CITY OF OAKLAND
AGENDA REPORT

TO: Public Works Committee

FROM: John Russo, City Attorney

DATE: December 16, 2008

RE: Supplemental Report in Support of an Ordinance Establishing Landowner Responsibility and Liability for Sidewalk Safety and Maintenance

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SUMMARY

This supplemental report addresses specific questions raised in response to the initial report presented to the Public Works Committee on October 28, 2008.

The effect of the proposed ordinance on adjacent property owners is to establish a measure of legal responsibility for the maintenance of safe sidewalks, because the adjacent property owners are often in the best position to quickly identify and address potentially dangerous sidewalk conditions. Without the ordinance, abutting property owners have no incentive to maintain sidewalks or to report or eliminate tripping hazards, even though they are currently responsible for repairs pursuant to state law.

Of key significance, the sidewalk liability ordinance proposed in this report would not entirely absolve the City of legal responsibility for dangerous sidewalk conditions. The City still may be found liable or partially liable for tripping hazards, to the extent that such conditions result from negligence or some other wrongful act on the part of the City, or the City has actual or constructive notice of the conditions before an accident occurs.

Nevertheless, when a local ordinance creates joint liability for sidewalk injuries, a homeowner's insurance company will usually cover all or a significant portion of the cost of a viable trip and fall claim, resulting in fewer and smaller pay-outs for sidewalk related injuries.

BACKGROUND

Pursuant to the request of several Council members, on October 28, 2008, the City Attorney's Office presented a proposed ordinance to this Committee to establish that property owners may be jointly responsible for sidewalk related injuries occurring on sidewalks adjacent to or fronting their properties. In the course of discussing the proposal at the October 28th meeting, a number of questions were posed and the City Attorney was asked to return on this date for further discussion. A copy of the original October 28th report and the proposed ordinance is included as part of this item.

DISCUSSION

A. Legal Analysis

At the previous Committee meeting of October 28, 2008, the Committee requested additional legal analysis of the relevant cases addressing sidewalk liability.

California Streets and Highways Code Section 5610 requires the owners of lots or portions of lots fronting on any portion of a public street to maintain the sidewalk in such a condition that it "will not endanger persons or property", and will not interfere with the public use of the sidewalk:

> "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 interfere with the public convenience...". (See Streets and Highways Code sections 5610 et seq.)

This provision codifies a duty of care under California law that dates back to 1911. **This proposed ordinance does not impose any higher burden upon adjacent property owners for the repair and maintenance of sidewalks than has already existed pursuant to the above cited state law**. It is necessary, however, in order for the City to hold property owners jointly liable for third party injuries that result from an owner's failure to maintain adjacent sidewalks.

Until 2004 it was not clear whether the property owner duty of care established under state law extended to persons that suffered injuries as a result of the dangerous condition of the sidewalk. The California Appellate court first addressed this issue in *Williams v. Foster,* (1989) 216 Cal.App.3d 510. The *Williams* case arose after the plaintiff, Dennis Williams, tripped on a raised

portion of a sidewalk in San Jose, and thereafter sued the city. In its defense, San Jose argued that under Section 5610, the owner of the property fronting the sidewalk in question was solely liable. Rejecting this contention, the Court held that Foster owed no legal duty at all to the injured plaintiff.

In reaching its decision, the *Williams* Court held that imposing upon abutting owners a duty of care in favor of third persons "would require clear and unambiguous language", which, according to the Court, is not contained in Section 5610. Notably, the Court went on to state that San Jose "could have enacted [an] ordinance which expressly made abutting owners liable to members of the public for failure to maintain the sidewalk, but did not." (*Ibid.* at 522.) Following the *Williams* decision, San Jose amended its sidewalk ordinance to include language similar to that suggested by the *Williams* Court.

In 2001, after adopting a sidewalk liability ordinance that addressed the issues raised in the *Williams* case, San Jose was sued by Joanne Gonzalez, who alleged that she was injured when she tripped and fell over a raised portion of the public sidewalk. San Jose argued that the adjacent property owner was partially liable because he had not maintained the sidewalk as required under the local ordinance. The case proceeded to the Court of Appeal, which in 2004 ruled in San Jose's favor. (*Gonzales v. City of San Jose* (2004) 125 Cal App. 4th 1127.) The primary issue before the court was whether state law preempted the local measure. The court found that the ordinance was constitutional and was not preempted by state law.

