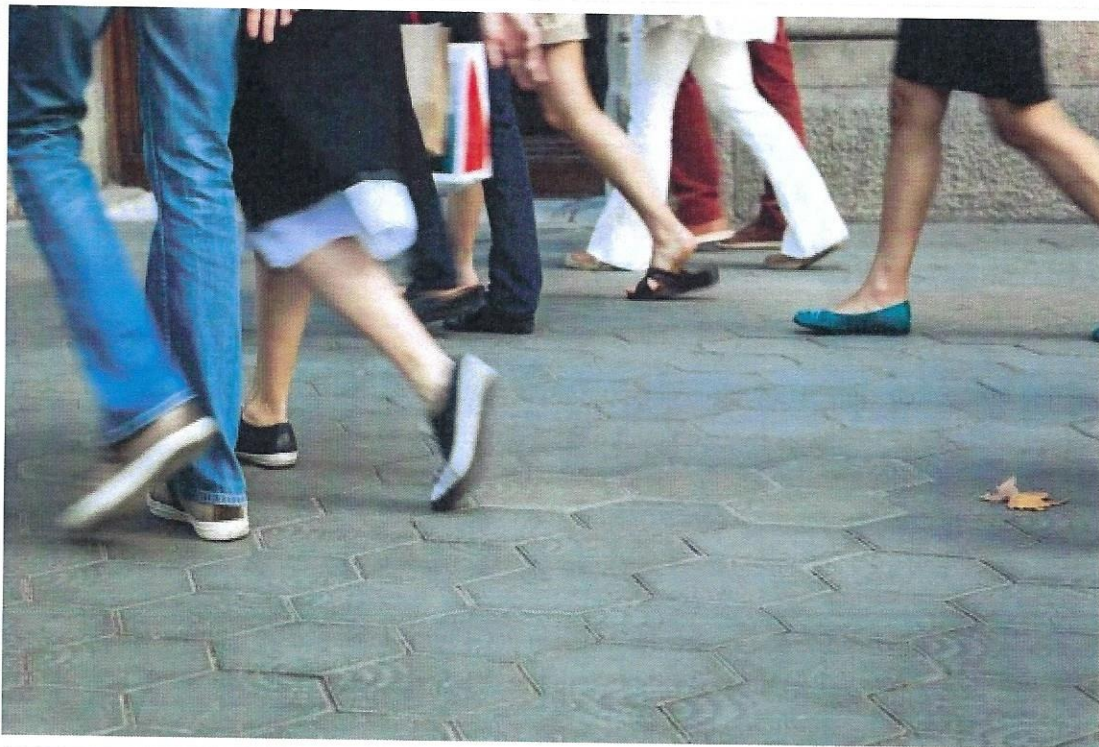


Defective Sidewalk Conditions: Who is at Fault?

Posted on **September 10, 2015** by **Barry D. Brown**



Liability between municipalities and landowners for injuries sustained by pedestrians due to defective sidewalk conditions has been the subject of lawsuits and statutory enactments for years. In California, municipalities generally own the sidewalks adjacent to private property owners' land, but state law provides that the landowners are responsible for maintaining the sidewalk fronting their property in a safe and usable manner. According to Streets and Highways Code 5610:

"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 parking or a 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..."

California state law provides that a municipality may assess landowners for the cost the municipality incurs to maintain sidewalks if the landowner fails to perform his/her duty. Although state law provides that abutting landowners are responsible for sidewalk maintenance and may be assessed the cost of repairs, they may not be liable for injuries or damages to third persons who use the sidewalk, unless the municipality enacts an ordinance that addresses liability. *Williams v. Foster* (1989). *Williams* arose after the plaintiff, Dennis Williams, tripped on a raised portion of the sidewalk in the City of San Jose, and thereafter sued the City. In its defense, San Jose argued that under 5610, the owner of the property fronting the sidewalk in question was solely liable. Rejecting this contention, the court held that Foster (landowner) owed no legal duty at all to the injured plaintiff.

In reaching the *Williams* decision, the 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 5610. Notably, the court went on to state that the City "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." Following the *Williams* decision, the City of 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 *Williams*, San Jose was sued by Joanne Gonzalez, who alleged she was injured when she tripped and fell over a raised portion on a public sidewalk. Gonzalez also sued Charles Huang, who owned the property adjacent to the sidewalk on which she fell. Huang was sued on the theory that he had a common law duty to the plaintiff to maintain the sidewalk in a non-dangerous condition, as well as a duty under the San Jose Municipal Code.

The City of San Jose argued that the adjacent property owner was partially liable because he had not maintained the sidewalk as required by the local ordinance. Huang filed a motion for summary judgment arguing in part that the sidewalk liability ordinance enacted by the City of San Jose was unconstitutional. The trial court agreed with Huang and granted his Motion for Summary Judgment. Both Gonzalez and the City of San Jose appealed.

The case proceeded to the Court of Appeal which in 2004 ruled in San Jose's favor. (*Gonzales v. City of San Jose* (2004.)) The primary issue before the court was whether the 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 that power. Without such an ordinance, the court noted, landowners would have no incentive to maintain adjacent sidewalks in a safe manner.

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, knew of its existence and failed to remedy it. Since the *Gonzales* ruling, many municipalities have considered liability shifting ordinances. Some have enacted such ordinances while others have not, oftentimes on public policy concerns.

Note that even in jurisdictions which have enacted liability shifting ordinances, one must determine the cause of the defective sidewalk condition. In many ordinances, liability does not shift to the landowner if the landowner did not cause the defective condition to exist.

Thus, in analyzing liability in a case involving an allegedly defective sidewalk condition, a major issue will be whether the municipality has a liability shifting ordinance. If such an ordinance exists, it must be read carefully to determine its scope, as each ordinance differs from municipality to municipality.