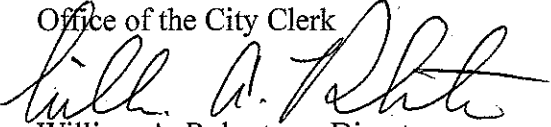


CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE

DATE: December 9, 2009

TO: Public Works Committee
of the Los Angeles City Council
Attn: Adam Lid, Legislative Assistant
Office of the City Clerk

FROM: 
William A. Robertson, Director
Bureau of Street Services

SUBJECT: Sidewalk Repair Options (C.F. 05-1853 and 05-1853-S1)

RECOMMENDATIONS

That the Public Works Committee:

1. Provide input on the most feasible options developed by the Sidewalk Repair Task Force.
2. Instruct the Bureau of Street Services to conduct a Neighborhood Council outreach effort in each of the seven City Planning areas.
3. Instruct the Bureau of Street Services to report back in 120 days with a final recommendation from the task force for implementing a City-wide Sidewalk Repair Program.
4. Forward the attached City Attorney reports to the City Council, recommending adoption of the proposed Los Angeles Municipal Code change and associated California Environmental Quality Act finding.

BACKGROUND

The City is at a crossroad with regard to sidewalk construction, reconstruction, and repair. Previous reports under this Council File describe the magnitude of the problem in detail: over 40% of the system is estimated to be in disrepair (4,600 miles out of a total of 10,750 miles), exceeding a cost of \$1.2 billion. The City expended a total of nearly \$95 million from the General Fund from fiscal year 2000-01 through 2008-09 to reconstruct an estimated 550 miles of damaged sidewalk; yet, the amount of sidewalk damaged during this period of time is believed to have exceeded the amount corrected. Clearly, the City must recover its repair costs so sidewalks are not unsafe. It must do so by returning to compliance with the California State Law regarding sidewalk construction, reconstruction, and repair.

A Council Motion (Parks-Smith) was introduced in September of 2005, instructing the Bureau of Street

Services (BSS) to work with other City Departments and outside stakeholders to develop recommendations for implementing a point-of-sale plan for fixing sidewalk, whereby damaged sidewalk would be required to be certified as safe before escrow closed on a property transaction.

Following initial investigation and research, BSS partnered with the USC Graduate School of Policy – Planning and Development to help develop viable options and a recommended alternative (see report on file dated May 2007). This study reinforced the feasibility of a point-of-sale program. In July of 2007, the City Council formally supported the concept of a point-of-sale program and instructed BSS to proceed with task force work. BSS solicited participation from all known affected City agencies and interested parties and formed four sub-committees to work on details associated with the Program Details, Workforce Development and Training, Legal issues, and Community and Business Outreach (Attachment 2 of the February 12, 2008 report on file includes the rosters for each sub-committee).

A comprehensive Point-of-Sale Implementation Plan, dated February 12, 2008, was then presented in a report to the Public Works Committee. After consideration, the Committee instructed BSS to develop alternatives other than point-of-sale; in particular, bonding, third party financing, and a risk/legal-based program. BSS did subsequently have discussions with the City Administrative Officer (CAO) - Debt Management and Risk Management Offices, as well as with the City Attorney's Office. BSS also reached out to a number of other Cities in an attempt to learn which policies may be working well and to find other policies that have not yet been assessed.

Momentum has been re-ignited with the adopted City Budget for fiscal year 09-10, which calls for a point-of-sale program to be implemented. The four sub-committees were recently reorganized into two: a "Repair Policy Committee", chaired by the City Attorney's Office and a "Finance Committee" chaired by the CAO. A list of eight potential options has been narrowed down to five options. These all have broader support from the task force, particularly from the Real Estate Industry.

State Law (Improvement Act of 1911, aka California Streets and Highways Code – Division 7) and City Code (Los Angeles Municipal Code Section 62.104) already place the responsibility for sidewalk construction, reconstruction, and repair on the adjacent property owner. However, in 1974 because of available federal funding, the City accepted responsibility for sidewalk damage caused by parkway tree root growth and adopted this exception to Los Angeles Municipal Code (LAMC) Section 62.104. This exception is still effective today, despite the absence of funding. Each of the five proposed options would require the adoption of an amending Ordinance, which would effectively place all sidewalk construction, reconstruction, and repair responsibility back on the adjacent property owners, regardless of the cause of damage.

In a report dated August 3, 2009 (City Attorney Report No. R09-0270), the City Attorney has transmitted a Draft Ordinance which would repeal the tree root exception, effectively eliminating City responsibility for repair of curbs, driveways and sidewalks damaged by any cause, including by tree root growth. An accompanying City Attorney Report, dated August 14, 2009 (Report No. R09-0292), recommends the adoption of a California Environmental Quality Act - Categorical Exemption Finding in conjunction with the LAMC amendment. Staff recommends that both City Attorney reports be forwarded for City Council and Mayor approval at this time.

