

To: James L. App, City Manager
From: Doug Monn, City Building Official
Subject: Support for an Amendment of Enforcement Sections of the Americans with Disabilities Act and California Civil Code Sections 43 through 53
Date: November 16, 2004

PURPOSE: For the City Council to consider a two (2) resolutions requesting State and Federal reconsideration of the enforcement sections pertaining to violations of the Americans with Disabilities Act.

FACTS:

1. The Americans with Disabilities act was signed into law in on January 26, 1990.
2. The Americans with Disabilities Act did not become fully effective until January 26, 1992.
3. The purpose of the Americans with Disabilities Act was to extend to people with disabilities civil rights similar to those available on the basis of race, color, national origin, sex and religion through the Civil Rights Act of 1964.
4. The Americans with Disabilities act is comprised of five (5) Titles.
 - a. Title I prohibits discrimination on the basis of disability in employment and requires employers to provide “reasonable accommodations” to the disabled with respect to job description and the work place.
 - b. Title II pertains to services rendered by state and local governments from discrimination by requiring “program accessibility.”
 - c. Title III is the most applicable to the current situation in that it provides that no individuals shall be discriminated against on the basis of disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages or accommodations or any place of public accommodation. Example of public accommodations are, but not limited to hotels, restaurants, theaters, auditoriums, laundromats, museums, parks, zoos, private schools and day care centers.
 - d. Title IV addresses transportation and telecommunications services.
 - e. Title V contains miscellaneous provisions covering items such as accessibility standards, attorney’s fees and technical assistance.
5. The Americans with Disabilities Act (ADA) allows compensatory damages to be awarded for violations of the various Titles contained in the ADA.
6. Violations of the Americans with Disabilities Act filed at the federal level are prosecuted by the Department of Justice for the United States.
7. At the federal level, the ADA establishes that the Department of Justice may obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.

8. State of California Civil Code Sections 43 to 53 (The Unruh Act) broadly prohibits business establishments from discriminating against people based on their sex, race, color, religion, ancestry, national origin, or disability. The Civil Code also provides a private right of action to allow persons harmed by a violation of their rights under the ADA to sue for a minimum of \$4,000 plus attorney's fees and further provides that for each violation that remains in effect 90 days after the violator receives written notice, the violator shall be subject to an additional civil penalty.
9. The State Civil Code is silent on how fines should be assessed. Penalties have varied from case to case, ranging from awards of \$4,000.00 per day for each day a violation exists to \$4,000.00 per ADA violation.
10. As the result of these provisions, certain attorneys have abused the spirit of the ADA by filing lawsuits against property owners for minor, technical violations of the Americans with Disabilities Act.
11. Neither the Federal or the State code sections pertaining to the Americans with Disabilities Act establish a procedure for giving notice to property owners and allowing them time to cure any violations prior to a lawsuit being filed.
12. Legislation has been introduced at the Federal level (AB 2594 & H.R. 728) that would amend the Americans with Disabilities Act to require, as a precondition to commencing civil actions with respect to a place of public accommodation or commercial facility, that notice and an opportunity cure any violations first be provided.
13. State Civil Code does not provide any opportunity to correct violations prior to commencing civil actions with respect to a place of public accommodation or commercial facility.

ANALYSIS &

CONCLUSION: The ultimate goal of the Americans with Disabilities Act is to eliminate barriers for the Disabled. The award of compensatory damages does not result in the elimination of those barriers; therefore, it would seem prudent to amend both the Americans with Disabilities Act and the California Civil Code Sections to allow a property owners an opportunity to correct alleged violations of the ADA prior to a lawsuit being filed.

POLICY

REFERENCE: AB 2594 (Leslie) and H.R. 728

FISCAL

IMPACT: Council support of the attached resolutions to amend the Americans with Disabilities Act and California Civil Code would not impact the General Fund.

OPTIONS:

- a. Adopt Resolutions Nos. 04-xx and 04-xxx and direct staff to file them with the appropriate Federal and State agencies and political representatives.
- b. Amend, modify, or reject the above options.