In its holding, the *Gonzales* Court noted that cities are empowered under the California Constitution to enact ordinances and regulations deemed necessary to protect the public health, safety, and welfare, and that the City of San Jose's ordinance was a permissible exercise of such power. Without such an ordinance, the court noted, landowners would have no incentive to maintain adjacent sidewalks in a safe condition. The court emphasized that the ordinance did not serve to absolve the city of liability for dangerous conditions on city owned sidewalks when the city created the dangerous condition or knew of its existence and failed to remedy it. A copy of the *Gonzales* decision is attached for your reference.

B. Sidewalk Liability Ordinances in Other California Cities.

In our previous presentation to this Committee on October 28, 2008, we reported that the cities of Larkspur, Concord, Emeryville, Albany, Lodi, Sacramento, Vacaville and Pinole have adopted sidewalk liability ordinances substantially similar to the ordinance enacted in San Jose. The Committee requested information on additional cities that have adopted sidewalk liability ordinances. Although not a complete list, we are aware that in addition to the cities previously mentioned, the cities of Richmond, San Francisco, Tiburon, Mill Valley, Sausalito, Fairfax, Novato, Lafayette, Orinda, Gilroy, Walnut Creek, San Pablo and Pleasant Hill have also passed sidewalk liability ordinances.

C. ABAG and CPEIA Recommend Adoption of Sidewalk Liability Ordinances.

A sidewalk liability ordinance such as the one being proposed today serves as an effective risk management tool, enabling a city to more fully defend against sidewalk trip and fall cases by potentially obtaining at least partial indemnity from the responsible property owner's insurance carriers. For these reasons, sidewalk ordinances are strongly recommended by ABAG (Association of Bay Area Governments) and CSAC EIA (Excess Insurance Authority), which is the public entity insurance authority that provides the City's excess liability coverage.

D. Effect of Sidewalk Liability Ordinances in Other Jurisdictions.

The Committee requested information on whether the adoption of sidewalk liability ordinances in other jurisdictions has resulted in a reduction in claims and/or a reduction in payouts. According to Marcus Beverly, who tracks information regarding sidewalk claims in his role as Risk Manager at ABAG, anecdotal information he has compiled from member cities strongly suggests that cities that have sidewalk liability ordinances are successful in obtaining contributions from homeowner's insurance companies, and that the amount of payouts in those cities has tended to decrease as a result. He has further stated that a high level of recovery for claims tendered to homeowner's insurance companies in cities that have adopted sidewalk liability ordinances is due to the fact that the insurance companies recognize that sidewalk claims are covered by most standard homeowner's insurance policies when a city has adopted a sidewalk liability ordinance. Mr. Beverly notes that insurance companies have generally paid all or a significant portion of the claims presented by cities or injured third parties in jurisdictions with sidewalk liability ordinances.

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 and their insurance companies a portion of the claims for injuries resulting from unsafe sidewalk conditions.

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 and repair 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 the requests of several Council members. 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.

The policy question for the Council to weigh is: Should the taxpayers as a whole continue to shoulder the high cost of trip and fall claims, including the cost of defending against such claims, or should the property owners and their insurance companies carry some of the liability burden?

ACTION REQUESTED OF THE CITY COUNCIL

ABAG and CSAC EIA (previously CPEIA), which is the public entity insurance authority that provides the City's excess liability coverage, recommend adoption of sidewalk liability ordinances as a risk management best practice. Such ordinances have been upheld by the courts and are considered a legally acceptable means to allocate risk. For these reasons, the City Attorney recommends adoption of the proposed sidewalk liability ordinance.

Respectfully submitted,

JOHN RUSSO

City Attorney

Attorney assigned:

Patrick Tang

Filed 12/16/04; pub. order 1/11/05 (see end of opn.)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

JOANNE D. GONZALES, Plaintiff and Appellant, v. CITY OF SAN JOSE, Defendant, Cross-Complainant and Appellant; CHARLES HUANG, Defendant, Cross-Defendant and Respondent.	H025030 (Santa Clara County Super. Ct. No. CV798208)

Plaintiff Joanne Gonzales and defendant City of San Jose appeal a judgment following the trial court's grant of defendant Charles Huang's motion for summary judgment.

