

MEMORANDUM

City of Placentia

TO: MAYOR AND MEMBERS OF THE CITY COUNCIL

VIA: CITY ADMINISTRATOR

FROM: CITY ATTORNEY

PUBLIC WORK DIRECTOR

DATE: SEPTEMBER 9, 2013

SUBJECT: UPDATE ON STREET TREES AND SIDEWALK REGULATIONS

BACKGROUND

Council Member Wanke requested an update on the City's street trees and sidewalk regulations. As the City Council is aware, the City has previously adopted an ordinance which regulates the installation, maintenance and removal of street trees throughout the City and a policy which establishes responsibility for the maintenance and repair of sidewalks. Specifically, Ordinance No. 132, which was adopted in 1954, places the responsibility for the maintenance, planting and removal of street trees on the property owner who is directly adjacent to where the tree is located. Although existing state law makes an individual property owner responsible for the repair of sidewalks in front of their home, the City Council has adopted Policy 618 which establishes a protocol for determining whether the City or property owner assumes responsibility for paying the cost to repair damaged sidewalks depending on various contributing factors.

In 2011, Staff presented to the City Council two draft ordinances to help clarify the responsibility for street tree maintenance and sidewalk repairs, as well as to provide a number of tools to assist property owners in complying with the City's requirements. The first ordinance proposed the addition of a new section to the City's Municipal Code reiterating the requirements of State law and confirming that liability for injury or damages incurred as a result of improper maintenance or repair of sidewalks is that of the adjacent property owner. In addition the proposed ordinance would have codified the protocols contained in Policy 618 and set forth a requirement to assist income eligible property owners with sidewalk repairs. The second ordinance provided clarification and streamlined the procedures for street trees, as well as required the preparation of a policy to provide for grants to low-income property owners to help defray the costs of tree maintenance. After a lengthy debate by the City Council, neither ordinance was adopted. Consequently, the current regulations for street tree maintenance and sidewalk repair remain in full effect.

STATE LAW

An individual property owner's obligation to maintain and repair the sidewalk, as well as street trees adjacent to his or her property is not new. In fact, since at least 1935, state law has required the owners of property fronting a public street to maintain sidewalks in a safe condition for use by members of the public. Section 5600, adopted as a part of the Street Improvement Act of 1911 ("1911 Act"), defines, for purposes of the 1911 Act a "sidewalk" as including ". . . a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls or other works for the protection of any sidewalk or of any such park or parking strip." Accordingly, reference to the term "sidewalk" in this memorandum includes not only the sidewalk itself but also the parkway strip between the back of curb and the physical sidewalk itself and anything that may be planted within the parkway strip.

EXISTING CITY REGULATIONS

The City's regulations concerning street tree maintenance and sidewalk repair is derived from State law, City Ordinance and City Council Policy. Under § 5610 of the California Streets & Highways Code, a property owner is responsible for maintaining sidewalk area (including trees placed on public property between the curb and the sidewalk) adjoining his or her property. The provisions of California Streets & Highways Code § 5610, *et seq.*, have been upheld by several decisions of the California Courts of Appeal.

In 1975, the City Council adopted its current policy of paying for some or all of the cost to repair sidewalks. A copy of Policy 618 is attached. Under this policy, the City pays the entire cost to repair sidewalks under the following conditions:

1. Damage caused by parkway trees (separate from street trees).
2. Damage due to grade subsidence.
3. Sidewalk at street intersection (no abutting property).

Policy 618 shifts much of the responsibility for sidewalk repairs onto the City which is the responsibility of private property owners under State law. For example, responsibility for sidewalks damaged by parkway trees depends on who historically cared for the trees. If the City planted the parkway trees and performed all necessary maintenance on them, then the City is responsible for repairing the sidewalk if it is damaged by roots from the parkway trees. (*Jones v. Deeter*, 152 Cal. App. 3d 798, 805, 1984). If the parkway trees were planted, trimmed, or cared for by the adjacent property owner, then the property owner is responsible for repairing the sidewalk (*Jones*, 152 Cal. App. 3d at 805). Under Policy 618, however, the City has assumed responsibility for repairing all sidewalks damaged by parkway trees, regardless of who planted or cared for the trees. Under Streets and Highways Code § 5610 and the rule in *Jones*, the City is only responsible for repairing sidewalks adjacent to City-owned property and sidewalks that are damaged by City activities or parkway trees planted and maintained by the City.