RESOLUTION NO. 04-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
SUPPORTING A STATE LEGISLATIVE AMENDMENT OF ENFORCEMENT
SECTIONS OF THE AMERICANS WITH DISABILITIES ACT

WHEREAS, the Americans with Disabilities Act became effective January 26,1992; and

WHEREAS, the purpose of the Americans with Disabilities Act, is to extend to people with disabilities civil rights similar to those available on the basis of race, color, national origin, sex and religion through the Civil Rights Act of 1964; and

WHEREAS, the City of Paso Robles does support the original intent of the Americans with Disabilities Act for the purpose of providing equal access opportunities for all Americans; and

WHEREAS, California Civil Code Sections 43 through 53 establish that compensatory damages may be awarded to individuals through civil action for violations of the Americans with Disabilities Act; and

WHEREAS, as the result of these civil sections abuses have been perpetrated against property owners by individuals seeking financial retribution for violation of the Americans with Disabilities Act , and

WHEREAS, the ultimate goal of the Americans with Disabilities Act is to eliminate barriers for the Disabled; and

WHEREAS, the California Civil Code does not establish a period of time to allow physical changes to be implemented to address said violations prior to a Civil Hearing and potential award of compensatory damages; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Paso de Robles as follows:

SECTION 1. The City Council for the City of El Paso de Robles does hereby request the Senate and Assembly for the State of California amend Civil Code Sections 43 through 53 to allow a period for correction of any physical violations of the Americans with Disabilities Act prior to the filing of any civil action that could result in an award of compensatory damages.

SECTION 2. That the person charged with the review and prosecution of violations of the Americans with Disabilities Act within the State of California shall be the Attorney General.

SECTION 3. That should the specific physical violations noted in a civil action be addressed to the satisfaction of the Attorney General for the State of California within the adopted time period, that no award of compensatory damages or attorney's fees be permitted.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 16th day of November 2004 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk

RESOLUTION NO. 04-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
SUPPORTING A FEDERAL LEGISLATIVE AMENDMENT OF ENFORCEMENT
SECTIONS OF THE AMERICANS WITH DISABILITIES ACT

WHEREAS, the Americans with Disabilities Act became effective January 26, 1992; and

WHEREAS, the purpose of the Americans with Disabilities Act, is to extend to people with disabilities civil rights similar to those available on the basis of race, color, national origin, sex and religion through the Civil Rights Act of 1964; and

WHEREAS, the City of Paso Robles supports the intent of the Americans with Disabilities Act to provide equal access opportunities for all Americans; and

WHEREAS, the Americans with Disabilities Act allows compensatory damages and attorneys' fees to be awarded for violations of the Americans with Disabilities Act without first providing the property owner an opportunity to correct alleged violations; and

WHEREAS, since the enactment of the Americans with Disabilities Act, certain individuals, apparently seeking personal financial gain, have used the civil rights law to sue property owners, for alleged violations; and

WHEREAS, the ADA does not presently contain a provision requiring that property owners be given notice of any alleged violations and a reasonable opportunity to cure any violations prior to the filing of a lawsuit; and

WHEREAS, the ultimate goal of the Americans with Disabilities Act is to eliminate barriers for the Disabled; and

WHEREAS, providing the property owner with prior notice and a reasonable opportunity to correct any alleged violations prior to the initiation of civil litigation would not defeat the purpose and intent of the Americans with Disabilities Act; and

WHEREAS, legislation introduced by U.S. Congressman Mark Foley (H.R.728) that would amend the Americans with Disabilities Act to require, as a precondition to commencing a civil action with respect to a place of public accommodation or commercial facility, that an opportunity be provided to correct alleged violations.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of El Paso de Robles as follows:

SECTION 1. The City Council hereby requests the Senate and House for the United States of America to adopt H.R. 728, amending the Americans with Disabilities Act to allow prior notice and a period for correction of any physical violations prior to allowing any civil action that could result in an award of compensatory damages and attorneys' fees.

SECTION 2. That should the specific physical violations noted in a civil action be addressed to the satisfaction of the Department of Justice within the adopted time period, that no award of compensatory damages and attorneys' fees be considered.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 16th day of November 2004 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk