/user/413/contact>

Re: Voluntary enforcement and reasonable modifications of mask orders to accommodate persons with disabilities

Dear All:

Thank you for all your work to keep residents of your communities safe in these difficult times of COVID-19.

We write now with respect to the orders adopted in each of your communities requiring wearing of masks in certain public places.

Some of your orders apply only to entry into places of public accommodation, while others are broader and apply whenever someone is on a public street, sidewalk, park, or other public space. With regard to all of them, however, we write to ask

that 1) you take affirmative steps to ensure that imposition of fines or other sanctions is a last resort and that your municipalities rely primarily on voluntary compliance and public education to encourage compliance with public health best practices; and 2) you take immediate steps to clarify and to communicate with enforcement personnel, the public and places of public accommodation the legal obligation to make reasonable modifications to your various mask-wearing requirements for persons with disabilities, including but not limited to children with autism and other behavioral issues that make it very difficult, if not impossible, for parents to ensure the child wears a mask in public.

With regard to voluntary compliance, please note the Office of the Attorney General has indicated that municipalities can encourage and advise mask wearing but has not indicated that municipalities have authority to mandate this action. <https://www.massmunilaw.org/wp-content/uploads/2020/04/AGO-Guidance-re-Muni-Authority-4-15-2020.pdf>. And by purporting to authorize trespassing arrests and prosecutions, the Lawrence order in particular may well have the unintended consequence of compounding the public health threat to members of the public, police officers and those brought to jails or holding facilities or courtrooms, where COVID is a particular risk. You may wish to consult with the Attorney General further about your authority in this regard. But regardless, we believe that voluntary compliance is likely to achieve substantial results without risking undue encroachment on civil rights and civil liberties.

With regard to disability, the language of each of your respective masking orders seems to differ, but, as far as we have seen, none of them make express provision for reasonable accommodations/modifications to avoid discrimination against persons with disabilities, which are required by Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1974, Amendment Article 114 of the Massachusetts Constitution, and the state public accommodations law, G. L. c. 272, §§ 92A and 98.

We ask that you take immediate steps to amend the orders or otherwise make clear to the public, to operators of places of public accommodation, and to enforcement officers that warnings, fines or other actions that have the effect of creating barriers to equal access to public places or accommodations, due to disabilities that make wearing a mask difficult, may not be imposed or taken.

The City of Cambridge order includes the following language: “This Emergency Order shall not apply to anyone under the age of five, anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance, and/or any other person exempted by Centers for Disease Control guidelines or Massachusetts Department of Public Health guidelines.”

[https://www.cambridgema.gov/-/media/Files/citymanagersoffice/COVID19/temporaryorderrequiringmasksandfacecoverings\\_042720.pdf](https://www.cambridgema.gov/-/media/Files/citymanagersoffice/COVID19/temporaryorderrequiringmasksandfacecoverings_042720.pdf).

While this is an apparent attempt to recognize the need to make some accommodations, it does not adequately address the needs of persons with disabilities who cannot wear the masks for reasons other than the specific reasons listed in this statement. For instance, it would not protect children with autism or behavioral disorders, persons with mental illness, etc.

And, although we have been unable to locate the actual language of the Somerville ordinance, officials have been quoted as saying that “[e]xceptions will be made for persons unable to medically tolerate a face covering.”  
<https://www.somervillema.gov/facecoverings>.

While this reflects some acknowledgment of obligations under the various disability discrimination laws, it does not mention disability as a reason for making exceptions.

Apparently, neither the Swampscott, Peabody nor Lawrence orders makes any reference to accommodating the needs of persons with disabilities.  
[http://www.swampscottma.gov/sites/swampscottma/files/uploads/swampscott\\_mask\\_order\\_-\\_signed.pdf](http://www.swampscottma.gov/sites/swampscottma/files/uploads/swampscott_mask_order_-_signed.pdf); <https://www.peabody-ma.gov/health/face%20coverings%20order%20approved%204-13.pdf>;  
<https://www.cityoflawrence.com/816/300-Fine-for-Not-Wearing-Mask>.

In sum, we believe more binding instructions and guidance are needed in each of your communities in order to avoid your orders having the effect of screening out persons with disabilities from use of the public spaces to which your orders varyingly apply. This should include information about how and from whom members of the public can seek reasonable modifications from the masking requirements, so they can avoid the additional stress of worrying that they will be ensnared in enforcement actions.

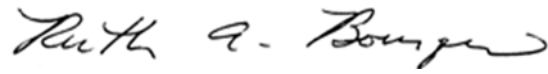
Not only will this bring your communities into compliance with the law and protect business owners from violating the public accommodations law, it will ensure that all members of your community, regardless of disability, are protected and included during this time when we all need to work together for the common good.

Please know we are willing to consult on appropriate language to be used and to connect you to other disability law experts to assist in this important effort.

Thank you for your prompt attention to this issue.

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April 29, 2020

Sincerely,

A handwritten signature in cursive script that reads "Ruth A. Bourquin".

Ruth A. Bourquin

cc: Leaders of other Massachusetts Municipalities  
with COVID Orders requiring the wearing of masks  
James B. Lampke, Massachusetts Municipal Lawyers Association (via email:  
jlampke@massmunilaw.org)