



REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 26, 2021

TO: Mayor Kelley and Members of the City Council

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

SUBJECT: Continued Discussion of Draft Sidewalk Maintenance and Liability Ordinance

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 payouts for sidewalk related injuries because (1) property owners would be more likely to maintain sidewalks in a safe condition; and (2) depending on the situation, property owners and their insurance companies would pay all or a portion of any claims for personal injuries attributable to unsafe sidewalk conditions.

BACKGROUND:

This matter has been previously discussed at the October 8, 2019 and November 10, 2020 regular council meetings. Copies of the previous staff reports to Council, including all related attachments, are provided as Attachments to this report.

Additional Information Requested by Council: At the November 10, 2020 council meeting, Council directed staff to bring this item back in January 2021 for further discussion and to provide additional information regarding:

- How other cities in Contra Costa County handle sidewalk liability, specifically when the sidewalk defect is caused by a city tree.
- Whether other cities in the county require adjacent property owners to maintain median and park strips and the trees and landscaping planted within those median and park strips.
- Whether the City could require sidewalk inspections and repairs at the time properties are sold.

DISCUSSION:

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, 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, state law allows cities to adopt ordinances 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. In Contra Costa County, Hercules and Pinole are the only two cities that have not adopted some form of sidewalk liability ordinance. 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 so that 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.

What Other Cities do When Sidewalk Damage is Caused by City Trees. While information from all cities within the county was not obtained prior to finalizing this report, it has been determined that in seven cities within Contra Costa County (Brentwood, El Cerrito, Lafayette, Pittsburg, San Pablo, San Ramon, and Walnut Creek) the city pays for repairing sidewalks damaged by city trees. In six cities within the County (Antioch, Clayton, Danville, Martinez, Moraga, and Oakley), the adjacent property owner pays for repairing sidewalks damaged by city trees. One city, Pleasant Hill, has no street trees planted, owned, or maintained by the city. Sidewalk repair permit fees are waived by some cities when the damage is caused by city trees.

Who Repairs and Maintains Park and Planter Strips in Other Cities. While the number of Hercules neighborhoods and homes that have park and planter strips is relatively small, this feature is prevalent in some of the newer neighborhoods, such as the Promenade, Baywood, and Bayside. See Attachment 3. Seventeen cities in Contra Costa County require adjacent property owners to maintain park and planter strips; no cities in the county were found to expressly undertake this maintenance responsibility. This is evidenced by the wholesale adoption by reference within local municipal codes of California Streets & Highways Code section 5600 which defines sidewalks broadly as follows:

As used in this chapter “sidewalk” includes a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining

walls or other works for the protection of any sidewalk or of any such park or parking strip.
Cal. Streets & Highways Code Sec. 5600.

Or in the alternative some of the seventeen cities have adopted an even more specific definition of “sidewalk” such as that found in the City of San Pablo Municipal Code:

“Sidewalk” as used in this chapter, in addition to paved walkways, includes parks or parking strips maintained in the area between the property line and the street line, and also includes driveways, curbing, and other works constructed by any person under and by virtue of any permit or right granted by law or by the city council or city officer in charge thereof upon sidewalk areas of the public highways. City of San Pablo Municipal Code Sec. 12.04.010

The most comprehensive maintenance and repair requirements are found in the Antioch Municipal Code, which requires property owners to maintain and repair sidewalk areas, including grinding, removing and replacing sidewalk, repairing and maintaining curb and gutters, removing and filling or replacing parking strips, removing weeds and debris, tree root pruning and installing of root barriers and trimming shrubs and ground cover. Antioch Municipal Code Section 7-8.02(c).

Some cities such as San Ramon and Walnut Creek simply define the sidewalk area as the area between the property line of a parcel and the edge of the street pavement or the property side of a curb; this would presumably include curb and gutters, parking strips, and other improvements within and between the property line and the edge of the street.

Whether the City Could Require Sidewalk Inspections and Repairs at the Time Properties are Sold.
It is legally permissible to enact a program that, similar to a sewer lateral inspection program, would require sidewalk inspection and repair upon the sale of property. The City of Piedmont requires sidewalk inspections and repairs when real property is sold, and also when a home improvement project’s value is \$5,000 or greater and a sidewalk inspection has not been performed in the past two years (Piedmont Municipal Code Chapter 18, Article V, Sec. 18.26). While there is no legal impediment to adopting such a requirement, there may be practical concerns; such a program would need to be implemented properly to avoid hindering the timely sale and transfer of property.

Related Measures: Many cities that have adopted sidewalk liability ordinances have also adopted sidewalk inspection and repair programs. Depending on available resources and staffing levels, some cities have set up revolving loan funds to assist property owners unable to afford sidewalk repairs. Other cities waive permit fees for sidewalk repairs when the damage is a result of city trees (Oakland and Vallejo among others) and/or provide discounted repairs to residents by “bundling” repair work to achieve an economy of scale (Oakland and Oakley).

In addition, the National League of Cities offers a program called The NLC Service Line Warranty Program which would give residents who have not set aside money to pay for an unexpected, expensive utility line repair, caused by tree root invasion or other sources, the opportunity to obtain an optional warranty that will provide repairs for a low monthly fee, with no deductibles or service charges. Many cities sign on and offer this NLC program in conjunction with addressing sidewalk liability. More information on the program can be found here: [NLC National Service Line Program](#)

CONCLUSION:

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

ATTACHMENTS:

- 1- November 10, 2020 Staff report to Council with attachments.
- 2- Draft Sidewalk Liability Ordinance.
- 3- Parkway Strip Locations in Hercules