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2008 OCT 16 PM 8:46

**CITY OF OAKLAND
AGENDA REPORT**

TO: Public Works Committee
FROM: John Russo, City Attorney
DATE: October 28, 2008
RE: Ordinance Establishing Landowner Responsibility and Liability for Sidewalk Safety and Maintenance

SUMMARY

Pursuant to the request of several Councilmembers, the City Attorney's Office has prepared for Council consideration an ordinance that would establish that property owners are jointly responsible for sidewalk related injuries that occur on sidewalks adjacent to or fronting their properties.

Currently, the City is liable for the cost of injuries resulting from damaged sidewalks even though state law provides that adjacent property owners are responsible for maintenance and repair of the sidewalks. If adopted, the proposed ordinance would make adjacent landowners jointly liable for injury resulting from damaged sidewalks. The proposed ordinance includes an indemnification clause that would entitle the City to recover from property owners the judgments against the City for damaged sidewalks.

This ordinance would provide additional incentive for landowners and their insurance companies to maintain sidewalks because they would be liable for injuries resulting from damaged or neglected sidewalks. A number of cities in California have passed similar ordinances that create joint liability for landowners for personal injuries due to poorly maintained sidewalks adjacent to their properties. Recently, the California Court of Appeal upheld a City of San Jose ordinance that established liability for property owners. (See *In Gonzales v. City of San Jose*, 125 Cal. App. 4th 1127 (2004).)

FISCAL IMPACT

The proposed Sidewalk Liability Ordinance would likely reduce the City's pay-outs for sidewalk related injuries because (1) property owners will be more likely to maintain sidewalks in a safe condition if they are jointly liable for injuries due to damaged and neglected sidewalks adjacent to their property; and (2) the City would have the right to recover from property owners judgments against the City for damages resulting from injuries.

BACKGROUND

Although municipalities generally own the sidewalks adjacent to private property owners' land, state law provides that landowners are responsible for maintaining sidewalks fronting their property in a safe and usable manner:

“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..... 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 endanger persons or property and maintain it in a condition which will not interfere with the public convenience...”. (See Streets and Highways Code sections 5610 et seq.)

State law provides that the City may assess landowners for costs the City incurs to maintain sidewalks if the landowner fails to perform his/her duty. (California Streets and Highways Code, sections 5625-5630.) Although state law provides that abutting landowners are responsible for sidewalk maintenance and may be assessed the cost of repairs, state law, abutting landowners are not liable for injuries or damages to third parties who use the sidewalk unless the City adopts a law that establishes liability.

To date, the City has shouldered the cost of sidewalk-related personal and/or property injury, reducing the City revenues that are available to the City to provide other programs and services to Oakland residents. When the City pays for sidewalk related injuries, it is ultimately the taxpayers who bear this cost. Adopting a policy that holds the adjacent landowner jointly liable for sidewalk injuries will likely reduce the overall cost of sidewalk liability claims to the taxpayers.

Like the San Jose ordinance that was upheld by the courts, this proposed ordinance will make landowners jointly liable with the city for personal and/or property damage resulting from their failure to perform their maintenance obligations. In upholding the San Jose ordinance, the Court of Appeal noted that the ordinance “...serves an important public policy of providing incentives to abutting landowners to maintain the sidewalks adjacent to their property in a safe condition.” *Gonzales v. City of San Jose*, 125 Cal. App. 4th 1127, 1140 (2004) The court rejected the argument that state law preempted a municipal ordinance making adjacent landowners liable for injuries attributable to sidewalk defects, noting that there was no conflict between the state and local laws. (*Id.* at 125 Cal.App.4th 1135.)

The *Gonzales* case confirms that cities may hold landowners jointly liable for injuries to individuals that occur on adjacent city-owned sidewalks. This sharing of liability by the public entity and the landowner allows the injured person to sue and recover from both the public entity and the adjacent landowner, and, allows the public entity to cross-complain against the landowner to share in the potential liability.

The proposed ordinance also describes the procedures that the City will use to: (1) notify landowners of needed repairs and (2) recover its costs in the event that the City has to perform the repairs on behalf of the landowner.

DISCUSSION

In 2006, the City completed a sidewalk survey. Based on the survey, approximately 84 percent of the City's sidewalks are considered to be in satisfactory condition and 16 percent are damaged. Of the 16 percent of sidewalks that are damaged, approximately 83 percent is private damage due to old age, sewers or utilities, and 17 percent is tree-related. From Fiscal Year 2001-2002 through FY 2007-2008, the City paid a total of \$ 2,169,904 for sidewalk related injuries. This amount does not include the cost of defending these actions.

