Memo

From: South Bay Association of REALTORS
Beverly Hills/Greater Los Angeles Association of REALTORS
Pasadena-Foothills Association of REALTORS
Glendale Association of REALTORS

Contact: David Kissinger, (310)326-3010

Date: September 23, 2009

Re: Sidewalk Repairs at the Point-of-Sale

Attached hereto is a report intended for inclusion with Council File 05-1853 and related documentation for the proposal to repair broken sidewalks in the City of Los Angeles at the Point-of-Sale.

This document is written in response to "Putting California Cities Back on Their Feet", an academic paper written by Dr. Donald Shoup and published in the UCLA journal *California Policy Options* on March 18, 2009.

Putting California's Cities Back on Their Feet – Only to Trip Again

The Realtor community in the City of Los Angeles has for several years worked with the City of Los Angeles and its respective departments to craft a mechanism for repairing broken sidewalks. The scale of such disrepair is well-documented elsewhere; suffice it that all parties agree that the current conditions of broken sidewalks cannot continue.

A paper published on March 18, 2009 by UCLA professor Dr. Donald Shoup in the journal *California Policy Options* calls for the use of "point-of-sale" ("POS"), where broken sidewalks are to be repaired at the time of selling a home. In fact, the practice of POS is perhaps the least efficient, most expensive, and most risky solution for addressing the daunting task of repairing 4,600 miles of broken sidewalks in the City of Los Angeles ("City").

Furthermore, the paper – hereinafter referred to as Shoup (2009) – excessively exaggerates the promised benefits of POS and contains improperly analyzed data, incorrect conclusions, and claims about properties, real estate, and Realtors that are simply wrong. In this document we seek to address the specific analysis in Shoup (2009) and show how that paper's own data disprove the effectiveness of POS.

The Speed of Repairs, or Lack Thereof: How many sidewalks would be fixed with point-of-sale, exactly?

Shoup (2009) makes arguments in favor of POS, and purports to show how POS benefits public safety, job growth, and macroeconomic benefits to the region. Why wouldn't we implement POS right away? Yet POS's inherent inefficiencies shine again and again, whether in Shoup 2009, the City's February 12, 2008 Staff Report on POS sidewalk repair ("Staff Report"), or in the economic data itself.

In fact, Shoup (2009) itself bases much of its pro-POS argument on an improper application of housing data; this error is significant because Shoup's assumption about the number of sidewalks that would be physically repaired – were it only that the City had implemented POS – is far higher than that paper's own data allow.

The trouble begins with housing data in Table 1 as reported in Shoup (2009, 129). It describes the number of all properties in the City of Los Angeles sold at least once from 1977 to 2006. Based on this data, the paper concludes that "[i]f in 2000, the city had

begun requiring owners to repair any broken sidewalk at sale, 36 percent of all sidewalks in the city would have been fixed over the next seven years" Shoup (2009, 128).

During that period of time under POS, those properties may have been **inspected**, however not necessarily **fixed**. This important distinction occurs because not every property for sale has a broken sidewalk in front of it. 4,600 miles of the city's 10,750 miles of sidewalk are in disrepair, or 43%. This suggests that 57% of sidewalks in the City are in acceptable condition and do not need repair. (It also assumes that a POS program will apply equally to residential and commercial properties).

Let's assume for the moment that, all other things equal ("*ceteris paribus*"), 43% of all properties **for sale** in the City need sidewalk repairs. This belies the statement in Shoup (2009, 128) that "36 percent of all sidewalks in the city would have been **fixed** over the next seven years" (our emphasis), because this assumes that 100% of all those homes sold in that time needed sidewalk repair. The data show that they do not. There is no demonstrated statistical correlation between properties for sale and properties with broken sidewalks.

All other things equal, then at most 43% of that 36% of "all sidewalks in the city" would have, in theory, been "fixed"; in other words, after seven years only 15.5% of those properties would have been actually repaired.

In addition, if we reexamine the data using figures supplied by the City of Los Angeles Department of Planning, closer to 21% of all units would have been inspected (not necessarily fixed), rather than 36%. This is because we compare properties sold to the total number of **units** in the city, not properties (Table A). If 43% of that 21% needed repair, *then just 9% of properties with broken sidewalks would have been repaired in seven years, at the rate of barely one percent a year.*

Table A below replicates Table 1 in Shoup (2009, 129), and also incorporates (in red) our data obtained from the Department of Planning.[1] A repair rate of one percent a year is more consistent with our belief that, in any given jurisdiction, approximately 2-4% of housing stock sells per year, regardless of market conditions.