DISCUSSION

The Sidewalk Repair Task Force has studied the following five options, including various combinations, for implementing an effective Sidewalk Management Program for the City of Los Angeles:

1. “1911 Act” – Compliance
BSS investigators would be required to inspect sidewalk and cite property owners, directing that repairs be made in a prescribed period of time (LAMC 62.104 now specifies two weeks). The City would be required to make the necessary repairs (either through additional BSS construction resources and/or contractors) and assess the property owner in cases of non-compliance. The entire City would be covered in a time frame directly related to the resources allocated for the Program.
2. Point of Service (or Sale) and Building Permits
“Point of Service” would require the buyer of a property to obtain a Safe Sidewalk Certificate from BSS prior to utility connection, versus “Point of Sale” which would require certification prior to the close of escrow. This effort would be combined with the requirement for a Safe Sidewalk Certificate to be obtained from BSS when any building permit is issued for repairs/improvements valued over \$20,000.
3. Point of Service (or Sale) City-wide and “1911 Act” Compliance – Commercial Only
Commercial property is not transferred as often as residential property and, in most cases, commercial property is located on heavy pedestrian corridors which should be a priority.
4. Point of Service (or Sale) and 50-50 Voluntary Sidewalk Repair Program
Challenges would include the question of providing City funds to help facilitate repairs that are the responsibility of private property owners and reserving these 50/50 City funds for property not pending or being considered for transfer.
5. 1911 Act – Compliance Based on Liability Risks
The inspection and citation effort would be targeted at trip and fall claim locations and other known hazardous areas combined with a complaint driven effort.

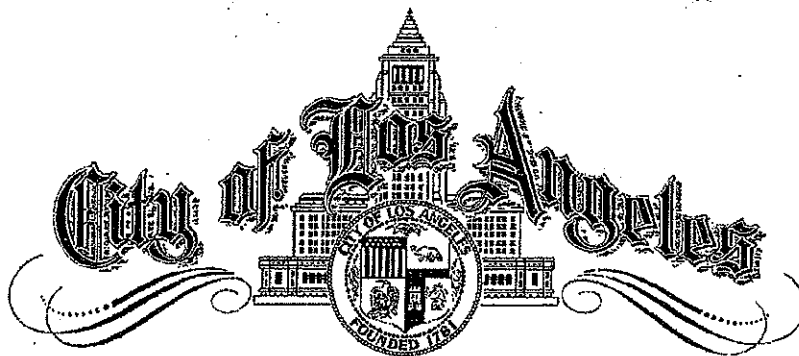
Three other options: Benefit Assessment Districts, General Obligation Bonds and Third Party Financing were assessed but ultimately deemed infeasible due to an assumed lack of public support and/or logistical complexities.

Upon concurrence from your Committee, BSS will conduct a public outreach effort over the next 120 days, inviting a representative(s) from each Neighborhood Council to attend one of seven workshops (one in each City Planning Area). Also during this time, BSS will identify cost impacts and resource options, along with other issues that need to be resolved, in order to insure successful implementation of an adopted plan. All of this information will be addressed in the next report to your Committee, with the goal of presenting a recommended alternative and implementation plan.

If you have any questions or if additional information is needed, please contact me or Dominique Shipp of my staff at (213) 847-3333.

Attachments

City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012



(213) 978-8100 Tel
(213) 978-8312 Fax
CTrutanich@lacity.org
www.lacity.org/atty

CARMEN A. TRUTANICH
City Attorney

REPORT NO. R09-0270

AUG 03 2009

REPORT RE:

**BUDGET RELATED DRAFT ORDINANCE AMENDING SUBSECTION (e)
OF SECTION 62.104 OF THE LOS ANGELES MUNICIPAL CODE TO
REPEAL THE "EXCEPTION" WITHIN THIS SECTION THAT ESTABLISHED
CITY LIABILITY FOR REPAIR OF CURBS, DRIVEWAYS AND SIDEWALKS
DUE TO TREE ROOT DAMAGE**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 05-1853

Honorable Members:

Pursuant to your request, this office has prepared and now transmits for your consideration the attached draft ordinance, approved as to form and legality. The draft ordinance amends Subsection (e) of Section 62.104 of the Los Angeles Municipal Code (LAMC) to repeal the "EXCEPTION" within that section which established City liability for repair of curbs, driveways and sidewalks due to tree root damage.

Summary of Modifications

This ordinance changes the Code to eliminate the "EXCEPTION" within Subsection (e) of Section 62.104 of the LAMC, thereby, eliminating City responsibility for damage done to curbs, driveways and sidewalks due to tree roots.

CEQA Exemption

This ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because "... it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." State CEQA Guidelines Section 15061(b) (3). See also City CEQA Guidelines, Article II, (1) General Rule and General Exemption. If the Council chooses to adopt the ordinance, it should also find that it is exempt from the provisions of CEQA pursuant to the above cited section.