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Policy 618 is not unusual. A number of cities throughout the State have adopted similar policies that limit the financial exposure these cities have for sidewalk maintenance. These cities include, but are not limited to:

- Diamond Bar
- Brea
- San Diego
- Berkeley
- San Jose
- Monterey
- Sacramento
- Pasadena
- San Francisco
- Oakland
- Fremont

With respect to street trees, Ordinance No. 132, which was incorporated into Chapter 14.12 of the Municipal Code, specifically places the responsibility for the maintenance, planting and removal of street trees on the property owner who is directly adjacent to where the tree is located. While the City may have, in past years, planted new trees to replace dead or dying ones and provided tree trimming at no direct cost to the property owner, based on Ordinance No. 132, the City did so without obligation. In the past, the City was spending several hundred thousand dollars annually maintaining street trees throughout the City that it essentially had no responsibility for.

Many cities across the State require property owners to maintain, plant and remove street trees adjacent to their property. Cities that have adopted similar ordinance and/or policies for street trees include, but are not limited to:

- Monterey Park
- San Diego
- Fremont
- Santa Rosa
- Torrance
- Visalia
- Hermosa Beach

COST/LIABILITY ISSUES

Although the City Council can modify its current regulations and shift the responsibility for street tree maintenance and sidewalk repair from the property owner to the City, such a change would come at a significant financial cost to the City.

Last year, the City Council approved a one-time budget appropriation of \$265,000 to perform a citywide trimming of 4,225 residential street trees, 1,465 palm trees and a one-time trimming of vines along arterial roadways. To accomplish a basic three-year pruning cycle of all trees on public land and within the public right-of-way (*including residential street trees*) and perform necessary annual work (*Palms and Vines \$92.1K*) the City would need to budget, at current contract rates, a minimum of \$180,000 every fiscal year plus a small contingency (\$20,000) for a total of \$200,000. This figure does not provide for major storm or emergency tree related costs or addressing policy and management plan issues. Any bidding or competition for service will likely increase the cost.

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The City has approximately 6,600,000 square feet of sidewalk area throughout the City. Based on current pricing the estimated cost to repair and rehabilitate only 10% of the existing sidewalks would cost \$4,620,000 - \$6,600,000. Although no formal assessment of sidewalk conditions has been performed, based on field surveys and the age of our sidewalks, staff believes that the estimated cost to repair all damaged sidewalks in the City could exceed \$20 Million.

Generally, a public entity is liable for injury proximately caused by a dangerous condition of its property if the dangerous condition was created by its employee, or if the public entity had actual or constructive notice of the dangerous condition with sufficient time to have protected against it prior to when the injury occurred (Cal. Gov't Code § 835). The condition is dangerous if it creates a substantial risk of injury to users exercising due care and using the property in reasonably foreseeable manner. Whether damaged sidewalk is a dangerous condition depends on a number of factors. Courts will consider all the circumstances surrounding the accident, including the size of the defect, whether the sidewalk had broken pieces or jagged edges, and whether the defect was concealed by debris, grease, water or darkness (*Caloroso v. Hathaway*, 122 Cal. App. 4th 922, 927, 2004). Courts also recognize that not all sidewalk cracks are dangerous:

[I]t is impossible for a city to maintain its sidewalks in perfect condition. Minor defects nearly always have to exist. The city is not an insurer of the public ways against all defects. If a defect will generally cause no harm when one uses the sidewalk with ordinary care, then the city is not to be held liable if, in fact, injury does arise from the defect.