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[1] **Footnote on unit counts.**
Data in Table A are different than that which is cited in Shoup (2009, 129), possibly because here we are measuring housing **units**, rather than **properties**. POS triggers a government action each time a housing **unit** is transacted; this is important because many properties have more than one unit. In fact, according to the Los Angeles Planning Department's 2008 Housing and Population Estimate, 61% of all housing units in the City are on multifamily properties.

It is unclear in Shoup (2009) whether this distinction is indicated in the data. However, for the purpose of analyzing the data in Shoup (2009) as described in Table A, we assume that one property = one unit. This has the effect of skewing the data in *favor* of POS, because otherwise only the first unit sale in a multifamily building should in theory trigger an inspection (but not necessarily a "repair"), while subsequent near-term unit sales in that same multifamily building may render an inspection unnecessary. Nonetheless, government action is still triggered in escrow, because the City needs to make that determination. As shown in this document, even with data skewed in favor of POS, it still falls short.

Finally, the "36%"conclusion is a misapplication of the data, where Shoup (2009) starts by observing that "36% of all **properties** were sold at least once between 2000 and 2006", and therefore "36 percent of all **sidewalks**…would have been fixed" (our emphasis; Shoup (2009, 128)). The analysis of the data is called into question due to the free mixing of the terms "property", "unit", "home", and "sidewalks".[2]

POS is better than nothing?

While POS may seem an improvement over doing nothing, it still struggles under its own weight. The City's Staff Report (Staff Report, 18) found that "…the BSS [Bureau of Street Services] has experienced a substantial increase in cost when reconstructing one property frontage at a time (double the cost)."

POS, by definition, contemplates reconstructing "one property frontage at a time", because in almost every instance the adjacent and abutting properties are not simultaneously in a point-of-sale situation (i.e., escrow). In other words, any purported benefit achieved by POS will be significantly reduced by the doubled costs incurred during repair.

Furthermore, while we state above that all other things are equal (*ceteris paribus*) for the purpose of this analysis, things are in fact not equal at all. There is probably no perfect distribution of exactly 43% broken and 57% smooth sidewalks among houses for sale in the City. Such data at any exact moment is largely unknowable, as is the question of precisely where and when the next unit (or "property") will be sold. Because such information cannot be known, even in the best of real estate markets, it is questionable at

[2] **Footnote on Units vs. Properties.**
Shoup (2009) appears to mix definitions in a manner that leads to incorrect conclusions of the data. It is important to make the distinction between "units" and "properties", because Realtors and real estate professionals transact individual units (i.e. such as condos or units in a multifamily setting) and not just whole properties. For the purpose of our analysis herein, we use the following definitions and assumptions:

- **Property or parcel.** A piece of real property as defined by the Los Angeles County Recorder, irrespective of what building(s), unit(s), or use(s), if any, are on that property.
- **Unit.** A dwelling or dwelling unit (du) in which lives an individual, family, or household. More than one unit may be on a given property. In the City of Los Angeles, 61% of all housing units in the City are on multifamily properties (Los Angeles Planning Department's 2008 Housing and Population Estimate).

Assumptions:

- **Sidewalk frontage.** A single family home on a standard 50 x 100 foot parcel is assumed to have 50 linear feet of sidewalk frontage abutting it. This is by no means the case for every City parcel.
- At 50 linear feet of sidewalk per parcel, one mile of sidewalk is assumed to equal 105.6 parcels.
- It should not be assumed that a sidewalk repair will require fixing or replacing the entire 50 linear feet abutting a parcel.

best why a government agency would base a program for public safety, route of travel access, and economic growth on a trigger that is so unreliable.

California's Cities Can't Find Their Feet

This error in Shoup (2009) has far reaching ramifications for the remaining claims in this paper, and call into question just how viable and reliable any POS program can be. Below is a detailed review of specific parts of Shoup (2009) and how they stand up to scrutiny:

Statement:
"[I]f the program had begun 11 years earlier (in 1995), 50 percent of all sidewalks would have been repaired by 2007" (Page 128).

Scrutiny:
This is incorrect. Shoup (2009) again confuses "inspection" with "repair" and overstates the claim. If we compare the percentage of units sold each year (and we still assume that one unit = one property) with the total number of units (not properties) in the City according to the Department of Planning, then properties (not units) inspected (not repaired) would be 29%, not 50%. However, if we assume that just 43% of sold properties (not units) actually required repair, then just 12% of properties in the City would be fixed, which over 12 years (1995-2006 inclusive) is **at the rate of one percent per year – and at double the cost!**

Statement:
"If the City Council had also adopted a point-of-sale program for sidewalks in 1997, about 1,060 miles of broken sidewalks (4,600 x 46%) would have been repaired by 2007" (Page 133).