This case involves a personal injury suit resulting from a slip and fall accident that occurred on a sidewalk owned by the City of San Jose. The plaintiff sued not only the City of San Jose, who owned the sidewalk she fell on, but also Charles Huang, the individual who owned the property adjacent to and abutting the sidewalk. The plaintiff sued Huang on the theory that he had a common law duty to her to maintain the sidewalk in a non-dangerous condition, as well as a duty imposed under San Jose Municipal Code

section 14.16.2205, which makes owners of property abutting city owned sidewalks liable to those who are injured as a result of unsafe conditions on the sidewalks.

The trial court concluded that San Jose Municipal Code section 14.16.2205 is preempted by state law and is therefore unconstitutional, because the State of California occupies the field of tort liability on public property. The trial court also found there was no triable issue of material fact to demonstrate that Huang had sufficient control over the sidewalk such that he had duty to maintain it in a non-dangerous condition.

We find the trial court erred in finding San Jose Municipal Code section 14.16.2205 unconstitutional. There is no conflict between state law and the local ordinance to support a finding of preemption of the local ordinance. We therefore reverse the trial court's judgment.

STATEMENT OF THE CASE AND FACTS

In May 2000, plaintiff Joanne Gonzales (Gonzales) was walking south on 7th Street in San Jose when she tripped and fell over a rise in the sidewalk in front of a commercial building located at 301 East Santa Clara Street. Defendant Charles Huang (Huang) and Lillian Z. Quin owned the commercial building.

In May 2001, Gonzales filed a complaint against Huang, Quin,[1] and defendant City of San Jose (San Jose), alleging she tripped and fell over a raised portion of the concrete public sidewalk and suffered injuries. The complaint also alleged that Huang "negligently owned, maintained, managed and operated" the sidewalk, and that San Jose "owned the public property on which a dangerous condition existed."

Huang filed a motion for summary judgment, asserting he had no liability because Gonzales's injuries did not occur on his property, but on property owned by San Jose, and as a result, Huang owed no duty to Gonzales. In addition, Huang claimed that San Jose Municipal Code section 14.16.2205, which makes an adjacent landowner liable to

[1] Quin was later dismissed from the suit.

third persons who are injured as a result of dangerous conditions on a city owned sidewalk is unconstitutional.

After a hearing, the trial court ruled that San Jose Municipal Code section 14.16.2205 is unconstitutional, because only the State of California has the authority to make laws establishing liability for torts occurring on public property. Additionally, the court held that Gonzales and San Jose failed to present evidence creating a triable issue of fact as to whether Huang had control over the sidewalk sufficient to establish his liability under a common law theory.

Judgment was entered in favor of Huang, and Gonzales and San Jose timely appealed.[2]

DISCUSSION

There are two issues presented by this appeal. The first is whether state law preempts San Jose Municipal Code section 14.16.2205 (section 14.16.2205), which mandates that an adjacent landowner may be liable to third persons that are injured on a defective city-owned sidewalk, making the ordinance unconstitutional. The second issue is whether, even in the absence of a municipal code section mandating liability, an adjacent landowner has a common law duty to a third party who may be injured on a city-owned sidewalk.[3]

Because the question presented in this case is whether state law preempts a local ordinance, it is a pure question of law subject to de novo review. (*Roble Vista Associates v. Bacon* (2002) 97 Cal.App.4th 335, 339.)

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[2] The League of California Cities filed as amicus curiae brief in support of San Jose.

[3] Because we find section 14.16.2205 is constitutional, and properly imposes a duty on adjacent landowners to third parties injured on sidewalks, we will not address the issue of common law duty.

Enactment of section 14.16.2205

Charter cities such as San Jose are empowered by the California Constitution to enact ordinances and regulations deemed necessary to protect the public health, safety and welfare. (Cal.Const., art. XI, §§ 5 & 7.) Such ordinances and regulations prevail over all State laws other than those that specifically address matters of statewide concern. (Cal. Const., art. XI, § 5.)

In that vein, and in order to address the issue of abutting landowner liability for injuries occurring on city owned sidewalks, San Jose adopted section 14.16.2205, which provides, that if an abutting property owner fails to maintain a sidewalk in a non-dangerous condition and any person suffers injuries as a result thereof the property owner shall be liable to such person for the resulting damages or injury." (§§ 14,16.220, 14.16.2205.)

