



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Request to Join in Amicus Brief in the case of Barden v. City of Sacramento, 9th Circuit Court of Appeals.

MEETING DATE: August 15, 2001

PREPARED BY: Randall A. Hays, City Attorney

RECOMMENDATION: That the City join the Amicus Brief in the case of Barden v. City of Sacramento, 9th Circuit Court of Appeals.

BACKGROUND: Amicus Briefs are filed in various actions, which involves matters of wide-ranging concern to provide information and additional argument to the Court in order to assist the Court in understanding all of the issues and arrive at a conclusion.

The Board of Directors of the League of California Cities at the request of its Legal Advocacy Committee recommends that cities join in this amicus brief.

The Plaintiff/Appellants brought this action against the City of Sacramento alleging violations of the ADA and State's Civil Rights laws arising out of the City's design and maintenance of its sidewalk system. They alleged that the City violated their rights by failing to install proper curb ramps at intersections, failing to maintain sidewalks in compliance with ADA regulations, and failing to prepare and implement a proper self-evaluation and transition plan in conformance with ADA regulations. Plaintiffs/Appellants argued that sidewalks are programs for the purposes of the ADA regulations and therefore the ADA's program accessibility requirements must be met. The trial court found in favor of the City of Sacramento by determining that sidewalks in and of themselves are not a separate program and therefore the program accessibility requirements of the ADA were not applicable. In this appeal the Ninth Circuit will decide whether a public entity's sidewalk facilities constitute a program for purposes of the program accessibility requirement under the ADA and State law. A ruling against the City of Sacramento on this issue which is in fact an issue of first impression, would result in a precedent requiring public entities who have responsibilities over public rights of way to be saddled with the burden associated with the enormous costs of bringing millions of miles of sidewalks into compliance with current design standards. Such a decision as well would place a great deal of urgency upon such compliance activities.

Today most cities such as Lodi have programs, which are working toward the development of handicapped access for its sidewalks. The focus has been and probably properly so, on those areas of older construction and high densities. Clearly all new construction is built in a manner which provides handicapped access. This type of approach allows a community to balance its programs in a way that meets the needs of the vast majority of its citizens relative to sidewalk use.

Funding: Not applicable.

Respectfully submitted,

Randall A. Hays, City Attorney

APPROVED:
H. Dixon Flynn -- City Manager