Scrutiny:
This is incorrect. Again, the same false claim is now made three times using three different portions of the same data. This statement assumes that every one of those homes needs sidewalk repair. If, in keeping with citywide statistics, only 43% of those homes (i.e. "properties") needs sidewalk repair, then at most 20% (43% x 46%) of broken sidewalk miles (not "properties"?) would have, in theory, been repaired.

But that conclusion is still incorrect; because the statement shifts to "sidewalk miles" rather than "properties" or "units", it assumes that in every one of those homes sold with broken sidewalks, the full 50-linear-foot sidewalk frontage would need to be replaced. Even without the benefit of reviewing more data, this is patently incorrect and can be borne out by a looking at a small sample of *properties* in need of repair and seeing how most damage from tree roots does not require repair of the full 50 linear feet. Trees are powerful beings, but not that powerful.

Statement:
The "[e]stimated regional effects of shifting $72 million from private consumption to public investment in Southern California" from the first year of a POS program in the City of Los Angeles will create a net of:

- 94 jobs
- $4,700/year average wage increase
- $11 million total wage increase
- $6 million increased proprietary income per year
- $17 million increased total labor income per year

(Pages 130-132)

Scrutiny:
This is incorrect. These numbers are exaggerated because they assume that every home sold will get its sidewalk repaired. If 43% of the of properties (not units) inspected need repair, then it stands to reason that a public investment of $31 million (not $72 million) would create a much lower economic benefit.

Furthermore, any such economic benefit would occur by the use of other repair programs as well, not just POS. Any solution would require a transfer of funds from the property owner to the city for the purpose of repair; require funding by way of bonds or taxation; require increased government spending from existing public funds; or require that the owner engage a private contractor to do the repair. Due to these conditions, any sidewalk repair solution may reduce private consumption that occurs outside of the region. Much as Shoup (2009, 132) correctly states that "we cannot import sidewalks" from other countries, we also cannot import the repair work; the concrete is not poured in another country and then dropped cleanly into place in Los Angeles.

Whatever economic benefits are derived by POS as implied in Table 2 (Shoup (2009, 131)) would also be derived in a similar fashion by other repair solutions, which do not enjoy the same level of analysis in Shoup (2009). In pure economic terms, POS is better than doing absolutely nothing, however it is simply false to claim that POS should be adopted for its job creating and economic growth potential.

Statement:
"At the very least, the model results show that the point-of-sale program will not *hurt* the economy" (author's emphasis, page 132).

Scrutiny:
That is maybe not the strongest selling point for any government program. In fact, it may not be correct either. As already demonstrated, the repair costs incurred by POS can be double that of a more systematic, efficient solution that does not depend on the desires or the personal/financial situations of individual consumers.

It also does not consider the opportunity costs due to the slowness of POS and the wasted city resources (inspections, permit processing, record keeping, labor, overhead) that are

spent in dealing with the remaining 57% of city sidewalks in front of homes for sale that need no repairs at all.

Back to Basics

Given the ineffectiveness and excessive costs of POS, as described here and ironically shown in Shoup (2009) itself, there must be, as we've argued elsewhere, a better way.

At a minimum it is inappropriate to tag Realtors as "extremely shortsighted" and is professionally irresponsible to claim, in a peer-reviewed academic journal, that "realtors want the right to broker the sale of property that endangers pedestrians, impedes the disabled, and increases the city's liability for trip-and-fall lawsuits." We cannot imagine how any businessperson can with a straight face conduct business to such an end.

Realtors all over the United States operate with a strictly enforced code of ethics under the authority of the National Association of REALTORS® and take their responsibilities for proper disclosures and ethical behavior very seriously. The author of Shoup (2009) is cordially invited to see how Realtors actually work and under what conditions before jumping to such wild and wrong conclusions as are apparent in his academic paper.

A new and wider-ranging study of the real estate transaction process is warranted before further progress on this matter. For even POS is not, as Shoup (2009) correctly states, free from the political process. In fact, Shoup (2009, 134) argues that "exempting foreclosures and short sales from the point-of-sale requirement can remove a political objection", despite the fact that such exemptions would make POS even *less* effective, because even fewer properties are addressed. After all, does one want to actually repair sidewalks, or not?

Whatever Shoup (2009, 135) observes about the "abuses in the real estate industry, including no-documentation, subprime loans to people who could not afford the properties they bought" does not somehow make POS better. Sidewalk repair should not be a punitive measure to right unrelated wrongs, but rather a positive goal for improving public safety, economic growth, and pedestrian access.

But perhaps the weakest point of POS comes out in Shoup (2009, 135): "To achieve economics of scale in the process, the city can wait until it has accumulated a substantial number of orders in a neighborhood, and then make all the repairs at the same time." In the process of trying to eliminate that doubled cost mentioned above by using a more efficient means to actually do the physical repairs, the city (and residents) will have to wait a long time.

