

Thursday, November 03, 2011

Los Angeles City Council  
Budget Finance Committee  
Public Works Committee  
City Hall  
200 N. Spring Street  
Los Angeles, CA 90012

**Re: Objection to DRAFT ORDINANCE in regards to amending subsection (e) of Section 62.104 of the LAMC to repeal the “exception” that established city liability for repair of curbs, driveways and sidewalks due to tree root damage (CF#05-1853, #05-1853-S1)**

Honorable Members:

This letter is to express our objection to a proposed ordinance, and any variation thereof, that would shift the responsibility for sidewalk damage, currently held by the city who has been long remiss in meeting their maintenance obligation, to the property owner.

#### **The City Cannot Ignore a Mandatory Duty**

LAMC Section 62.104 clearly states that the “Preventive measures and repairs or reconstruction to curbs, driveways or sidewalks required as the result of tree root growth shall be repaired by the Board at no cost to the adjoining property owner.” That duty exists and the City cannot ignore that mandatory duty and shift the cost to property owners merely by stalling until they remove that duty.

Please accept these comments with regard to Items 1 and 2, File Numbers 05-1853/05-1853-S1 on the October 19, 2011 “PUBLIC WORKS COMMITTEE and BUDGET AND FINANCE COMMITTEE, SPECIAL JOINT MEETING” agenda.

This response is provided on behalf of the Wilshire Highlands Neighborhood Association. The Wilshire Highlands Neighborhood Association covers an area from Pico to San Vicente and from La Brea to Cochran in the mid-city area.

Wilshire Highlands has many of the original sidewalk slabs still in place bearing the indicia of the original developer. As a 60+ year old residential area, multiple mature trees currently exist in the parkway, and many of those city trees have caused damage to city sidewalks, curbs and driveways.

For the following reasons, we believe the proposal to shift financial and legal responsibility from the City to property owners for sidewalk damage caused by city trees is unacceptable. This includes any “point-of-sale” plan as well as any enforcement effort involving the repeal of the exception contained LAMC 62.104.

*As you consider this letter, it is important to note that the **only reason tree-damaged sidewalks exist today is because the city has failed to perform a mandatory duty.***

### **The Proposal is Regressive**

Point-of-Sale: While the cost of repairing a sidewalk is relatively static, the value of property throughout the City is far from static. Property owners with homes valued at \$1,000,000 might face a 0.5% reduction in the value of their property if they have to pay a \$5,000 sidewalk repair bill. On the other hand, property owners with homes valued at \$100,000 would be facing a 5% reduction in the value of their homes. In these challenging times, reducing the value of property is unwise and unfair.

Point-of-permit: The incremental cost of sidewalk repair may put some projects out of reach for some homeowners – especially lower-income homeowners. At a time when construction projects are already being delayed and construction jobs are desperately needed, taking any action that may cause a reduction in remodel activity is unwise.

Enforcement/Complaint-Driven: Perhaps worse than having the value of your home diminished or having a project delayed by sidewalk repair costs is being told that you **MUST** bear the expense for sidewalk damage caused by a City tree within 90 days. Many property owners are already having trouble making ends meet. This is especially true for lower-income property owners. Adding to that burden, especially for an expense that is the duty of the City, is improper.

### **The City Cannot Ignore a Mandatory Duty**

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If the City wishes to transfer responsibility to property owners for sidewalks, it should first deliver a sidewalk that is free from defect and then hold property owners responsible for future damage, provided that the city has fulfilled its responsibilities to mitigate damage by its trees. Damage that exists now, only exists because the City has ignored a mandatory duty.

### **Inconsistency with the General Plan, Environmental Impacts**

It is reasonable to assume that some number of property owners would remove trees as a way to mitigate the risk of future sidewalk damage. It is equally reasonable to assume that some number of property owners will avoid planting trees or oppose new trees to mitigate the risk of sidewalk damage. In this economy, the cost of tree repair, including required permits, is prohibitive to many.

The city-wide implications of transferring responsibility for damage to sidewalks caused by city trees must be studied via CEQA to determine if there are any environmental impacts or inconsistencies with the general plan.

**The Urban Forestry Division website states:**

- Street trees are considered by the City as one of many infrastructure elements.
- Street trees are a significant and highly visual portion of the urban forest and recognized as a vital infrastructure system essential to the quality of life in the urban environment. This living infrastructure provides the City economic, social, environmental, ecological, and aesthetic benefits.
- Trees reduce summer cooling by as much as 30 percent.
- Trees trap particulate matter.
- Trees fight smog.
- Trees filter water entering waterways/aquifers.
- Trees reduce soil erosion and run-off.
- Trees revitalize business districts.

Contrary to the opinion provided by the City Attorney's office, this ordinance does not qualify for exemption from CEQA as it may have substantial cumulative impacts on several aspects of the environment including loss of trees and an increase in greenhouse gases. Any program which reasonably could result in the reduction of street trees throughout the City must be studied via CEQA.

**City Responsibility for Tree Maintenance Creates a Conflict**

The City has an ongoing responsibility for trimming trees and maintaining its sidewalks and curbs. The City has clearly failed to do so, whether for budgetary reasons or otherwise. As a direct result of the City's failure to maintain its trees, sidewalks have been and will be damaged. Property owners will be forced to sue the City after-the-fact, or in advance of sidewalk damage to force the City to either maintain its trees or compensate the property owner for damage caused by City property.

**Indicative of the City's Failure on Infrastructure Monitoring and Maintenance**

The City's failure to monitor and maintain its trees and sidewalks is indicative of the City's failure to properly monitor and maintain its infrastructure systems. Water, power and sewer systems are aging and require billions of dollars in deferred maintenance. Roads (and clearly sidewalks) are failing. A recent report stated that the school district alone has billions in deferred maintenance. The City's failure to allocate proper resources or reduce demand represents decades of mismanagement and has resulted in the decay of the infrastructure.

The General Plan contains assurances that the infrastructure needs monitoring and maintenance. Property owners should not be required to pick up the tab for the City's failure to meet its obligations. Crisis-based management is expensive. That expense should be borne by the City.

**Interaction with Administrative Code Enforcement (ACE), ADA Lawsuit**

The City has or is about to reach a settlement on several ADA lawsuits that will require the City to have its sidewalks ADA compliant within 25 years. The cost of repairing the City's sidewalks has been estimated at \$1.5B for approximately 4,600 miles of sidewalk (or 40% of the network). Absent

shifting responsibility to property owners, the City will be forced to divert at least \$50M per year for 25 years toward compliance with the ADA settlement. This is the cost of poor management and as one former councilmember put it “municipal malpractice.”

The recently proposed ACE concept would allow the City to write tickets forcing property owners to repair their sidewalks at their expense (plus a fee for receiving the ticket). Simply put, ACE would allow the City to fan out inspectors to find broken sidewalks and then issue tickets to make property owners pay for sidewalk repair caused by city trees. The combination of ACE and responsibility for tree-damaged sidewalks represents a true financial threat to every property owner in the City.

### **Impacts on Insurance Rates**

There has been no study on the impact of transferring both financial and legal liability for City tree-damaged sidewalks from the City to property owners. Anecdotal evidence suggests that insurance companies may require repairs prior to insuring a property. Given that City trees can cause future damage, and that property owners cannot legally mitigate their risk by removing a tree, insurers may simply increase premiums to cover the new class of claims. The economic impact on homeowners must be reviewed in detail.

### **Ethically and Morally Unsupportable**

Aside from the above, it is inconceivable to many that the City Council is attempting to make property owners pay for the City’s failure to maintain its trees and sidewalks. The attempt to charge property owners for damage caused by City trees is unconscionable. This is especially true as the City has a mandatory duty to repair sidewalks damaged by its trees.

The City has budget problems because the City has mismanaged its budget and has spent millions on discretionary projects while ignoring its mandatory duties. The City is further being forced to pay the price for decades of deferred maintenance. Only when this City can tell its taxpayers that it has spent nothing on discretionary expenditures and has addressed its fundamental inefficiencies can it go back and ASK the taxpayers for more.

### **Notice on Curbs and Driveways**

We further wish to put the City on notice that numerous driveways and curbs in our area are in a state of disrepair specifically due to damage by City trees and/or damage by City water main breaks. The City is equally responsible for those repairs as well per LAMC 62.104 which also covers curbs and driveways.



Accompanying this letter is an exhibit which documents many city-tree damaged sidewalks in our area.

Sincerely,

J.C. Rivas  
*President*  
Wilshire Highlands Neighborhood Association

Encl.