Council Rule 38

In accordance with the requirements of Council Rule 38, this office has forwarded the draft ordinance to affected city departments and requested that they address any comments that they may have directly to the City Council when this matter is considered.

If you have any questions regarding this matter, please contact Deputy City Attorney Keith W. Pritsker at (213) 978-8141. He or another member of this office will be available when you consider this matter in order to answer any questions you may have.

Sincerely,

CARMEN A. TRUTANICH, City Attorney

By



PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

DM:KWP:pb
Transmittal

ORDINANCE NO. _____

An ordinance to repeal the EXCEPTION within Subsection (e) of Section 62.104 of the Los Angeles Municipal Code to eliminate City responsibility for repair of curbs, driveways and sidewalks due to tree root damage.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subsection (e) of Section 62.104 of the Los Angeles Municipal Code is hereby amended to read as follows:

(e) Determination of Responsibility for Damage. 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 identity of 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. These costs shall include an amount equal to forty percent (40%) of the cost to perform the actual work, but not less than the sum of \$100.00, to cover the City's costs 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, late charges, or interest, incurred in relation to the provisions of this section as provided in Los Angeles Administrative Code Sections 7.35.1 through 7.35.8.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

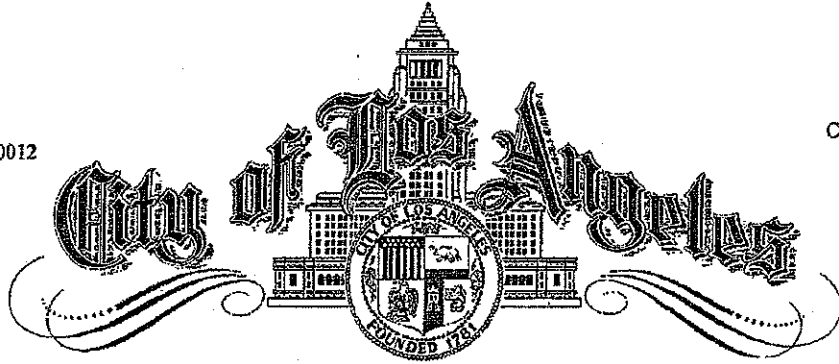
By 
KEITH W. PRITSKER
Deputy City Attorney

Date 7-16-09

File No. 05-1853

City Hall East
200 N. Main Street
Room 800
Los Angeles, CA 90012

(213) 978-8100 Tel
(213) 978-8312 Fax
CTrutanich@lacity.org
www.lacity.org/atty



CARMEN A. TRUTANICH

City Attorney

REPORT NO. R09-0292

AUG 14 2009

REPORT RE:

**REVISED CEQA FINDING IN CONNECTION WITH BUDGET RELATED DRAFT
ORDINANCE AMENDING SUBSECTION (e) OF SECTION 62.104 OF THE
LOS ANGELES MUNICIPAL CODE TO REPEAL THE "EXCEPTION" THAT
ESTABLISHED CITY LIABILITY FOR REPAIR OF CURBS, DRIVEWAYS AND
SIDEWALKS DUE TO TREE ROOT DAMAGE**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 05-1853

Honorable Members:

Pursuant to your request, this office prepared and transmitted (City Attorney Report No. R09-0270) for your consideration a draft ordinance, approved as to form and legality that would amend Subsection (e) of Section 62.104 of the Los Angeles Municipal Code (LAMC) to repeal the "EXCEPTION" within that section which established City liability for repair of curbs, driveways and sidewalks due to tree root damage. Upon further review of this matter, we recommend that, if you adopt the proposed ordinance, you first make a CEQA finding as follows rather than the finding contained in our prior report.

CEQA Exemption

This ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 24, Chapter 3 California Code of Regulations Section 15301. Existing Facilities (which includes the repair of existing public structures or facilities involving negligible or no expansion of an existing use) and City CEQA Guidelines Article III 1.a.3 (repair, maintenance or minor alteration of

The Honorable City Council
of the City of Los Angeles
Page 2

existing highways and streets, sidewalks, gutters...). If the Council chooses to adopt the ordinance, it should also find that it is exempt from the provisions of CEQA pursuant to the above cited sections.

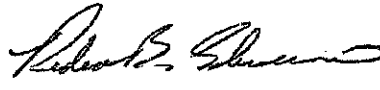
Council Rule 38

In accordance with the requirements of Council Rule 38, this office has forwarded the draft ordinance to affected city departments and requested them to address any comments that they may have directly to the City Council when you consider this matter.

If you have any questions regarding this matter, please contact Deputy City Attorney Keith W. Pritsker at (213) 978-8141. He or another member of the office will be available when you consider this matter in order to answer any questions you may have.

Sincerely,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:KWP:mg
Transmittal