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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 1 - 0 1 3 2

MAR 3 1 2011

REPORT RE:

**REVISED DRAFT ORDINANCE AND CEQA FINDING IN CONNECTION
WITH AMENDING SUBSECTION (e) OF SECTION 62.104 OF THE
LOS ANGELES MUNICIPAL CODE TO REPEAL THE "EXCEPTION"
THAT ESTABLISHED CITY LIABILITY FOR REPAIR OF CURBS,
DRIVEWAYS AND SIDEWALKS DUE TO TREE ROOT DAMAGE**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 05-1853

Honorable Members:

Pursuant to your request, this Office previously prepared and transmitted (City Attorney Report No. R09-0270) a draft ordinance that would amend Subsection (e) of Section 62.104 of the Los Angeles Municipal Code (LAMC) to repeal the "**EXCEPTION**" within that section which established City liability for repair or reconstruction of curbs, driveways and sidewalks required as a result of tree root growth. Thereafter, your Honorable Public Works and Budget and Finance Committees requested this Office to revise the draft ordinance to increase the time required for adjoining property owners to commence the work of repair or reconstruction of curbs, driveways and sidewalks from two weeks to 90 days after the date notice is given. This Office now transmits for your consideration the attached revised draft ordinance, approved as to form and legality.

CEQA Exemption

This ordinance is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14, Chapter 3 of the California Code of Regulations Section 15301. Existing Facilities (which includes the repair of existing public structures or facilities involving negligible or no expansion of an existing use) and City CEQA Guidelines Article III 1.a.3 (repair, maintenance or minor alteration of existing highways and streets, sidewalks, gutters...). If the Council chooses to adopt the ordinance, it should also find that it is exempt from the provisions of CEQA pursuant to the above cited sections.

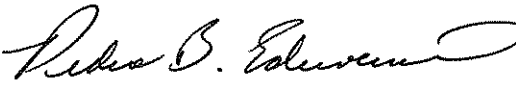
Council Rule 38

In accordance with the requirements of Council Rule 38, this Office has forwarded the draft ordinance to affected City departments and requested them to address any comments that they may have directly to the City Council when you consider this matter.

If you have any questions regarding this matter, please contact Assistant City Attorney Edward M. Jordan at (213) 978-8184. He or another member of this Office will be present when you consider this matter in order to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:EMJ:mg
Transmittal

ORDINANCE NO. _____

An ordinance amending Subsections (b) and (c) of Section 62.104 of the Los Angeles Municipal Code to increase the time required for adjoining property owners to commence work of repair or reconstruction of curbs, driveways and sidewalks, and to repeal the EXCEPTION within Subsection (e) of Section 62.104 of the Los Angeles Municipal Code to eliminate City responsibility for the repair or reconstruction of curbs, driveways and sidewalks required as a result of tree root growth.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Subsection (b) of Section 62.104 of the Los Angeles Municipal Code is hereby amended to read as follows:

(b) **Time Required for Repairs.** Any owner, agent or occupant of any such premises, within ninety (90) days after notice given as provided herein, shall commence the work of repair or reconstruction, or both, and shall do said work in the manner and with the materials specified in said notice. No owners, agent or occupant of any such premises where notice is given as provided herein shall fail, refuse, or neglect to commence the work required in said notice within the time permitted herein, nor shall any such person after having begun such work fail, refuse, or neglect to proceed diligently with the work to completion in the manner and with the materials specified in said notice.

Sec. 2. Subsection (c) of Section 62.104 of the Los Angeles Municipal Code is hereby amended to read as follows:

(c) **Failure to Repair.** In the event a person neglects, fails, or refuses within ninety (90) days after notification, to begin the work of repair or reconstruction of the property designated in the notice, or fails to prosecute the work diligently to completion, the Board shall have the power to perform the work described in the notice.

Sec. 3. Subsection (e) of Section 62.104 of the Los Angeles Municipal Code is hereby amended to read as follows:

(e) **Determination of Responsibility for Damage.** Whenever the Board determines that a curb, driveway or sidewalk is damaged as the result of negligence or violation of this Code and the Board determines the identity of the responsible party, all costs incurred pursuant to this section shall be a personal obligation of the responsible party, recoverable by the City in an action before any court of competent jurisdiction. These costs shall include an amount equal to forty percent (40%) of the cost to perform the actual work, but not less than the sum of \$100.00, to cover the City's costs for

administering any contract and supervising the work required. In addition to this personal obligation and all other remedies provided by law, if the Board determines that a curb, driveway or sidewalk is damaged to such an extent as to create a menace to the public health, welfare and safety, and to constitute a public nuisance, the City may collect any judgment, fee, cost, or charge including any permit fees, fines, late charges, or interest, incurred in relation to the provisions of this section as provided in Los Angeles Administrative Code Sections 7.35.1 through 7.35.8.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

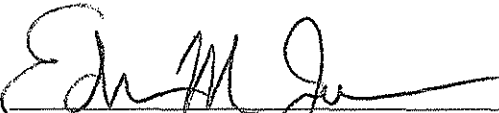
By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality:

CARMEN A. TRUTANICH, City Attorney

By  _____
EDWARD M. JORDAN
Assistant City Attorney

Date 3-31-11

File No. 05-1853