San Jose adopted section 14.16.2205 in large part in response to the case of *Williams v. Foster* (1989) 216 Cal.App.3d 510, in which a panel of this court considered whether the ordinance's predecessor, Municipal Code section 14.16.220, imposed a duty on abutting landowners to third parties injured on city owned sidewalks. This court concluded that the language of Municipal Code section 14.16.220, which mirrored that of Streets and Highways Code section 5610,[4] did not clearly impose a duty on abutting landowners to pedestrians to maintain sidewalks in a safe and non-dangerous condition. (*Id.* at p. 522.) In addition, the court concluded that San Jose could have enacted an

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[4] Streets & Highways Code section 5610 provides, in relevant part:

"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 . . . and . . . shall be under a like duty in relation thereto."

ordinance that specifically created a duty to pedestrians on the part of abutting landowners. (*Ibid.*) In response to this directive, in 1990, San Jose enacted section 14.16.2205 to specifically impose a duty on adjacent landowners to pedestrians injured as a result of dangerous conditions on public sidewalks.

Constitutionality of section 14.16.2205

The constitutionality of section 14.16.2205 depends on whether state law preempts it. The California Supreme Court in *Sherwin Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893 (*Sherwin Williams*) set forth the standard for determining if a state law preempts a charter city ordinance. A charter city ordinance will be preempted if the ordinance conflicts with state law, and a conflict exists if the local legislation " ' " 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " ' [Citations.]" (*Id.* at p. 897.) If an actual conflict exists between the charter city ordinance and state law, and the matter implicates municipal affairs, the question then becomes whether the State law qualifies as a matter of statewide concern. (*Johnson v. Bradley* (1992) 4 Cal.4th 389 (*Johnson*).)

Here, the state law at issue is the California Government Tort Claims Act (the Act), which establishes liability of public entities or public employees for money or damages. (See Gov. Code § 810 et seq.) In the area of liability for dangerous conditions on public property, the Act provides, in relevant part:

> "[A] public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of injury which was incurred, and either:
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> > "(a) A negligent or wrongful act or omission of an employee of the public entity within the scope pf his employment created the dangerous condition; or

"(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition."

(Gov. Code, § 835.)

In applying the test for preemption from *Sherwin Williams* to the Act, it is clear that state law does not preempt section 14.16.2205. Initially, section 14.16.2205 is not duplicative of the Act. (See *In re Portnoy* (1942) 21 Cal.2d 237, 240 [finding duplication where local legislation purported to impose the same criminal prohibition that general law imposed].) Section 14.16.2205 establishes a duty on the part of abutting landowners for injuries to third persons on public sidewalks, while the Act establishes liability for public entities and their employees for dangerous conditions on public property under limited circumstances. Because the Act and section 14.16.2205 encompass two separate areas of liability, section 14.16.2205 is not duplicative of the Act.

In addition, section 14.15.2205 is not contradictory to the Act. (See *Ex parte Daniels* (1920) 183 Cal. 636, 641-648 [finding contradiction where local legislation purported to fix a lower maximum speed limit for motor vehicles than that which general law fixed].) Here, section 14.16.2205 does not absolve San Jose of liability for dangerous conditions on public property. Under the provisions of the Act, San Jose will be liable for dangerous conditions on sidewalks as public property to the extent the defect in the sidewalk is as a result of negligence or some other wrongful act on the part of one of San Jose's employee, or if San Jose had actual or constructive notice of the defect. (See Gov. Code, § 835.) Section 14.16.2205 does nothing to abrogate or abridge the San Jose's liability imposed under the Act.

Finally, section 14.16.2205 does not enter an area that is fully occupied by general law, because the State Legislature has not expressly manifested its intent to fully occupy the area. (See, e.g., *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 886.) Notably, the Act contains no express language that the

Legislature intends to occupy the field of liability of private parties for injuries occurring on public property (See Gov. Code, § 810 et seq.) In addition, the Act only addresses the liability of public entities and employees, and does not address private party liability. Nor does the Act express any intent to cover sidewalk maintenance and repair, or abutting landowner liability.

Not only does the Act not contain express Legislative intent to fully occupy the area by general law, but it also does not demonstrate the implied intent to do so. In *Sherwin Williams*, the court indicated that implied Legislative intent is demonstrated by the following indicia: " '(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.' [Citations.]" (*Sherwin Williams, supra*, 4 Cal.4th at p. 898.)