The proposed ordinance would dovetail with the City's ongoing efforts to effectuate sidewalk repairs and reduce the City's liability exposure. At the March 18, 2008 City Council meeting, the Council directed staff to return to Council with a detailed Sidewalk Prioritization Plan and ADA Right-of-Way Transition Plan. At the meeting, City Council approved a revolving fund of \$300,000 to provide funding for the repair of private sidewalk damage.

In addition to establishing landowner liability for injuries resulting from poorly maintained sidewalks, the proposed ordinance also describes the procedures that the City will use to: (1) notify landowners of needed repairs and (2) recover its costs in the event that City has to perform the repairs on behalf of the landowner. The proposed ordinance also includes an indemnification provision, that would entitle the City to sue the property owner to recover damages it pays to a third party who sues the City for injuries sustained as a result of a damaged sidewalk; the City could file a cross complaint against the property owner or seek to recover from them later.

ALTERNATIVES

The Council could elect not to adopt the ordinance. In this event, landowners would continue to owe a responsibility to the City to maintain adjacent sidewalks as required by state law, but they would not be liable for injuries to persons or property resulting from unsafe sidewalk conditions.

SUSTAINABLE OPPORTUNITIES

Economic: Adoption of the Sidewalk Liability Ordinance likely would reduce the City's liability associated with sidewalk related trip-and-fall claims.

If the enactment of the proposed ordinance encourages timelier sidewalk repairs by adjacent property owners, the repaired sidewalks will enhance the appearance of the City's commercial and residential corridors and likely increase property values.

Sidewalk repair work could provide employment opportunities for Oakland residents.

Social Equity: Improvements to the City's sidewalk network will enhance the quality of life of all Oakland residents regardless of their age, physical limitations or disabilities.

DISABILITY AND SENIOR CITIZEN ACCESS

Sidewalk repairs will enhance the quality of life of senior citizens and persons with disabilities.

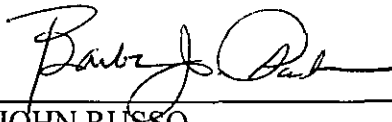
RECOMMENDATION AND RATIONALE

This report and ordinance were prepared by the City Attorney based on requests of several Councilmembers. We recommend that the Council consider the ordinance and decide whether to adopt it. As discussed in this report, the adoption of the proposed, Sidewalk Liability Ordinance would provide incentives for property owners to repair adjacent sidewalks in order to minimize the liability that could result from trip-and-fall claims.

ACTION REQUESTED OF THE CITY COUNCIL

The City Attorney recommends that the City Council consider the ordinance and decide whether to adopt it.

Respectfully submitted,


for JOHN RUSSO
City Attorney

Attorney assigned:
Patrick Tang

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OAKLAND

APPROVED AS TO FORM AND LEGALITY

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INTRODUCED BY COUNCILMEMBER _____



City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE OF THE CITY OF OAKLAND ADDING CHAPTER 12.22 TO THE OAKLAND MUNICIPAL CODE TO ESTABLISH LANDOWNER RESPONSIBILITY AND LIABILITY FOR SIDEWALK SAFETY AND MAINTENANCE

Whereas, the timely maintenance and repair of damaged sidewalks is essential to protect the health, welfare and safety of Oakland citizens and visitors; and

Whereas, an owner of property abutting a sidewalk is often in the best position to know of unsafe conditions in the sidewalk and to initiate repairs or notify the City of Oakland of the conditions; and

Whereas, the state Streets and Highways Code provides that owners of property abutting sidewalks have a duty to maintain those sidewalks; and

Whereas, the City Council of the City of Oakland wishes to limit the City's liability exposure for injuries resulting from sidewalk defects; and

Whereas, the City Council of the City of Oakland desires to establish a uniform practice consistent with the state Streets and Highways Code for maintenance and repair of sidewalks;

Now, therefore, the City Council of the City of Oakland does hereby ordain as follows:

SECTION 1: Purpose and Intent. The purpose and intent of this Ordinance is to protect the health, welfare and safety of City of Oakland residents and guests to the City of Oakland by establishing regulations for the maintenance and repair of sidewalks consistent with the state Streets and Highways Code, and establishing joint liability for sidewalk related damages or injuries.

SECTION 2: Adding Chapter 12.22 to Title 12 of the Oakland Municipal Code. Chapter 12.22 is hereby added to the Oakland Municipal Code, and such Chapter shall read as follows:

12.22.010 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, the words and phrases used in this chapter are defined as follows:

A. "City" shall mean the City of Oakland.

B. "Owner" and "Property Owner" shall be deemed in accordance with Chapter 22 of Division 7, Part 1 of the California Streets and Highways Code, as the same is now in effect or may hereafter be amended.

C. "Sidewalk" shall be deemed to include sidewalks, walkways, driveways, curbs, bulkheads, retaining walls, gutters, such areas maintained as a park or parking strip in the area between the property line and the street line, and other works for the protection of any sidewalk or of such park or parking strip and any portion of a street between the curbline and the adjacent property line, intended for the use of pedestrians.

