REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 08, 2012

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Gerry F. Miller G. Miller for
Chief Legislative Analyst

Council File No.: 12-0002-S37
Assignment No.: 12-04-0322

SUBJECT: Resolution Opposing AB 2231 (Fuentes) - Sidewalk Repairs.

CLA RECOMMENDATIONS: Adopt the attached Resolution (Parks-Perry)to include in the City's 2011-2012 State Legislative Program, OPPOSITION to AB 2231 which would mandate that cities, counties and cities/counties, including charter cities and counties, to undertake the repair of sidewalks that have been damaged by tree roots or plants or are owned by local governments, the costs of which are unknown, and subjects local governments to heightened liability, and eliminates the ability of local governments to assess property owners for the costs to effectuate such repairs.

SUMMARY
On February 24, 2012, Assembly Member Fuentes introduced AB 2231, a measure to amend Section 5611 of the Streets and Highways Code relating to sidewalk repairs.

Existing law requires owners of property fronting on a public street to maintain adjoining sidewalks in a safe condition and in a manner that does not interfere with the public convenience of those areas.

Existing law also requires a local superintendent of streets to notice property owners to make repairs to sidewalks fronting their property. Further, if repairs have not commenced within a specified time after the notice has been provided, local superintendent of streets has the authority to make the repair and the cost of the repair can be imposed as a lien on the property.

While current law provides that property owners are responsible for repairs on sidewalks, AB 2231 would effect a major shift in California State law by making cities and counties responsible for the repair of any sidewalks they "own" or that have been damaged by any plant or tree root. This measure prohibits cities and counties from imposing an assessment on the adjacent property owner to effectuate the repair of a damaged sidewalk.

The bill would impose a state-mandated local program, the costs of which have not been determined. The Commission on State Mandates would have to determine that such costs are reimbursable to local agencies and school districts.

BACKGROUND
The maintenance and repair of sidewalks and the implementation of those repairs, is of substantial

concern to California's local governments. With AB 2231, the State is mandating that cities and counties incur substantial sidewalk repair costs which could result in significant financial disruption and diversion of funds from other core functions. AB 2231 drastically alters the long-standing statutory framework for sidewalk repair by shifting the burden from property owners to local governments. AB 2231 presents significant cost concerns to California's cities and counties.

As a result, the State is creating unknown implementation consequences and substantial financial burdens on local governments by relieving adjacent property owners of sidewalk repair responsibilities. AB 2231would impose increased financial and legal risks on local governments, particularly at a time when they can least afford it. Sidewalk repair is clearly a matter of local concern and should remain so. This measure disrupts the local legislative process and substitutes the State's legislative interests.

While the City of Los Angeles is grappling with a difficult economic environment, it is also seeking viable solutions to the long term problem of sidewalk maintenance and repair, much like other California cities. With an estimated 10,750 miles of sidewalks, and a mature urban forest, there are substantial challenges in the development and implementation of a citywide sidewalk repair program. For example, the City has not undertaken a complete determination of the extent of sidewalk disrepair and the costs to mitigate. Bureau of Street Services has cited figures from the 1990's estimating that 40% of the system or 4,620 miles is in disrepair, with repair costs roughly estimated at $1.5 billion to $2 billion, which does not include the installation of an unknown number of missing curb ramps. BSS has very limited survey information as to where this damage has occurred and the true scope of the problem. At the direction of the Public Works Committee, the Bureau of Street Services is reviewing options to undertake a Citywide systemic survey of sidewalk conditions.

As sidewalks were increasingly damaged by tree roots, homeowner groups contended that sidewalks were the property of the City and therefore, sidewalk repair was the responsibility of the City. The City Attorney opined, however, that sidewalk repair was the responsibility of the adjacent property owner, with the City holding an easement to the public-right-of-way, including sidewalks.

Beginning in 1972, the Public Works Committee held hearings relative to the complaints of homeowners to consider the issue of the City assuming the cost of sidewalk repair. At that time, federal funds were available for that purpose. A report from the City Administrative Officer (CAO) recommended that the property owners continue to be assessed for sidewalk repair work.

However, in January 1973, the Council acted to end the assessments to property owners and for the City to assume the cost of sidewalk repairs caused by tree root damage. The Municipal Code was amended in 1974 to provide an exception that the City is responsible for sidewalk repairs as the result of tree root damage. Beginning in 1976, federal funding was no longer available.

