



LEGAL ASSISTANCE OF WESTERN NEW YORK, INC.*

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Reconnect Rochester
Attn: Dan Speciale
1115 East Main Street
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RE: Legal Analysis Regarding Rochester City Code 1040-11

Mr. Speciale:

In response to Reconnect Rochester's ["Reconnect"] request for legal assistance in addressing concerns over snow removal in the City of Rochester, please accept this letter as a legal analysis on the potential impact Rochester City Code, Section 1040-11, as it's currently written, is having on snow and ice removal practices in the City. As further analyzed below, it appears that the City Code 1040-11 on Right-Of-Ways, is ambiguous on the responsibility of property owners to remove snow and ice from "bus shelters" and "bus stops." This coupled with a low level of enforcement of this Code has had the impact of making access to public transportation during the winter months problematic for City Residents and individuals with disabilities.

As part of ongoing discussions and collaboration with your organization, it has been identified that property owners seem unaware that their responsibility to clear snow and ice extends to any "bus shelters" or "bus stops" on the property. This has resulted in a build-up of snow and ice in these areas, impacting the ability of pedestrians, including individuals with disabilities, to safely access and use public transit. It is our belief that the lack of knowledge on the part of property owners related to clearing "bus shelters" and "bus stops" is based on either lack of enforcement of municipal snow removal laws, or unclear city codes that lead property owners to fail their legal duty to remove snow and ice from bus shelters. I have attached to this letter an article and study by the Department of Transportation on how lack of enforcement mechanisms for snow removal are most directly related to follow through by the community. Nevertheless, it is very possible the ambiguity in the code related to snow removal for "bus stops" and "bus shelters" is a larger part of the snow accumulation problem.

Rochester City Code 1040-11 currently states:

"The owner of a building or lot must keep the sidewalks adjoining such building or lot free and clear from snow and ice and must not suffer or permit snow or ice to collect or remain on such sidewalk later than 9:00 a.m... the portion of the sidewalk required to be kept free from snow and ice is the portion thereof which is paved, if any, and if no portion is paved, a space at least four feet in width shall be kept free and clear as stated above."

The Code further clarifies that:

"no person shall remove snow or ice from private property or structures and deposit it on the sidewalk or roadway of any street or against a fire hydrant or on the loading or unloading areas of a public transportation system, nor shall any person authorize or permit such removal and depositing. No person shall remove snow or ice from the sidewalks and deposit it on the roadway of any street..."

The City may consider the language in section C requiring paved portions of the sidewalk to have snow removed as being sufficient; however, the Code fails to specifically and clearly identify "bus shelters" and



“bus stops” as parts of the sidewalk that need to have snow removed. Unfortunately, property owners see “bus shelters” as not part of their private property and often neglect clearing them. There appears to be uncertainty regarding whether bus shelters and stops are under the purview of the City or the RTS. As Reconnect Rochester is aware from observations and photographs sent into the group, “bus shelters” and “bus stops” are not being cleared properly.

In addition to the issue of property owners not being aware of this duty, New York State case law also supports the contention that the City must use specific and clear language in their Code before transferring snow removal liability onto landowners. See Garcia-Martinez v. City of New York, 867 N.Y.S.2d 16 (2008) (holding that “if the city council desires to shift liability for accidents... exclusively to abutting landowners in derogation of the common law, it need[s] to use specific and clear language to accomplish this goal.”) In Cabrera v. City of New York, the court determined that the duty to maintain public sidewalks and roadways, including those adjacent to bus stops in a reasonably safe condition and good repair... falls upon the city. The court in Vucetovic v. Epsom Downs, Inc. further held that “legislative enactments in derogation of common law, and especially those creating liability where none previously existed must be strictly construed.” In line with this reasoning, the Courts in Garcia-Martinez and Vucetovic, both interpreted the City Code as not transferring liability to the landowner where the statute was not specific and clear. (in Garcia-Martinez, the Code didn’t clearly include bus shelters and in Vucetovic the Code didn’t clearly include tree wells).

Here in Rochester, the Code doesn’t specifically and clearly include “bus stops” and “bus shelters” in its snow and ice removal policies. Like in New York City, the City of Rochester has transferred snow and ice removal from the City’s common law duty to landowners through City Code 1040-11. Because the code does not specifically include snow and ice removal from “bus shelters” and “bus stops,” however, landowners appear to be unaware of their duty. As this transfer of liability is strictly construed based on the plain language of the statute, it is possible that the City of Rochester believes the liability has been transferred to the landowners when a court of law may disagree.

Also concerning is the impact the Code’s ambiguity may have on the City’s compliance with the Americans with Disabilities Acts as codified in 28 CFR §35. Pursuant to Section 35.133 *Maintenance of Accessible Features*, a walkway, including the bus stop and bus shelter areas, must be maintained in an accessible condition, so that individuals with disabilities may access programs, services, or activities. If individuals with disabilities cannot access public transportation or other programs, services, or activities, then the owner or responsible party is in violation of the ADA. Title II of the ADA prohibits public entities, such as any state or local government from discriminating against persons with disabilities, either directly or through contractual agreements. See Anthony Hunter v. District of Columbia, Case No. 1:12-cv-01960-GK. This means that a public entity may not transfer their liability for ADA compliance to another entity to avoid liability. Because of this, it is possible that the City may still be responsible for ensuring safe access in these areas and compliance with the ADA.

In conclusion, based on: (1) a plain reading of the City of Rochester’s Code 1040-11; (2) current case law on transferring liability from a municipality to an individual, and; (3) the prevalence of snow and ice obstructions in the City’s bus stops and shelters, it appears that the way the City Code is drafted is not sufficiently clear in advising property owners of their responsibility to clear bus stops and shelters. Lack of enforcement is another contributing factor, but the main cause may simply be ambiguity in the Code. To make matters worse, it’s possible that the ambiguity of the Code and lack of enforcement may be



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creating ADA violations, as the snow clearing procedure, specifically with bus shelters and stops, appears to not be working.

Should you have any questions or concerns regarding this, please feel free to contact me at 585-295-5602 or jplacito@lawny.org.

Sincerely,



Jonathan Placito, Esq.
Staff Attorney

