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ITEMS 1,2,&3 Special Council
Meeting and Joint B&F-PW Cmte

8/18/14

E. Pulst & M. Espinosa

**STATEMENT of J.H. McQUISTON, CALIF. REG. ENGR,
on OPTIONS AVAILABLE to CITY for "SIDEWALK" REPAIR**

Honorable Chairmen and Members of the Committees:

To enact a "special tax, assessment, or fee" related to real property requires the City to obtain a Permissive Report from an Engineer registered in the State of California. I am such a person, but I cannot agree that anyone but the real-property owner should pay for work on the property.

There would be no backlog of repair if the City demands of property owners what State Streets & Highways Code, and LAMC, specify: **Property owners must repair or else pay the City.**

Instead, City gave properties gifts of public funds, doing what the Supreme Court prohibited in 1902, and every time the Legislature tried to overturn the 1902 prohibition the City opposed it.

There is no ambiguity in State Law. The property owner must pay for any "construction" of "sidewalks", per Streets & Highways (S & H) Code, and must "maintain" them.

"Construction" includes (b) Construction. (c) Reconstruction. (d) Replacement. (e) Any improvement excepting maintenance as defined in Section 27." §29.

"Maintenance" includes: (a) The preservation and keeping of rights-of-way, and each type of roadway structure, safety convenience or device, planting, illumination equipment, and other facility, in the safe and usable condition to which it has been improved or constructed, but **does not include reconstruction or other improvement.**" §27

"Sidewalks or curbs" includes 'gutters,' 'driveways,' 'pavement' to the centerline of the street,' 'full pavement' in alleys, 'storm and sanitary drainage facilities,' 'water mains,' 'pipes,' 'conduits,' 'tunnels,' 'hydrants,' and 'other necessary works and appliances for providing water service,' 'paving to provide a parking lane on arterial or collector street sections,' 'parkway trees,' and 'street lighting facilities.'

"Superintendent of streets" includes any other person or persons who may be designated by the legislative body to perform any of the duties of the superintendent of streets set forth in this chapter." §5870.

"Superintendent of streets shall notify [owner or lessee], to repair the sidewalk." §5611

If the owner fails to work in the time allowed, the City per S & H Code may construct, reconstruct, or repair, but must bill the property owner for the work, associated incidentals, and an amount not to exceed 40 percent of that grand total. The Code permits adding to Property tax bill immediately, or assessment in installments. §5625 et seq; §5881 et seq.

This was Law (Vrooman Act) long before Article 13 was enacted. It is not countermanded by Article 13. City does not need legislation to apply it; LAMC already contains this procedure.

Capitalizing on Charter §910 and ITA automation, process will substantially improve City's welfare.

WHY "50-50", "COST-SHARING" AND "PROP 218" SCHEMES ARE INVALID

Bill Robertson put McQuiston on the "Sidewalk Task Force" when Bill ran Street Services. **McQuiston investigated legal and unlawful City proposals. McQuiston found the only legitimate City option was what City obediently-followed prior to 1976: The option in LAMC, which still follows S & H Code.**

50-50 and cost-sharing

It is unconstitutional for City to perform this work *gratis* for property owner. Courts already said so. The City is not to maintain sidewalks, except for those on or adjacent to property the city owns (properties extend to center of street in Los Angeles, except for State Highways). *See, e.g., Jones v Deeter*, 152 Cal. App.3d 798 (1984) (nor do easements transfer property maintenance).

A City argument was that a general law permits the City to do the work without charging, but the State Supreme Court in 1902 declared that the Vrooman Act is superior over that law, and a City must bill the property owner.

S & H Code's use of "shall" with respect to City's billing for work and interest prohibits the City from absorbing *any part* of either expense. Moreover, S & H Codes permit City to charge a "profit" on work it performs for that property owner. Nothing in Article 13 prohibits or modifies that entitlement.

Prop 218 schemes

Articles 13C and 13 D **specifically-removed City's practical-means to tax, assess, or charge to do this work, other than by employing City's existing LAMC (complying with S & H Codes).**

In 2008 the Supreme Court reinterpreted Articles 13. *Silicon Valley Taxpayers v Santa Clara County OSA*, 44 Cal 4th 431, said: An assessment may be imposed **only for a "special benefit" to a property**, and the assessment **on a parcel must be in proportion to the special benefit conferred on it.**

Silicon Valley finally-acknowledged that **Article 13D also specifically-shifted the burden of proving both the above, to the government from the assessee.** It removed the deferential standard of review courts gave to governments. **And it invalidated contrary prior-precedents.**

McQuiston already served every Councilmember with a copy of *Silicon Valley*. Please do not ignore it.

It is a "given" that City-work for a private-property is a "special benefit". **It is not possible to enact a Prop 218 scheme except to do exactly what the above S & H Code already mandates the City to do.** Putting it to voters to decide if the City should do what State law already mandates **will bring trouble and embarrassment.** Of course the City should obey State Law; **Article XI requires it.**

And a "special tax" (i.e, charge a property for work done on another property) would be objectionable to owners who the City already required to repair their properties at the owners' expense. They probably would defeat the ballot-proposition if City proposed a "special tax" on them only for others' benefit.

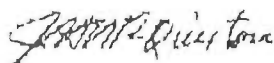
A.D.A. Litigation

McQuiston entered a comment in Court on one of City's A.D.A. cases: Because S & H Code requires the *property owner* to "maintain any 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" (§5610), **A.D.A. City liability is only for not giving notice to the property owners to remove the interferences.** *See, e.g., Rodriguez v City of Los Angeles*, __ Cal App __ (1963).

In older-areas, sidewalk is only one inch thick, which causes substantial potholes. Travel is blocked by poles and signs which **City installed.** But **property owner permitted the blockage and constructed the sidewalk.**

Committees should make City Attorney prove why City may pay for sidewalk reconstruction.

Respectfully submitted,



J. H. McQuiston