12.22.020 Maintenance and repair of sidewalks.

A. Anything in this chapter to the contrary notwithstanding, the maintenance and repair of sidewalk areas and the making, confirming and collecting of assessments for the cost and expenses of said maintenance and repair may be done and the proceedings therefore may be had and taken in accordance with this part and the procedure therefore provided in Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state as the same is now in effect or may hereafter be amended. In the event of any conflict between the provisions of said Chapter 22 of Division 7, Part 3, of the Streets and Highways Code of the state and this Chapter 12.22, the provisions of this Chapter 12.22 shall control.

B. The owners of lots or portions of lots adjacent to, abutting or fronting on any portion of a sidewalk area between the property line of the lots and the street line, including parking strips, sidewalks, curbs and gutters, and persons in possession of such lots by virtue of any permit or right shall repair and maintain such sidewalk areas and pay the costs and expenses therefore, including a charge for the City of Oakland's costs of inspection, administration and abatement whenever the city awards a contract for such maintenance and repair and including the costs of collection of assessments for the costs of maintenance and repair under subsection A of this section or handling of any lien placed on the property due to failure of the property owner to promptly pay such assessments.

C. For the purposes of this chapter, maintenance and repair of sidewalk area shall include, but not be limited to, maintenance and repair of surfaces including grinding,

removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal and filling or replacement of parking strips, removal of weeds and/or debris, supervision and maintenance of signs allowed, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover and trimming shrubs within the area between the property line of the adjacent property and the street pavement line, including parking strips and curbs, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of said sidewalk area.

D. Notwithstanding the provisions of Section 5614 of the state Streets and Highways Code, the Director of Public Works, or such other City Official as may be designated by the City Administrator, may in his or her discretion, and for sufficient cause, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not to exceed ninety days from the time the notice referred to in said Section 5614 is given.

12.22.040 Liability for injuries to public.

The property owner required by Section 12.22.020 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a nondangerous condition as required by Section 12.22.020, any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury. Any person who suffers injury or property damage as a result of the failure of the property owner to so maintain the sidewalks and sidewalk areas shall have a cause of action for such injury or property damage against such property owner. The City of Oakland shall have a cause of action for indemnity against such property owner for any damages it may be required to pay as satisfaction of any judgment or settlement of any claim that results from such injury to persons or property as a legal result of the failure of the owner to maintain the sidewalks and sidewalk areas in accordance with this Chapter.

12.22.060 Advancement of costs of work.

The Director of Public Works, or such other City Official as may be designated by the City Administrator, is authorized and empowered to and may advance from a revolving fund specifically created for such purpose, any sum or sums necessary to pay the cost of the work of repairing or constructing any sidewalk by a contractor awarded a contract to perform said work under the procedures set forth by the City Administrator, and may reimburse said revolving fund for the sum or sums so advanced from any assessment thereafter levied and collected.

12.22.080 Notice of cost and hearing by council.

Upon the completion of the repairs or construction, the Director of Public Works, or such other City Official as may be designated by the City Administrator, shall cause notice of the cost of the repairs or construction to be given in the manner specified in Chapter 22 (Repair) of Division 7, Part 3, of the Streets and Highways Code of the state of California, as the same is now in effect or may hereafter be amended, for the giving of notice to repair or construct. The notice shall specify the day, hour and place when the city council will hear and pass on the report of the costs of the repair, together with any written objections or protests which may be raised by any property owner liable to be assessed for the cost of such repair or construction and any other interested persons. The notice shall also describe the procedure to be followed for such written objections or protests. In no case shall the hearing provided for in this section be sooner than ten days after giving of notice.

12.22.100 Conference with City Official.

The Director of Public Works, or such other City Official as may be designated by the City Administrator, may include with the notice of cost and hearing, as specified in Section 12.22.080 hereinabove, additional notice of a conference with a designated City Official. The conference which may be scheduled upon receipt of the written objection or protest, specified in Section 12.22.080, shall be conducted prior to the council hearing for the purpose of discussion between the property owner and the designated City Official of the costs of repair. Upon the conclusion of the conference, the designated City Official shall note his conclusions in the report together with any recommendations for adjustment of the costs of repair.

12.22.120 Hearing by City Council.

The City Council, on the day and hour fixed for hearing, shall hear and pass upon the report of the designated City Official, together with any written protests or objections, which have not been withdrawn prior to the hearing, from property owners liable to be assessed for the work of making such repair in accord with the procedure provided in Chapter 22 of Division 7, Part 3 of the Streets and Highways Code.

SECTION 3. Severability. The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION 4. Exemption from CEQA. The City Council finds that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that is not a Project which has the potential for causing a significant effect on the environment.

SECTION 5. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____