At the rate of 2-4% per year in any jurisdiction (including any Council District, Community Plan Area, Area Planning Commission, etc.), it will be several years before the work actually gets done. The Staff Report states that it may take three years before

actual construction occurs. Not only does this excessive delay expose the City and residents to ongoing risks of trip-and-fall injuries for several more years, but it also reduces any economic benefits as claimed in Shoup (2009) in Table 2, because that public investment occurs not in one year, but over several.

Finally, a multi-year delay in repairs appears inconsistent with the requirements under Proposition 218, which "specifies that no property-related fee may be … Imposed for a service not used by, or **immediately** available to, the property owner." ("Understanding Proposition 218", our emphasis).

Conclusion: The Point-of-No-Return

We stated elsewhere that "we strongly protest the suggested Point of Sale mandate for sidewalk repair" and we repeat that protest here. We make it abundantly clear that we do so not only on behalf of the real estate industry, on whose behalf it is our right to advocate, but also for the benefit and interests of the City of Los Angeles and its residents. We claim in good faith that other and better solutions are available and we seek the continued opportunity to explore those measures.

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Sources Cited

Memo to the Los Angeles City Council from the Pasadena-Foothills Association of REALTORS®, Glendale Association of REALTORS®, Beverly Hills/Greater Los Angeles Association of REALTORS®, and the South Bay Association of REALTORS®, February 20, 2008.

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Table A: A new look at real estate sales in the City of Los Angeles

Year	Number of properties with last sale date in each year	Total number of properties sold since each year	Share of all properties sold since each year	Los Angeles Department of City Planning: Population & Housing Estimates				
				All Units	Single Family	Multifamily	Percent of all existing units of that year	Share of all units sold since each year
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
2006	45,327	45,327	6%	1,372,000	535,000	828,000	3.30%	3.30%
2005	47,470	92,797	12%	1,353,000	527,000	817,000	3.51%	6.81%
2004	44,921	137,718	18%	1,353,000	527,000	817,000	3.32%	10.13%
2003	43,127	180,845	24%	1,349,000	527,000	812,000	3.20%	13.33%
2002	38,155	219,000	28%	1,344,000	526,000	809,000	2.84%	16.17%
2001	30,984	249,984	33%	1,337,654	n/a	n/a	2.32%	18.48%
2000	**27,412**	**277,396**	**36%**	**1,337,654**	**523,563**	**803,703**	**2.05%**	**20.53%**
1999	27,169	304,565	40%	1,300,025	n/a	n/a	2.09%	22.62%
1998	24,982	329,547	43%	1,300,025	n/a	n/a	1.92%	24.55%
1997	21,453	351,000	46%	1,300,025	n/a	n/a	1.65%	26.20%
1996	18,964	369,964	48%	1,300,025	n/a	n/a	1.46%	27.65%
1995	16,129	386,093	50%	1,300,025	n/a	n/a	1.24%	28.89%
1994	15,679	401,772	52%	1,300,025	n/a	n/a	1.21%	30.10%
1993	13,793	415,565	54%	1,300,025	n/a	n/a	1.06%	31.16%
1992	11,930	427,495	56%	1,300,025	n/a	n/a	0.92%	32.08%
1991	11,279	438,774	57%	1,300,025	n/a	n/a	0.87%	32.95%
1990	10,970	449,744	58%	**1,300,025**	**511,975**	**764,271**	**0.84%**	**33.79%**
1989	12,571	462,315	60%					
1988	15,359	477,674	62%					
1987	16,886	494,560	64%					
1986	18,873	513,433	67%					
1985	13,275	526,708	68%					
1984	10,259	536,967	70%					
1983	8,848	545,815	71%					
1982	5,967	551,782	72%					
1981	6,086	557,868	73%					
1980	7,118	564,986	73%					
1979	10,130	575,116	75%					
1978	10,369	585,485	76%					
1977	10,473	595,958	78%					

1. Data in black are replicated from Table 1 in Shoup (2009, 129): "Share of all properties in the City of Los Angeles sold at least once between January 1 of each year and December 31, 2006."
2. Data in red are amounts in units, according to the Los Angeles Department of City Planning Population & Housing Estimates
3. Single family (6) and multifamily (7) unit counts are unavailable from the Department of Planning where indicated by "n/a".
4. In each year where single family and multifamily unit counts are unavailable, the total unit count citywide (5) is conservatively assumed to be that of the U.S. Census esimate of the previous decade's count, i.e. 1998's unit count is assumed to be that of 1990 as indicated in the U.S. Census report for that decade.