

Addressing ADA Accessibility Issues in the Public Sector

by Nikki Hall



Although the Americans with Disabilities Act (ADA) of 1990 has been in effect for nearly two decades, many public entities are not yet in compliance with its accessibility requirements. It is well understood that ADA prohibits discrimination against disabled workers who are able to perform essential job functions with or without reasonable accommodation. But many public agencies have not fully recognized and taken steps to abide by ADA's affirmative mandate that requires public facilities and services to be accessible to people with disabilities.

ADA claims inflict a particularly painful financial sting on public agency defendants. Attorneys' fees in such a case can easily approach \$1 million. What's more, unlike other forms of civil rights litigation, ADA requires defendants to pay plaintiffs' attorneys' fees not only if plaintiffs win but also if they *settle* without a win. This article provides an introduction to ADA accessibility requirements and suggests steps public agencies should take to begin addressing this potential liability.

continued on page 29

Looking for Footnotes?

A fully footnoted version of this article is available online at www.westerncity.com/articles.

Nikki Hall is a senior counsel with Renne Sloan Holtzman Sakai LLP, a law firm that represents public entities almost exclusively and has offices in San Francisco and Sacramento. She can be reached at <nhall@publiclawgroup.com>.

Core ADA Accessibility Requirements

Under ADA's accessibility provisions, public entities must ensure that their facilities, services, programs, activities and communications when "viewed in their entirety" are accessible to people with disabilities.

This accessibility requirement applies unless an agency can demonstrate that compliance would result in a "fundamental alteration" in the nature of a service, program, activity or facility or in undue financial and administrative burdens. The decision regarding whether or not compliance would result in a fundamental alteration or undue burden must be made *in writing* by the head of a public agency or that person's designee after considering all of the agency's resources. Furthermore, even if an agency can demonstrate that compliance would result in a fundamental alteration or undue burden, the agency must nevertheless take whatever action it can that does not result in a fundamental alteration or undue burden, but still ensures that people with disabilities receive the benefits and services provided by the public entity.

To comply with ADA accessibility requirements a public entity must:

1. Conduct a thorough self-evaluation of its facilities, services, policies, communications and practices to determine whether any modifications are required to make them accessible to people with disabilities;
2. Adopt a transition plan, after the self-evaluation process is complete, describing the alterations that will ensure accessibility and the timeline for completing such changes. Many ADA consultants are available to assist an agency with its self-evaluation and transition plan;
3. Obtain public input during the self-evaluation and transition plan processes, particularly from disabled individuals and organizations that represent them;

continued

A lawsuit pending against the California Department of Transportation is the first of its kind to challenge sidewalk access barriers on a statewide basis.



J O B O P P O R T U N I T I E S

Police Chief, Fullerton, CA

Fullerton, population 137,400, is a dynamic city with a vibrant downtown and a small town atmosphere. The award-winning historic downtown has been recognized by the California Downtown Association, the League of California Cities and the National League of Cities for "innovation, community image, economic impact, and achievement of vision and goals." Restored historic buildings, tree-lined streets, unique restaurants and charming specialty shops all add to a hometown feel. In preparation for the upcoming retirement of the current chief who has served for the past 17 years in this position, the City is seeking a new Police Chief to oversee a full time staff of 160 sworn and 75 civilians and a department budget of \$39 million. The ideal candidate must be approachable and visible in the community and have a clearly defined vision of the future for the department. The new Police Chief will possess solid leadership, interpersonal, customer service, and communication skills, serve as a role model for the department, maintain high standards of accountability, and inspire confidence and creativity in others. Candidates who can demonstrate a proven track record of successful decision making and action are desired. A Bachelors degree in police science, criminal justice, public administration or a related field is required. In addition, a graduate degree or completed graduate level coursework in Management, Business Administration, Public Administration or a related field is preferred. The current salary control point of \$172,316 for Police Chief will be reviewed in early 2009. The City Manager may appoint a new Police Chief at a salary up to 20% above the control point. The City also offers an attractive benefits package. To apply for this opportunity, please visit our website at www.bobmurrayassoc.com and you will be prompted to apply online. If you have any questions, please contact **Mr. Bob Murray** at (916) 784-9080. A detailed brochure is available. **Filing Deadline: January 26, 2009.**



phone 916-784-9080
fax 916-784-1985
www.bobmurrayassoc.com

4. Designate at least one employee to act as its ADA coordinator to monitor compliance with ADA's non-discrimination and accessibility requirements. That person (or persons) must promptly investigate and respond to ADA complaints; and

5. Adopt and publish a grievance procedure for promptly resolving complaints alleging ADA violations.

Training employees regarding accommodation and accessibility under the ADA is also recommended to ensure that employees are aware of the entity's legal obligations.