Here, none of the indicia of implied preemptive intent are present. First, the subject matter of section 14.16.2205—abutting landowner liability for injuries to third persons occurring on city owned sidewalks—is not "so covered by the [Act] as to clearly indicate that the filed has become exclusively a matter of state concern." (*Sherwin Williams, supra*, 4 Cal.4th at p. 904.) Indeed, the Act does not cover the subject of abutting landowner liability at all, focusing entirely on the liability of public entities and their employees. Moreover, the subject matter of the ordinance has not been "partially covered by the [Act] in such terms to clearly indicate that a paramount state concern will not tolerate local governmental action." (*Id.* at p. 905.) There is nothing in the Act to indicate that abutting landowner liability was of "paramount state concern" such that the Legislature would not tolerate local regulation. (*Ibid.*) Finally, the subject matter of the

charter city ordinance has not been "partially covered by the [Act] *and* is [not] of such a nature as to cause an undue adverse effect on the transient citizens of the state." (*Id.* at pp. 905-906.) Indeed, section 14.16.2205 would not cause any undue adverse effect on the transient citizens of this state, because it only addresses the liability of landowners in San Jose. In sum, there is no indication of implied intent in the Act such that it preempts section 14.16.2205.

In addition to the Act discussed above, Huang asserts that because Streets and Highways Code section 5610 and Civil Code section 1714 do not impose liability on adjacent landowners for injuries to pedestrians, this demonstrates not only the state's intent to fully occupy this area of law, but also it's refusal to impose liability on adjacent landowners for injuries occurring on sidewalks. As such, section 14.16.2205's imposition of liability on adjacent landowner is in direct conflict with state law. However, this conclusion is incorrect. Streets and Highways Code section 5610's absence of language regarding liability to third parties does not demonstrate the state's occupation of the field of adjacent landowner liability. Indeed, Streets and Highways code section 5610 deals only with the maintenance of abutting sidewalks, and the landowner's duty to the city, not to pedestrians that use the sidewalk. (See, e.g., Sts. & Hy. Code, § 5610; see also *Shaefer v. Lenahan* (1944) 63 Cal.App.2d 324, 327.) The specific language of Streets and Highways Code section 5610 indicates that the section was only intended to address sidewalk maintenance and construction, not landowner liability to third parties. (See Sts. & Hy. Code, § 5602.)

Moreover, like Streets and Highways Code section 5610, Civil Code section 1714,[5] which generally addresses liability for negligence in the maintenance of one's

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[5] Civil Code section 1714, subdivision (a) provides, in relevant part:

"Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the

property, does not create an explicit duty of care between an abutting landowner and a pedestrian. Despite Huang's assertion to the contrary, Civil Code section 1714's lack of specific reference to adjacent landowner liability is not an indication of the state's intent to fully occupy the field of law. Like Streets and Highways Code section 5610, Civil Code section 1714's silence on the issue of adjacent landowner liability does not preempt the local ordinance. Neither Streets and Highways Code section 5610, nor Civil Code section 1714 conflict with section 14.16.2205.

It should be noted that in finding section 14.16.2205 unconstitutional, the trial court specifically stated that the "State occupies the field of liability for torts on public property," and cited *Douglass v. City of Los Angeles* (1935) 5 Cal.2d 123, 128 (*Douglass*), *Helbach v. City of Long Beach* (1942) 50 Cal.App.2d 242, 245 (*Helbach*), and *Wilkes v. City and County of San Francisco* (1941) 44 Cal.App.2d 393 (*Wilkes*)[6] in

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management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself."

[6] In *Douglass*, the court considered whether Los Angeles's charter provision could alter how an injured party must submit a claim under the Public Liability Act of 1923, the predecessor of the Act. (*Douglass, supra*, 5 Cal.2d at pp. 128-129.) The charter provision provides that no suit could be commenced until a claimant presented a claim to the "board, officer or employee *authorized by the charter to incur liability*." (*Id.* at p. 131.) The Public Liability Act of 1923, on the other hand, required that in an action against a city, a party must file a claim with the clerk if of the legislative body of the city. (*Id.* at p. 128.) The Supreme Court concluded that the issue of municipal liability and the procedures to enforce liability were a matter of general state concern, and as a result, the court interpreted the charter provision consistent with the Public Liability Act of 1923. (*Id.* at pp. 128 & 138.)

A similar result was reached in *Wilkes*, where the court considered whether a city could prescribe where a tort claim against the city could be filed. (*Wilkes, supra*, 44 Cal.App.2d at p. 394.) The Court of Appeal for the First District held that only the state has the power to prescribe the method of enforcing a tort claim against a municipality. (*Id.* at p. 395.) The court concluded that the provision of the Public Liability Act of 1923 controlled over the charter provisions. (*Id.* at p. 399.)

