



## **REPORT TO THE CITY COUNCIL**

**DATE:** Regular Meeting of November 10, 2020

**TO:** Mayor Esquivias and Members of the City Council

**SUBMITTED BY:** David Biggs, City Manager  
Mike Roberts, Public Works Director  
Patrick Tang, City Attorney

**SUBJECT:** Continued Discussion and Presentation of Draft Ordinance regarding Sidewalk Maintenance and Liability

**RECOMMENDED ACTION:** Receive Report, Discuss, and Provide Direction, if any.

### **FISCAL IMPACT OF RECOMMENDATION:**

If adopted by the City Council, a Sidewalk Liability Ordinance would likely reduce the City's pay-outs for sidewalk related injuries because (1) property owners would 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.

### **BACKGROUND:**

As discussed at the October 8, 2019 regular council meeting, California Streets and Highways Code Section 5610 requires property owners to "maintain any [adjacent] 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 or areas." While this statute imposes a duty on the abutting property owner to repair any defects or hazards in the adjacent sidewalk, the statute does not actually hold property owners accountable for the failure to correct or repair dangerous conditions on those sidewalks. Accordingly, unless a sidewalk maintenance and liability ordinance is adopted to put adjacent property owners on notice regarding their repair and maintenance obligations and to clearly determine their liability for failure to do so, the City, rather than the property owner, is solely liable when an individual is injured on a damaged sidewalk that an adjacent property owner failed to repair.

As previously reported to Council, cities have the legal authority to enact ordinances that reaffirm the duty of property owners to maintain and repair adjacent sidewalks and hold private property owners responsible for dangerous conditions on those sidewalks. The City's risk management pool, the Municipal Pooling Authority ("MPA"), has recommended that their client cities adopt this type of ordinance in order to increase the City's protection, and decrease the risk to the City of sidewalk related "trip-and-fall" cases. If this type of ordinance is adopted, the City could benefit from both a

positive impact on insurance premiums related to MPA, and from a reduction in the number of incidents and payments resulting from sidewalk trip-and-fall claims.

### **DISCUSSION:**

As discussed in more detail in the several attachments to this staff report, State law allows the City to adopt an ordinance assigning responsibility for maintenance of sidewalks to the owner or person in possession of property adjacent to a sidewalk, and holding private property owners responsible for dangerous conditions on those adjacent sidewalks. Sidewalk liability ordinances are common throughout California; the City of Oakland adopted such a measure in 2019, joining other Northern California cities including Albany, Concord, Emeryville, Larkspur, Lodi, Sacramento, Vacaville, Richmond, San Francisco, Tiburon, Mill Valley, Sausalito, Fairfax, Novato, Lafayette, Orinda, Gilroy, Walnut Creek, San Pablo, and Pleasant Hill, to name a few. Currently the Cities of Pinole and Hercules are the only cities in Contra Costa County that do not have some form of sidewalk liability ordinance which would require property owners to maintain sidewalks fronting their properties, and hold private property owners responsible for dangerous conditions on those adjacent sidewalks. The Pinole City Council in 2018 received a presentation regarding the possibility of adopting a sidewalk liability ordinance and directed that the matter be further studied by a council committee.

If adopted, a sidewalk liability ordinance would affirm the existing statutory duty of the property owner to maintain and repair the sidewalk pursuant to California Streets and Highways Code section 5610, and establish that the failure to do so would be considered negligence on the part of the property owner. The property owner would be liable to members of the public injured as a result of such negligence. In addition, the sidewalk maintenance ordinance may also include a provision providing that, if the property owner fails to maintain and repair the sidewalk as necessary to create a safe condition, the City may perform any necessary work and invoice such costs to the property owner. If the property owner fails to pay the invoices, the City may record a lien on the property.

### **CONCLUSION:**

A sidewalk ordinance such as the draft provided would limit the City's exposure to liability arising out of trip-and-fall cases. However, the ordinance would not completely eliminate the City's potential liability for dangerous conditions on sidewalks. The City could still be liable to a plaintiff injured as a result of a dangerous condition on a City owned sidewalk if the adjacent property owner is unable to pay (which is likely to happen if the property owner does not have home owners insurance), if the City's actions caused the dangerous conditions, or if the City was aware of a dangerous condition and failed to act.

### **ATTACHMENTS:**

- 1- October 8, 2019 Staff report to Council with attachments.
- 2- Draft Sidewalk Liability Ordinance.