Although the courts have found that property owners have a duty under state law to maintain and repair sidewalks, they are generally not liable to the public for injuries that occur on sidewalks fronting their property (*Schaefer v. Lenahan*, 63 Cal. App. 2d 324, 327 1944). A property owner may be liable if he or she alters the sidewalk for the benefit of his or her property (*Sexton v. Brooks*, 39 Cal. 2d 153, 157 1952). A property owner may also be liable if he or she negligently damages the sidewalk (*Moeller v. Fleming*, 136 Cal. App. 3d 241, 245 1982). But failure to maintain and repair a sidewalk as required by California Streets and Highways Code section 5610 does not by itself give rise to liability of a property owner (*Williams v. Foster*, 216 Cal. App. 3d 510, 521 1989). If the City assumes full responsibility for the maintenance and repair of sidewalks it will increase its liability exposure by accepting responsibility for damage caused by third parties and alterations made by adjoining property owners.

CONCLUSION

In summary, *ownership* of the street trees and sidewalk area is not the question; rather, as held by the Courts, the issue is who has the responsibility to maintain street trees and sidewalks, the city or the adjacent property owner? The Courts have consistently

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held that the adjacent property owner is the party responsible under State law. The adjacent property owner is not only the beneficiary of the improvements within the sidewalk area, but they are much more likely to know when a street tree needs to be trimmed or the sidewalk repaired. Imposing liability for injury to users of the sidewalk area on the adjacent property owner for failure to maintain these improvements has been held appropriate and in furtherance of public policy in order to better assure that the sidewalk area is safe for use.

While the City Council can modify the City's existing regulations and assume full responsibility for street tree maintenance and sidewalk repair, without a dedicated source of funding (e.g., assessment district or surcharge) to cover the cost of maintenance and repair such a change in policy would have significant cost implications that in all likelihood would exceed the City's available financial resources. In addition, by assuming responsibility for both street trees and sidewalks the City will have greater liability exposure which could invariably lead to higher costs as well.

If you have any questions concerning this matter, please contact the City Attorney or Director of Public Works at your convenience.

Attachment: City Policy 618

SIDEWALK REPAIR POLICY

It is the policy of the City Council that the following situations, with suggested policies and procedures, are to expedite the maintenance of sidewalks within the City of Placentia.

1. **Situation:** Sidewalk repair required due to a tree that has been damaged to the extent of 50% or more by an act of God.

Policy: The tree shall be removed and minimum sidewalk repairs made as required, at no expense to adjacent property owners.

Procedure: Public Works Superintendent shall determine the extent of damage to the tree. Public Works Superintendent shall determine the extent of any sidewalk removal and repair, as required, prior to removal or re-planting of tree by Public Works Department.

2. **Situation:** If a sidewalk is hazardous due to:
 - a. Tree or root growth from City-owned and controlled trees.
 - b. Where such repair is immediately adjacent to such tree or root damaged sidewalk and its incorporation into a fully City funded repair project would produce a safe contiguous section of sidewalk.
 - c. Where such repair is to a sidewalk which is over 40 years old and/or of the "sand/slurry" type construction.
 - d. Sidewalk damage resulting from heaving of the soil caused by an act of God, such as an earthquake or flood.

Policy: The adjacent property owner is NOT obligated to share in the cost of repair.

Procedure: Public Works Department determines whether or not the tree is to be removed or roots of trees can be cut. Public Works Superintendent determines extent of sidewalk repair and removes the necessary sidewalk prior to removal of tree and/or roots.

3. **Situation:** If a property owner has been given written permission to remove a parkway tree that has not erupted the sidewalk or caused damage to the sidewalk in any manner.

Policy: Property owner shall remove same and repair any damage to sidewalk, curb, or street made during said removal and replant designated variety of tree at their own expense.

Procedure: Request is to be made on approved form and submitted to the Public Works Department for inspection. The request, having been duly processed, shall be signed by the Director of Public Works after which a copy shall be forwarded to the applicant authorizing to proceed with the work as required.

4. Situation: If a sidewalk is in a hazardous condition from any cause other than as defined in Item 2 above.

Policy: It shall be the responsibility of the adjacent property owner to replace the sidewalk according to City standards at his own expense.

Procedure: Contact will be made by Public Works Department personnel with the property owner, informing him of his responsibility to replace that portion of hazardous sidewalk along the frontage of his property. This will be accomplished by personal contact as well as in writing on the approved form letter from the department. Property owner will be instructed to complete and return a sidewalk repair agreement or seek a licensed contractor to complete the necessary work as required within the time span allowed.