Finally, in *Helbach*, the Court of Appeal for the Second District held that the City of Long Beach had no power to extend or diminish the time fixed by the Public Liability

support of that position. However, *Douglass, Helbach* and *Wilkes*, are not applicable to the present case, because they all involve a clear conflict between a local ordinance and a *procedural* provision of the predecessor of the Act, a conflict that is not present here. Moreover, they stand for the proposition that cities may not enact a local ordinance that specifically alters the procedural scheme outlined in the Public Liability Act of 1923, the predecessor to the Act for filing a claim against a city for the city's tortious conduct. *Douglass*, *Helbach* and *Wilkes* do not preclude a city such as San Jose from imposing a duty of care on abutting landowners to third parties for injuries that occur on city owned sidewalks when such a duty of care does not alter the procedural aspects of the Act, or the city's liability under the Act.

We find no conflict between section 14.16.2205 and state law, in either procedure, or substance. Therefore, we need not consider whether the matter implicates " 'municipal affairs,' " and whether the Act qualifies as a matter of " 'statewide concern.' " (*Johnson, supra*, 4 Cal.4th at p. 399.) Section 14.16.2205 is constitutional.

Concurrent Liability of San Jose and Adjacent Landowners

Contrary to Huang's assertion, section 14.16.2205 does not alter San Jose's liability under the Act. Under the two laws, both San Jose as well as the abutting property owner could be held liable to a plaintiff injured as a result of a dangerous condition on a city owned sidewalk. Concurrent liability of San Jose and an abutting landowner is not tantamount to immunizing San Jose for dangerous conditions on public sidewalks. (See, e.g., *Low v. City of Sacramento* (1970) 7 Cal.App.3d 826, 833 [in an action against a city and a private landowner for injuries caused by a dangerous condition of a sidewalk, the city and the landowner may be joint or concurrent tortfeasors and may incur joint liability], *Marsh v. City of Sacramento* (1954) 127 Cal.App.2d 721, 722 [both

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Act of 1923 for filing a claim for damages against the city. (*Helbach, supra*, 50 Cal.App.2d at p. 243.)

the city and the property owner could be jointly liable for a dangerous condition on a sidewalk], and *Peters v. City and County of San Francisco* (1953) 41 Cal.2d 419, 428-429 [the liability of the city and the adjacent landowner for a dangerous condition on a city owned sidewalk is determined by each of their individual wrongful acts or omissions].) Section 14.16.2205 is silent on the adjacent property owner's liability to San Jose or elimination of San Jose's liability to injured pedestrians under the Act. As such, San Jose is not absolving itself of liability for dangerous conditions on public sidewalks through the enactment of section 14.16.2205.

Public Policy Considerations of Section 14.16.2205

Section 14.16.2205 and its imposition of a duty of care on an abutting landowner serves an important public purpose. The ordinance does *not* absolve San Jose of responsibility for dangerous conditions on public sidewalks; rather, it provides an additional level of responsibility for the maintenance of safe sidewalks on the owners whose property is adjacent to and abuts the sidewalk. These owners are often in the best position to quickly identify and address potentially dangerous conditions that might occur on the sidewalks, as opposed to San Jose. (See, e.g., *Segler v. Steven Bros., Inc.* (1990) 222 Cal.App.3d 1585, 1591-1592 [noting that in order to fully protect its citizens, a city would have to have inspectors circulating throughout the city, day and night].)

Without section 14.16.2205, abutting landowners would have not incentive to maintain the sidewalks adjacent to their property in a safe condition. This coupled with the restrictions of city liability under the Act to notice of the dangerous condition or responsibility for the condition through wrongful conduct (see Gov. Code, § 835), could lead to a pedestrian injured by the dangerous condition on a public sidewalk having no redress for his or her injuries. Such a result is contrary to public policy.

In sum, we find section 14.16.2205 is constitutional. San Jose's adoption of the law was properly within its power as a charter city, and section 14.16.2205 does not serve to absolve San Jose of liability for dangerous conditions on city owned sidewalks.

Additionally, state law does not preempt section 14.16.2205, because there is no conflict between the two. Finally, section 14.16.2205 serves an important public policy of providing incentives to abutting landowners to maintain the sidewalks adjacent to their property in a safe condition.

DISPOSITION

The judgment of the trial court is reversed.

RUSHING, P.J.

WE CONCUR:

PREMO, J.

ELIA, J.