Recent Lawsuits

In recent years, many public entities have faced arduous ADA lawsuits.

In 2004, a class of disabled people sued the City of Sacramento, alleging that its public sidewalks were inaccessible to those with disabilities. A settlement agreement requires Sacramento to allocate 20 percent of its Transportation Fund *annually for 30 years* to ensure disabled access to pedestrian rights of way. The settlement also requires the city to submit semiannual ADA compliance reports to an outside monitor for three years. As part of the settlement, the city had to pay \$800,000 in attorneys' fees to the plaintiffs.

In 2006, the City of Vacaville settled a similar lawsuit regarding pedestrian rights-of-way access. For up to 30 years, Vacaville must dedicate the equivalent of 5 percent of its annual gas tax revenue set-aside for capital projects — a minimum of \$50,000 — to an ADA fund that will be used exclusively to install compliant curb ramps and remove barriers to make pedestrian rights of way accessible to disabled individuals.

In 2005, the state Department of Parks and Recreation settled an ADA lawsuit alleging denial of access to state parks. Under the settlement agreement, the department committed to a comprehensive remedial transition plan. The settlement requires ongoing reporting of ADA compliance and monitoring by an outside source over a period of 11 years. Plaintiffs' attorneys' fees totaled \$650,000.

In 2007, the counties of Kern and Santa Cruz settled lawsuits related to alleged inaccessible polling sites brought against them by the state Attorney General's Office. The settlement agreement, which remains in effect through March 2011, requires the counties to improve accessibility to polling places, employ an architectural consultant to assist with upgrading polling facilities and train employees who select and set up polling sites on election days.

J O B O P P O R T U N I T I E S



Senior Planner City of Carson, CA

Salary: \$73,344-\$93,600 annually
Superior benefits: 3% @ 60 retirement; 4/10 work schedule.

THIS RECRUITMENT IS OPEN UNTIL FILLED. APPLICANTS ARE ENCOURAGED TO SUBMIT THEIR APPLICATION IMMEDIATELY.

The City of Carson, population approximately 98,000, is located in the South Bay section of Los Angeles County. Carson's strategic position and proximity to the West Coast's two major ports, as well its intersection by four freeways, makes it a major gateway to the Pacific Rim. Current and future development activities recognize the need to balance land uses, revitalize brownfields, encourage mixed use development and address sustainable design.

The Senior Planner will be responsible for managing complex development projects, community plans and advanced planning programs. The Senior Planner will assist with consensus building for redevelopment efforts, housing policies, community revitalization efforts and long range planning.

A bachelor's degree and four years of full time, paid professional experience in planning or related field is required; a Master's degree is preferred. Applicants are encouraged to submit their application immediately.

For further information regarding this outstanding career opportunity call: (310) 952-1736 or visit the city website at <http://ci.carson.ca.us/content/hr/hrjobs.asp>.

CITY OF WESTMINSTER

The City of Westminster is looking for a new City Manager to replace the retiring incumbent. Located in West Orange County, Westminster is a diverse community of 93,000. The City is a major retail center with Westminster Mall and the popular Little Saigon shopping district. In addition, the City is embarking on a number of exciting land use initiatives to further enhance the community as an excellent place to live and work.

The City has adopted a new Economic Development Strategy, including a Commercial Property Facade Grant Program, and is one of the first California cities to have a State Housing and Community Development General Plan Housing Element approved. Westminster was selected by the UCI Planning Studio to study the potential of the Westminster Mall. A Community Advisory Panel was also conducted by the Urban Land Institute to evaluate the potential of Little Saigon. The American Planning Association recently recognized Westminster for its Little Saigon Master Plan.

With a staff of 293 FTEs and a total FY 08-09 budget of \$181.3 million (GF budget of \$44.5 million), the City provides a full range of municipal services. Fire services are contracted through OCFA.

The successful candidate will be an experienced public sector manager, knowledgeable in City and Redevelopment Agency finances, and will demonstrate enthusiasm for the City's initiatives. Candidates should possess an appropriate Bachelor's degree (Master's preferred) and have 10 years of related experience. The current salary is \$224,724 annually (may be adjusted in January 2009).