Between the fiscal years 2000 and 2009, the City expended an estimated $95 million in General Fund appropriations to repair an estimated 550 miles of damaged sidewalks. Yet, it has been estimated that the amount of sidewalk damage that occurred during this period exceeded the amount that was repaired.

Since September 2005, BSS and other departments have reviewed and reported on various implementation approaches to sidewalk repair. On February 1, 2012, the Public Works Committee instructed BSS to determine a methodology to undertake a citywide survey of City sidewalks, including the specific depth and width of the sidewalk repair problem. Also pending Committee consideration is a draft ordinance prepared by the City Attorney to repeal the Municipal Code provision that the City is responsible for sidewalk repair as a result of tree root damage.

CONCLUSION

While the City of Los Angeles has elected to undertake sidewalk repairs as a result of tree root damage, this action was considered and taken by the City Council on its own authority, and not in response to State mandate. The tree root exception has been a cost burden that has exceeded the City's ability to readily resolve. AB 2231 would transfer the property owner's sidewalk repair duty and its costs to cities and counties. This new mandate would undo the existing framework for local sidewalk repair programs and would eliminate the use of assessments as a source of funding afforded to local governments. AB 2231 would impede the City's ability to implement a viable sidewalk repair program. The City Council may at some future date elect to remove the tree root exception from the Municipal Code. Such a decision, should remain under the jurisdiction and authority of locally elected bodies and not be imposed by State mandate.

Both the County of Los Angeles and the League of California Cities, have taken an oppose position on AB 2231.

DEPARTMENT NOTIFIED

Bureau of Street Services
City Attorney

BILL STATUS

2/24/12	Introduced. To print.
2/27/12	Read first time.
3/12/12	Referred to Com. On Local Government.
4/19/12	From committee: Pass and re-refer to Com. on JUD.
4/23/12	From committee chair, with author's amendments: Amend, and refer to Com. on JUD. Read second time and amended.
4/24/12	Re-referred to Com. on JUD.
4/26/12	Re-referred to Com. On APPR. pursuant to Assembly Rule 96.

Paul M. Smith
Analyst

AB2231_sidewalks.wpd
Attachment: Resolution
GM:JG:PS

12-0002-S37

APR 2 4 2012
RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, existing law requires owners of property fronting on a public street or place to maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition that will not interfere with the public use of those areas; and,

WHEREAS, current law requires the superintendent of streets to provide notice to the owner or person in possession of the property fronting the sidewalk in disrepair to repair the sidewalk, including sidewalks damaged by tree roots or plants; and,

WHEREAS, existing law also requires that if a noticed sidewalk repair is not made in a specified time, the superintendent of streets shall make the repairs and the cost will be imposed by a lien on the property; and,

WHEREAS, AB 2231 (Fuentes) substantially modifies state law to require a city, county or city/county to repair any sidewalk out of repair or pending reconstruction if the sidewalk is owned by the local entity or if the damage is caused by plants or tree roots; and,

WHEREAS, if the local entity does not complete the repairs, the local entity will be liable for any injury resulting from the failure to repair; and,

WHEREAS, the City is facing various legal challenges relative to sidewalk repair and the enactment of AB 2231 would place unknown direct burdens on local governments to make timely repairs; and,

WHEREAS, AB 2231 would prohibit any city, county or city/county from imposing an assessment district for such sidewalk repairs; this matter is applicable to charter cities and counties

WHEREAS, the City of Los Angeles is currently responsible under the Municipal Code for the repair of sidewalks as the result of tree root damage; an accurate assessment of such damage or its repair costs have yet to made; and,

WHEREAS, sidewalk repair is a significant issue of local concern and should not be a matter of State mandate imposing substantial burdens on local governments; and,

WHEREAS, AB 2231 represents a major change in California law by shifting the burden of sidewalk repair from the adjacent property owner to local entities which will create financial disruption and diversion of funds from other core functions and places substantially increased liability on cities and counties;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2011-2012 State Legislative Program, OPPOSITION to AB 2231 (Fuentes) which would mandate that cities, counties and city/counties, including charter cities and counties, to undertake the repair of sidewalks that have been damaged by tree roots or plants or are owned by local governments, the costs of which are unknown, and subjects local governments to heightened liability, and eliminates the ability of local governments to assess property owners for the costs to effectuate such repairs.

PRESENTED BY: Bernard C. Parks
BERNARD PARKS
Councilmember, 8th District

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SECONDED BY: