STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

December 23, 2002

To: District Attorneys
City Attorneys
County Counsel

Re: Compliance with and Enforcement of California's Disabled Access Laws

Dear Ladies and Gentlemen:

California's laws that guarantee individuals with disabilities the right to access publicly funded buildings and facilities and privately funded public accommodations have been in existence for more than 30 years. (Gov. Code, § 4450 et seq.; and Health & Saf. Code, § 19955 et seq.) In 1992, the Americans with Disabilities Act (ADA), 42 Unites States Code, section 12101 et seq., established the federal right of individuals with disabilities to access publicly funded buildings and facilities and privately funded public accommodations. These laws implement the well-established public policy that individuals with disabilities have a civil right to access our buildings, facilities and businesses on an equal basis with their fellow citizens who are not disabled.

As you may be aware, I have issued and sent to local governments several letters addressing specific California disabled access laws.[1] These letters encourage local public officials and bodies to do whatever they can to improve the level of compliance with our disabled access laws. I am now writing all California city attorneys, county counsels and district attorneys and urging them to join me in a renewed and concerted effort to gain better compliance with and to improve enforcement of California disabled access laws.

My call for greater attention to this issue is prompted by two concerns. First, advocates for the rights of individuals with disabilities have reported to me their continuing frustration with the violations of state access laws and regulations that exist throughout California. I am concerned that, notwithstanding the long period of time that California access laws and

[1]See letters at <http://www.caag.ca.us/civilrights.highlights.htm#disability>.

regulations have been in effect, individuals with disabilities are often denied their right to access buildings, facilities and public accommodations. Second, I am aware that the business community is becoming increasingly concerned with what appears to be a significant increase in the number of lawsuits that are being filed to correct violations of state and federal access laws and regulations. Recently, a local chamber of commerce wrote me and advised that these lawsuits are having a serious impact on small businesses in its community. I fully understand and share the business community's concern about the impact of these lawsuits. However, compliance with our access laws and regulations is not optional. The best way to avoid litigation is to comply with these laws and regulations.

I believe that city attorneys, county counsels and district attorneys can play an important and effective role in achieving greater compliance with state access laws and regulations. Greater compliance will avoid the necessity for costly litigation, minimize civil rights violations, and allow our business community to prosper.

There are several ways in which city attorneys, county counsels and district attorneys can help to make our disabled access laws and regulations work. First, with respect to accessibility laws and regulations that apply to publicly funded buildings and facilities, city attorneys and county counsels can, through the advice they provide, guide cities and counties to improving their compliance with these laws and regulations. I am committed to providing the same advice to the state agencies that I represent in my capacity as Attorney General.

Second, city attorneys and county counsels, on behalf of the cities and counties that they represent, assist local building officials in getting property owners of privately funded public accommodations to correct violations of state access laws and regulations that have been discovered to exist.

Third, city attorneys, district attorneys and the Attorney General have been vested by the Legislature with the independent discretionary power to institute legal actions to redress the unlawful denial of access to individuals with disabilities and to compel compliance with our access laws and regulations.[2] (Civ. Code, §§ 52 and 55.1; Gov. Code, § 4458; and Health & Saf. Code, § 19958.5.)

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[2]Although state and local officials do not have the statutory authority under federal law to directly enforce ADA access regulations, California law states that a violation of the ADA is a violation of state law (Civ. Code, §§ 51, 54 and 54.1), and city attorneys and district attorneys have the discretionary authority to enforce this state law. (Civ. Code, §§ 52 and 55.1; and 76 Cal.Atty.Gen.Ops. 130, 137; but see, *People of the State of New York v. The Mid Hudson Medical Group* (S.D.N.Y. 1995) 877 F.Supp. 143, where the New York Attorney General established *parens patriae* standing to maintain an action in federal court to enforce the ADA.)

In closing, I urge you to join me, local building officials, state and local public officials, those who design and construct public buildings and facilities and privately funded public accommodations, and our business and disability communities in doing everything we can to implement the public policy that is embodied in our state and federal access laws. Public policy and state and federal laws require that the environment in which we live be equally accessible to all who reside in the State of California. Thank you for your time and anticipated effort in helping to achieve this most important goal. If you have any questions or comments, please feel free to contact me or Special Assistant Attorney General Alberto L. Gonzalez of my staff. Mr. Gonzalez may be reached at (916) 324-5369 or at his e-mail address: alberto.gonzalez@doj.ca.gov.

Sincerely,

BILL LOCKYER
Attorney General