

**CITY OF LOS ANGELES
SIDEWALK REPAIR
POINT OF SALE TASK FORCE
STATUS REPORT**

BACKGROUND:

There was a time in the City of Los Angeles when there were very few sidewalks and people would walk in the dirt and mud to get to their destination. In order to remedy the situation, the City began requiring property owners to construct sidewalks through the assessment process (originally through the Vrooman Act of 1885 and later through the Improvement Act of 1911) and required developers to make such improvements prior to the City accepting a street easement. While the City could have and has on occasion obtained streets through the process of eminent domain (Attachment #1) it had been determined that the City would be best served by taking easements. This approach is the same as was used by most cities throughout the state and is supported by state law. In the same way that developers were required to construct sidewalks and streets during the permitting process, they were also often required to plant trees. The basic theory is that if property owners wish to share in the use of public easements to conveniently access their property, they should also be responsible for providing the same improvements for others on their property. This truth is evidenced by the fact that under the Vrooman Act the Council could not order the improvements if a majority of property owners protested. The residents of Los Angeles wanted to improve their streets and willingly made the decision to pay for the improvements so that they would enjoy the same citywide.

In light of the foregoing, one might ask if the City does not own the streets and sidewalks but merely has an easement, then what rights and responsibilities does the City and property owner have with regard to streets and sidewalks. The starting point is that the City has an easement for the public use and convenience. As the steward of this easement, cities have the right to maintain and improve the easement for the valid purpose of public use. The State of California, Government Code states:

40401. In its discretion the legislative body may expend the ordinary annual city income to pay all or part of the cost of work to:

- (a) Establish, build, and repair bridges.
- (b) Acquire by purchase or otherwise land for squares, parks, playgrounds, and places within the city and improve, equip and maintain them.
- (c) Establish, lay out, alter, keep open, improve, and repair streets, sidewalks, alleys, tunnels, and other public highways, and drain, sprinkle, oil, and light them.
- (d) Remove all obstructions from them.
- (e) Establish grades for them.
- (f) Grade, pave, gravel, and curb all or part of them.
- (g) Construct gutters, culverts, sidewalks, and crosswalks in all or on any part of them.
- (h) Cause shade trees to be planted, set out, and cultivated in them.
- (i) Generally manage and control all such highways, tunnels, and places.

In furtherance of Section 40401, the City passed the City Administrative Code, Section 247, which states:

“The City shall have power to provide for public improvements by contract or by the direct employment of labor and purchase of materials. The Council may cause the costs and expenses of the improvements, including any damages to private property caused thereby, to be paid from the General Fund or a special fund of the City, or may make those costs and expenses, including incidental expenses and damages, a lien upon the abutting property, or upon property in districts according to benefits. The Council may establish, by ordinance, an assessment process, the priority of the lien and the method for enforcement, and may levy and collect or cause to be levied and collected assessments upon property according to frontage or upon property in districts according to benefits, to pay the cost of the improvements. The City may cause to be issued and sold bonds, notes and other evidences of indebtedness, bearing interest, extending over a period not exceeding such time as may be permitted by state law, to represent any or all of the assessments in accordance with requirements and procedures to be established by ordinance.”

In other words, the City Council may at its discretion construct or repair a wide variety of improvements and pay for the construction and/or repair with any funds at its disposal that it is not prohibited from using for this purpose. That having been, the City also has the choice of making the property owner pay for such improvements and repairs. In regards to sidewalk repairs Section 4502 of the Streets and Highway Codes provides a “separate and alternate procedure for performing the work specified herein...” The alternate methodology is the assessment process. Section 5610 of the Streets and Highway Code states:

“The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.”

Since the inception of the Improvement Act of 1911 until January 15, 1973, sidewalks in the City were held the responsibility of the property owner. It should be pointed out that while the terms “abutting property owner” or “adjacent property owner” are often used in discussing streets and sidewalks for common understanding, in fact it would be more accurate to say the underlying property owner as most deeds show the ownership right extending to the middle of the

street. The common practice until 1973 was to inspect sidewalks, site the property owner and require that the repairs be made. When the repairs were not made in a timely manner, the City would then repair the sidewalk either by contract or through the use of City forces and the property owner would then be billed.

