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January 29, 2009

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SUPPLEMENTAL AGENDA REPORT

TO: Honorable City Council
ATTN: Jane Brunner, President
FROM: John Russo, City Attorney
DATE: February 3, 2009
cc: for John Russo

RE: Sidewalk Safety and Maintenance – Liability:
Answers to the Public Works Committee's Questions

This report provides answers to the questions the Public Works Committee asked at its December 16, 2008 Public Works Committee during the City Attorney's presentation of a proposed ordinance that would establish landowner responsibility and liability for sidewalk safety and maintenance. (The ordinance would be codified at Chapter 12.22 of the Oakland Municipal Code.) The Committee passed a motion recommending the proposal to the Council.

1. Information regarding previous sidewalk related claims and payouts. The requested information is attached (see Attachment "A").
2. Clarification of the standards for a "safe" sidewalk. The Community and Economic Development Agency ("CEDA") promulgates standards for safe sidewalks. Some of the standards are technical in nature. Information regarding these standards is attached (see Attachment "B").

Additionally, courts have held that differences in sidewalk elevation of as little as $\frac{3}{4}$ of an inch may in some circumstances constitute a "dangerous condition." (*Johnson v. City of Palo Alto* (1962) 199 Cal.App.2d 148; *Rodriguez v. City of Los Angeles* (1963) 215 Cal.App.2d 463.)

3. Clarification of the distance a property owner's property must be from an unsafe sidewalk condition, to be found liable for injuries resulting from the unsafe condition. The property owner's lot or parcel must be adjacent to or contiguous with the damaged sidewalk area in order for the property owner to be liable.
4. What is the City Attorney's position regarding a requirement that the City provide information to the public about the ordinance and a comment period to allow public input and educational outreach before the effective date of the ordinance. The City Attorney's Office has no legal concerns regarding these requirements.

Claims and Lawsuit Related to Sidewalks
By File Date for Claim and Served Date for Lawsuit

As of September 11, 2008 (stats change matters are resolved)

Fiscal Year	# Claims		# Claims		# Claims		# Claims		# Lawsuits		# Lawsuits		# Lawsuits		# Lawsuits		Amount
	Filed	Paid	Paid	Denied	Open	Served	Paid	Open	Served	Paid	Closed	No Payout	Open	Paid	Open	Paid	
2001-02	68	4	4	64	0	29	20	9	0	\$391,419							
2002-03	77	3	3	74	0	24	19	5	0	\$555,654							
2003-04	53	14	14	39	0	20	13	7	0	\$208,444							
2004-05	48	9	9	39	0	15	10	5	0	\$242,202							
2005-06	49	6	6	43	0	19	12	5	2	\$246,215							
2006-07	53	2	2	51	0	20	8	5	7	\$96,828							
2007-08	48	3	3	19	26	20	5	0	15	\$21,460							

2001-02 Payout Detail By Claim File Date & Lawsuit Served Date

	# Paid	Amount Paid
Lawsuit	20	386,250
Claims	4	5,159
Highest Single Payout	Mid Payouts	Lowest Single Payout
\$20,000 +		
80,000	30,000	225
	47,450	
	45,000	
	55,000	
	47,500	

2002-03 Payout Detail By Claim File Date & Lawsuit Served Date

	<u># Paid</u>	<u>Amount Paid</u>
Lawsuit	19	550,596
Claims	3	5,058
<u>Highest Single Payout</u>	<u>Mid Payouts</u>	<u>Lowest Single Payout</u>
197,596	\$20,000 +	
	47,500	73
	85,000	
	40,000	
	30,000	
	65,000	

2003-04 Payout Detail By Claim File Date & Lawsuit Served Date

	<u># Paid</u>	<u>Amount Paid</u>
Lawsuit	13	183,500
Claims	14	24,944
<u>Highest Single Payout</u>	<u>Mid Payouts</u>	<u>Lowest Single Payout</u>
65,000	\$20,000 +	
	30,000	94

2004-05 Payout Detail By Claim File Date & Lawsuit Served Date

	<u># Paid</u>	<u>Amount Paid</u>
Lawsuit	10	235,372
Claims	9	6,830
<u>Highest Single Payout</u>	<u>Mid Payouts</u>	<u>Lowest Single Payout</u>
80,000	\$20,000 +	
	72,500	200
	45,000	

2005-06 Payout Detail By Claim File Date & Lawsuit Served Date

	<u># Paid</u>	<u>Amount Paid</u>
Lawsuit	12	235,372
Claims	6	6,830
<u>Highest Single Payout</u>	<u>Mid Payouts</u>	<u>Lowest Single Payout</u>
	\$20,000 +	
70,000	23,500	142
	25,000	
	48000	
	20000	

2006-07 Payout Detail By Claim File Date & Lawsuit Served Date

	<u># Paid</u>	<u>Amount Paid</u>
Lawsuit	8	84,392
Claims	2	12,436
<u>Highest Single Payout</u>	<u>Mid Payouts</u>	<u>Lowest Single Payout</u>
	\$20,000 +	
34,142	20,000	2,436

2007-08 Payout Detail By Claim File Date & Lawsuit Served Date

	<u># Paid</u>	<u>Amount Paid</u>
Lawsuit	5	19,810
Claims	3	1,650
<u>Highest Single Payout</u>	<u>Mid Payouts</u>	<u>Lowest Single Payout</u>
	\$20,000 +	
5,000	0	50