CITY MANAGER



Contact

Ray Silver, City Manager
714-898-3311 x402

Brochure

www.ci.westminster.ca.us

Filing Deadline

January 30, 2009
4:30 pm

A lawsuit is pending against the California Department of Transportation to improve sidewalk access throughout the state for people with mobility and/or vision disabilities. This lawsuit is the first of its kind to challenge sidewalk access barriers on a statewide basis.

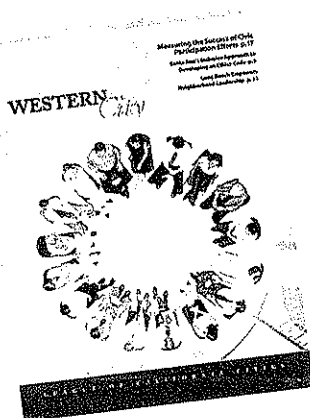
The City of Oakland has been sued for allegedly failing to adequately plan to meet the mass care and shelter needs of people with disabilities during an emergency.

Given the concern over the emergency preparedness of cities that followed such natural disasters as Hurricane Katrina, disability rights groups are focusing on whether cities are adequately prepared to address the needs of disabled people during an emergency. For example, Disability Rights Advocates, an advocacy group based in Berkeley, is currently soliciting public input regarding emergency preparedness for cities throughout the state with respect to accessibility for people with disabilities.

Moving Forward

ADA is one of the most important federal statutes governing employment and public accessibility. To fully comply with the letter and spirit of ADA and to avoid litigation, make sure that your agency is abiding by the core ADA accessibility requirements discussed here. ■

Did You Miss the December Issue?

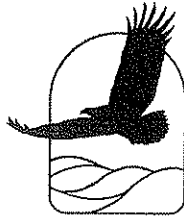


Read it online!
www.westerncity.com

Unlike other forms of civil rights litigation, ADA requires defendants to pay plaintiffs' attorneys' fees not only if plaintiffs win, but also if they *settle* without a win.

J O B O P P O R T U N I T I E S

COMMUNITY DEVELOPMENT DIRECTOR City of Watsonville



**Salary: \$108,023 - \$144,761/annually
 plus a generous benefit package**

The City of Watsonville (population approximately 50,000) is centrally located between Monterey and Santa Cruz along California's beautiful central coast. Reporting directly to the City Manager, the Community Development Director will plan, organize, direct, and coordinate planning, building inspection, development engineering plan check and other related activities for the City. The ideal candidate will possess excellent technical skills as well as proven leadership and management skills. Candidates must possess a Bachelor's Degree in public administration, city planning, business administration or closely related field and eight years of applicable, professional work experience.

For complete job description and/or an application, please contact the Personnel Office at 275 Main Street, Suite 400, Watsonville CA 95076, (831) 768-3025, or visit our website at www.ci.watsonville.ca.us. Filing deadline is January 30, 2009 at 5:00 p.m. Postmarks will not be accepted. Equal Opportunity Employer.

COUNTY OF CALAVERAS

Home of the California Gold Rush, an emerging wine country and the celebrated annual Frog Jumping contest, Calaveras County offers an enchanting and quality lifestyle. Calaveras County is located in the foothills of the Sierra Nevada Mountains, 133 miles east of San Francisco.

PLANNING DIRECTOR

The new Planning Director will have oversight for the Planning Division within the county's Community Development Agency. Along with managing the planning staff of eight employees, the director will also have a hands-on role in handling the county's most challenging and complex special projects.

The successful candidate will have at least two years supervisory experience and a total of five years professional planning experience within a public agency. A Bachelor's Degree or equivalent experience is also required. To apply, submit letter of interest, your resume and five work related references (email preferred) to Paul Kimura or Bill Avery by the recruitment close date of February 9, 2009. The annual salary for this position is \$81,515-\$99,091, DOQ. A formal job announcement is available on our website at <http://www.averyassoc.net/jobs>.



AVERY
 ASSOCIATES

William Avery & Associates
 Management Consultants

3 1/2 N. Santa Cruz Ave., Suite A
 Los Gatos, CA 95030

408.399.4424
 Fax: 408.399.4423
 email: jobs@averyassoc.net
www.averyassoc.net