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January 13, 2012

Los Angeles City Council
City Hall
200 N. Spring Street
Los Angeles, CA 90012

CC: Los Angeles City Attorney
Los Angeles City Clerk

RE: SUPPLEMENTAL COMMENTS

Objection to Potential Violation of California Environmental Quality Act and Americans with Disabilities Act

Council Files No. 05-1853 and 05-1853-S1, Otherwise Known as Proposal to Shift to Property Owners Sidewalk Repair Responsibility for Damage Due to Tree Roots, and Proposal for Point-of-Sale Sidewalk Repair Plan

Honorable Councilmembers:

Before your Budget and Finance Committee and Public Works Committee is a proposed ordinance that would shift to residential and commercial property owners sidewalk repair responsibility for damage due to tree roots, including damage from city trees, and a proposal to allow sidewalk repairs to be deferred until the time of property sales.

In October 2011 we communicated our objection to both policies as proposed. These ordinances violate the California Environmental Quality Act (CEQA) and the Americans with Disabilities Act (ADA). Our October 18, 2011 letter outlined the reasons why an Environmental Impact Report is required before definitive action on these policies can be taken. In particular, we are concerned about the likely loss of thousands of trees from the city, as the policies under consideration include no meaningful program to prevent that result. Additionally, we explicitly note that:

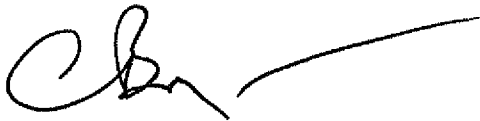
- The proposed policy change is a discretionary action under CEQA. CEQA applies in situations where a governmental agency can use its judgment in deciding whether and how to carry out or approve a project. In this case, the city has decided to propose changing local law without choosing to implement measures that would mitigate the potentially significant negative environmental impacts of the proposed law. (CEQA Guidelines § 15357)
- The proposed policy constitutes a project under CEQA. For CEQA purposes, “project” means an activity that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment”. The proposed policy constitutes such a project under CEQA.

- The proposed project cannot be subject to a categorical exemption from CEQA. The fact that the proposed policies are likely to produce significant cumulative effects on the environment precludes the policies' categorical exemption from CEQA. (California Resources Code § 153000.2(b), (c), (d))
- The proposed policy includes no mitigation measures, despite the likely result that thousands of trees will be lost from the city's urban forest. CEQA requires mitigation measures to be adequate, certain and enforceable to the extent that a proposed project would produce significant negative impacts. The policy before you includes no such mitigation measures.

Notably, the California Supreme Court has applied the California Environmental Quality Act when, as here, a public agency enacts an ordinance. (*Friends of Sierra Madre v. City of Sierra Madre*, *supra*, 25 Cal.4th at pp. 182–191, 105 Cal.Rptr.2d 214, 19 P.3d 567 [historic preservation ordinance]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 73–75, 118 Cal.Rptr. 34, 529 P.2d 66 [ordinances permitting oil company to sink test wells].)

Thank you for your consideration of these supplemental comments to our October 18, 2011 letter. We look forward to working with you to develop a reasonable solution to this set of issues.

Sincerely,



Cary Brazeman
Founder, LA Neighbors United

Former Managing Director, CB Richard Ellis Group, Inc. +
Member, Urban Land Institute - Los Angeles District Council +
Member, Board of Directors, Friends of the Los Angeles River +
Member, Board of Directors, Mid City West Community Council +

+ Titles for identification purposes only