Claims and Lawsuit Sidewalk Payouts by Fiscal Year
As of June 30, 2008

<u>Fiscal Year</u>	<u>Amount Paid</u>	<u># of Claims Paid</u>	<u># of Lawsuits Paid</u>
2001-02	208,031	3	17
2002-03	492,240	4	19
2003-04	568,970	5	21
2004-05	287,222	15	18
2005-06	145,303	8	9
2006-07	300,492	4	10
2007-08	167,646	3	15

ATTACHMENT

B

REPAIR GUIDELINES

From State mandates, the Oakland City Council has adopted uniform repair guidelines that property owners must follow as outlined below:

- **Low Damage:** Less than $\frac{1}{2}$ inch vertical offset
- **Moderate Damage:** $\frac{1}{2}$ inch - $1\frac{1}{2}$ inch vertical offset

Repairs are required and the property owner is responsible for notifying the City of any significant change in the condition of the damaged sidewalk. The sidewalk can be made safe by grinding the area or applying a patch to the damage area ramping it to a 1 to 12 inch slope.

- **High Damage:** $1\frac{1}{2}$ - 3 inch vertical offset
- **Very High Damage:** 3 inch vertical offset and over

The City will barricade or temporarily patch the damaged area, and the property owner will be required to replace the broken or displaced concrete.

REPAIR OPTIONS

1. Do the work yourself or hire a licensed contractor

If the area to be repaired is greater than 25 square feet, you or your contractor must obtain a permit prior to beginning repair work.

2. Use a City contractor

With a Request for Services form, you can avoid the process of locating and supervising a concrete contractor. Competitively priced repair will be scheduled through the City as soon as possible and the costs will be billed to you shortly after repairs are completed.

ABATEMENT PROCESS

An inspector from the Right of Way Management section of CEDA identifies the area of sidewalk needing repair. A Notice to Repair is then sent to the property owner. The date of the Notice to Repair begins a two-week period during which the property owner can pursue one of the two repair options. If a permit is not purchased within the two-week period, the City may begin mandatory repair proceedings.

After the work is completed, the property owner will receive a notice informing you that a public hearing will be held to hear any objections or protests to the cost of the required repairs.

If you wish to protest, you may appear at the hearing or send your objections in a letter prior to the meeting. If no protest is received, or the City Council overrules the protest, you will receive a bill from the City Finance Office.

A Notice of Lien will be placed upon your property on completion of any construction work done by the City and released upon full payment.



CITY OF OAKLAND

Property Owners

What You Need to Know
What You May Need to Do

Regarding Sidewalk Repair

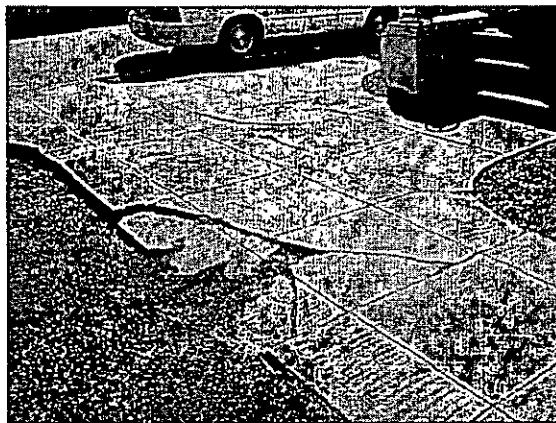
City of Oakland

SIDEWALK REPAIR PROGRAM

Community and Economic
Development Agency

Right of Way Management

(510) 238-3651



WHO SHOULD REPAIR?

The sidewalk in front of your home or business is public right of way. But State law and local ordinances hold the owner of the fronting property responsible for sidewalk maintenance and repair (Sections 5600–5602 of the California State Street and Highways Code and Section 12.04 of the Oakland Municipal Code).

This responsibility is enforced when sidewalk damage becomes an issue of safety. Legal claims are hardly a rare occurrence these days, and you should be aware that the property owner is the primary target if an accident occurs.

In the interest of preventing potential and expensive legal claims, the City employs an Engineering Inspector to respond to reports of unsafe conditions and to help property owners through the repair process.

FOR MORE INFORMATION

For property owner responsibilities, please refer to California State Street and Highways Code, Sections 5600–5602 available at their website: www.leginfo.ca.gov/calaw.html

To refer to your local ordinances, please go to www.oaklandnet.com and select the Municipal Code link. Then go to Chapter 12.04.

PARKWAY (PLANTER) STRIP

The area between the sidewalk and the curb (commonly called the planter strip) is frequently filled with concrete, bricks or other surface improvements.

The City does not require removal or repair of these improvements except where damage:

1. Prevents or interferes with sidewalk repair
2. Is in an area of high pedestrian use (such as a crosswalk) and is therefore treated like a sidewalk
3. Includes defects that may cause a risk of injury to the public



If adjacent sidewalk repairs are made, the property owner is advised to consider making any adjustments to the parkway strip that may be needed to create conformity with the new sidewalk. These and any other costs related to improvements within the parkway strip belong exclusively to the property owner.



TREES IN THE PARKWAY

Street trees are a common cause of sidewalk damage. In order to maintain a fair balance between individual and City responsibility, the City of Oakland has adopted a program in which the cost of repairing official street tree related sidewalk damage is the City's responsibility.

When sidewalk damage, regardless of degree, has been caused by the roots of an official street tree, the City will attempt to control further damage by root pruning.