As the trees in the City grew, more and more sidewalks become uprooted and in need of repair. In the early 1970s a few groups of homeowners complained that did not believe they should be responsible for their sidewalk repair. For many of those complaining, they believed that the trees were the property of the City. In fact, a City Attorney Opinion dated August 11, 1939 (Attachment #2) and State law shows this to be a fallacy. In the City Attorney's Opinion it is stated, "Whoever owns the fee title in the parking or parkway owns the trees that grow thereon, which are a part of the realty, subject to the power to remove or regulate their growth when necessary to the enjoyment of the street for purposes of travel." The City Attorney then addressed the question, "If the City furnishes, plants and maintains street trees, does it make any difference in the ownership". To which the answer was, "The ownership of the trees follows the ownership of the realty upon which they are growing unless there is a contract providing otherwise". In other words, they may be "street trees" but they are not "City trees" and the property owner can be held responsible for their trees when they endanger the public.

In response to the complaints from some property owners, the issue of sidewalk repair was sent to the Public Works Committee. At their meeting the Council members considered the possibility of the City assuming all the costs for sidewalk repairs. In a letter from Chauncey B. Pruner, Legislative Assistant to the Public Works Committee to Dr. C. Erwin Piper, City Administrative Officer it was stated that, "At said meeting it was indicated that the processing of thousands of repair orders is costly and that the actual net cost to the City of a sidewalk repair program might not be too great. There was the concern, however, that there would be a substantial increase in complaints if the work were done free of charge." The City Administrative Officer's report on the matter indicated the anticipated cost per year for the City to do the work in 1973 was \$3,500,000 and was expected to go up each year after as the program became more known. It was the recommendation of Dr. Piper that, "The City continue to assess adjacent property owners for the City's actual costs for performing repair work on curbs, gutters and Sidewalks under the provisions of the Streets and Highway Code". In response to the City Administrative Officer's and the Bureau of Street Maintenance reports, the Public Works Committee recommended that the assessment process remain City policy. A "minority report" was also submitted which called for an end to assessments and for the City to take on the cost of sidewalk repair. The City Council voted to replace the Public Works Committee report with the "minority report". On January 15, 1973 the Council passed two different items that were incompatible (Attachment #4) and the City Attorney recommended that the Council needed to pass additional rules to clarify the

matters (Attachment #5). In the end the Council reaffirmed their decision to make the City responsible for the repairs and requested the Bureau of Street Maintenance to prepare a budget for the program. Due to the costs of taking on the responsibility for sidewalk repair, on December 10, 1973 Mayor Tom Bradley requested the City Council to postpone the Sidewalk Repair program indefinitely. The City Council chose to adopt the budget and the Mayor then vetoed their decision. The City Council then appropriated approximately \$2 million for sidewalk repair. Within two years of instituting the new program, the City had a two and a half year backlog that was growing annually. In 1976 the City stopped funding and making most needed sidewalk repairs and in 1981 it attempted to re-institute the assessment process and was meant by a class action suit to hold the City responsible based upon the prior Council actions. Since that time there have been numerous attempts to fund a sidewalk repair program that have all met with limited success. In the end, the issue is the same as it was when the property owners built the sidewalks in the first place, who should pay for the repairs and where will the funds come from.

The current sidewalk repair ordinance can be found in Section 62.104 of the Municipal Code (Attachment #7). The ordinance begins with a repair and notice requirement in furtherance of the Streets and Highways Code, section 5600 et. Seq.; however, it then adds two items which cloud the issue. Firstly, section 62.104(d) states that, "The Board is authorized to take preventative action such as root pruning or tree removal to prevent damage to curbs, driveways or sidewalks". Section 62.104(e) then states "Whenever the Board determines that a curb, driveway or sidewalk is damaged as the result of negligence or violation of this Code and the Board determines the responsible party, all costs incurred pursuant to this section shall be a personal obligation of the responsible party, recoverable by the City in an action before any court of competent jurisdiction. The costs shall include an amount equal to 40 percent of the cost to perform the actual work, but not less than the sum of \$100.00, to cover the City's cost for administering any contract and supervising the work required. In addition to this personal obligation and all other remedies provided by law, if the Board determines that a curb, driveway or sidewalk is damaged to such an extent as to create a menace to the public health, welfare and safety, and to constitute a public nuisance, the City may collect any judgment, fee, cost, or charge, including any permit fees, fines, or late charges, or interest, incurred in relation to provisions of this section as provided in Los Angeles Administrative Code Sections 7.35.1 through 7.35.8." It further states the exception that "Preventative measures and repairs or reconstruction to curbs, driveways or sidewalks required as the result of tree root growth shall be repaired by the Board at no cost to the adjoining property owner".

It therefore appears that due to an incorrect belief that the City owned "street trees" and sidewalks, the City should therefore be responsible for the repair of the sidewalks where the tree roots had caused damage. It should be remembered that the City did not plant the overwhelming majority of "street trees"

and that the choice of which trees was made by the developer. It should further be noted that under state law the City could still hold the property owner responsible for their trees and their sidewalks.

On June 26, 2007 the Council directed the Bureau of Street Services to investigate creative approaches to funding sidewalk repair including a "Point of Sale" Repair program. The Bureau convened a "Point of Sale" task force and this report is their initial report.

CURRENT SITUATION:

Having reviewed the history of sidewalk repairs in the City, we now turn to consider the current situation. There are approximately 10,750 miles of sidewalk in the City and it is estimated that of those roughly 4,600 miles of sidewalk are in need of repair at a current cost of \$1.2 billion dollars. With the extreme demand and high cost of Portland cement concrete it is believed that this amount will continue increase over the coming years. At present the Bureau of Street Services is conducting a survey to determine what the average amount of repair is needed and the cause of the damage. As a consequence of the changes adopted in the 1970's the lack of repair in the past and the extent of the current need, the City must pay out over \$3,000,000 a year in claims for injuries. The current City programs provide sufficient funding to repair 52 miles per year of sidewalk. At this rate it will take 83 years just to repair the backlog and we have every reason to believe that trees and wear will continue to create damage to the sidewalks not currently needing repair.

OPTIONS:

Funding Options

While the following lists out a variety of funding options, they are really variations on three choices. The City can reduce other services to pay using existing funds, the City can tax or assess on a community or area basis or the property owner can be held responsible.

1. The City under Government Code Section 40401 may choose to pay for some or all of the costs using any funds at its disposal that it is not otherwise prohibited from using. An example of this would be the current 50/50 sidewalk repair program. While the City could pay for the sidewalks using General Fund monies this would mean that other programs would need to be reduced.
2. In accordance with the Streets and Highway Code the individual property owner could be sited and required to repair their sidewalk as was previously done.
3. The City could create assessment districts and spread the cost to property owners within an area. This may prove difficult, as a majority

- of the property owners would have to be in agreement and vote on the assessment.
4. The City might obtain outside funding from the State or Federal Government. The City has been attempting to do this for 35 years with only limited availability and success.
 5. The City could attempt to have a bond issue. The City has tried this for sidewalk repairs in the recent past and the voters chose not to support it.
 6. The City may continue with the current limited program.
 7. The City might choose to inform the public of their responsibility to repair their sidewalks and rely on self-compliance.
 8. The City could do nothing and allow the sidewalks to continue to deteriorate.

Inspection and Enforcement Options

1. The City may create an inspection program that covers the complete City by grids and sites property owners as they are inspected.
2. The City may create a program that prioritizes inspections by type of property. For instance major streets first and eventually residential streets.
3. The City might inspect and enforce based upon complaints and/or accidents.
4. The City may continue to accept the liability for not inspecting and citing.
5. The City may inspect based upon a “trigger” such as a home sale or the issuance of a building permit.

Options for how the repairs are completed

1. The property owner may be required to complete the work either by themselves or by using contractors.
2. The City may do the work using City forces, hiring hall or contractors.
3. The City may give the owner the option of doing the work themselves or using City forces or contractors.

RECOMMENDATION:

For the past 35 years, the City has struggled trying to fund sidewalk repair using outside and regular City revenue. In all of those years the sidewalks have continued to fall further and further into disrepair. Clearly if the City determines that sidewalks are a priority the property owners need to be held responsible for their sidewalks on some level. While the most common approach would be to cite owners using the Street and Highway Code and then give the owners two weeks to make the repairs, the size of the problem would tax the current resources available. That is to say that if all of the property owners attempted to contract

out the work at the same time there is little reason to believe that there are enough trained contractors or Portland Cement available to complete the work. For this reason any program would need to prioritize the inspection. By inspecting based on a "Point of Sale" trigger the City can spread this requirement over time and require that repairs be made when the property owners are receiving funds from the sale. Property owners who wish to take care of the repairs prior to sale would have the incentive of participating in a 50/50 program. It is further recommended that property owners be given the option of doing the work themselves or having the City do the work. In the past it was reported that 30% of all sidewalk repair work was done by the City. Because the City is much more likely to get better prices on Portland Cement and can schedule work in grids it is very likely that the City could perform the worker for less cost then a contractor. It is therefore recommended that the Council adopt a "Point of Sale" sidewalk repair policy and instruct the Bureau of Street Services to provide a budget and implementation plan.

DRAFT