

SUGGESTIONS AROUND CITY SIDEWALK POLICY

Prepared by Erik Sanjurjo, Public Works Committee Chair

RECOMMENDATIONS

- 1) Allocate a percentage of the funding proposed by the Bureau to conduct a complete and formal estimate of sidewalk damage across the City, using some combination of hiring hall staff, apprentices, and consultants to perform much of the work and lower the cost.
- 2) Formally request that the City Attorney produce a legal document discussing the history of City and State laws around trees and sidewalks, with an up to date analysis of what the City views as its responsibility/liability in this area. This information should be shared with neighborhood councils, the real estate community and public for their response.
- 3) Request that the Board of Public Works and Bureau of Street Services create a website about trees and sidewalks and produce a new version of their brochure on these topics.
- 4) Restart and fund the 50-50 cost sharing program for sidewalk repair in residential areas.
- 5) Consider using a portion of the local return portion of the proposed "Measure R 2.0" County sales tax measure to pay for sidewalk repair along City transportation corridors.

BACKGROUND/WILLITS SETTLEMENT

On March 30, 2015 the Council agreed to settle the *Willits* case, which was brought forward by a group of attorneys on behalf of physically disabled Angelenos who wish to enjoy greater accessibility along City streets. This settlement has accomplished what decades of efforts by the Bureau of Street Services (Bureau) and City Council had been unable to do- develop a real comprehensive sidewalk program. While some of the details remain to be determined, the broad strokes of the new approach to sidewalk repair are now clear based on the term sheet.

UCLA has determined that Los Angeles has about 4,600 miles of damaged sidewalks (out of a total of 10,750). The Bureau has estimated that it would cost \$1.5 Billion to repair this all at once, assuming it was using its own crews. The City currently has \$27 million set aside for sidewalk repair. The Willits settlement calls for \$1.37 billion to be spent over the next 30 years to repair sidewalks and remove or trim the roots of trees causing damage. This equates to \$31 million a year, or 14.8% more than is allocated in 2014-15, increasing by 15.3% every 5 years.

At first glance, this may be enough money to fix all of the City's broken sidewalks, though a lot depends on what the per mile repair cost will be. The Mayor and Council have also not indicated where they plan to find the \$31 million, beginning this year. A recent article in the *L.A. Times* pointed out that Councilmember Parks has developed a way to greatly reduce the price to repair sidewalks in his district by partnering with a local nonprofit that hires local youth to perform the work. This may be one idea for stretching the City's dollar and making it go further.

The term sheet of the *Willits* settlement states that the top priority for sidewalk funds will be around City properties, which is similar to a recent proposal by Budget Committee Chair Paul Krekorian. Transportation corridors are next, and then hospitals. The next two categories were left out of a proposal by Krekorian for prioritization of the \$27 million in 2014-15 funds. These are commercial and business zones, and facilities containing employers. This is a case where the settlement is at odds with previous discussions by the City about sidewalks, in which it was nearly universally agreed that commercial areas should be subject to State law and have to fix their own sidewalks. By nature of being listed last, residential areas are in no way guaranteed to see their sidewalks replaced if all the funding should be used up addressing the first 5 priorities.

It may be that even with the settlement in place that the City will need to relaunch its 50-50 cost sharing program for residential areas, which was a success when tried previously, but funds were not sufficient to keep up with demand and when the economy slowed it was ended. Given that homeowners are reluctant now to pay for repairing their sidewalks even though the City has extremely limited funding for residential sidewalk replacement, it may be difficult to get support for even sharing the cost once residents learn that there is a formal sidewalk fund.

The City pays out \$3-4 Million a year to settle trip and fall lawsuits, a pittance compared to what it would cost to repair all damaged sidewalks, but still a substantial amount of money. Los Angeles has perhaps the most convoluted set of laws and policies around trees and sidewalks, with the City and property owners each believing that they bear little or no responsibility for their repair. The history of this issue is well documented in the Bureau's 2006 report titled "City of Los Angeles Point of Sale Task Force- Sidewalk Repair History and Relevant Laws."

A MUDDLE OF LAWS

State law is fairly clear that local governments can assess repairs to sidewalks (1911 Act, Section 4502 of the Streets and Highway Code). The City Attorney stated in 1939 that trees were the property of the adjacent property owner, not the City, though subsequent actions to limit the ability of owners to trim their trees without a permit from the Bureau, or in the case of tree removal, approval from the Board of Public Works, have made it very confusing for property owners to know who is responsible. The fact that the City has no easy to understand summary of municipal law does not help, nor does it that the Bureau has not published a brochure on these issues for over a decade, or that the realtor community does not share this information.

Urban legend has it that most street trees in Los Angeles were planted by the City. Given that the Bureau did not even have a tree division until the 1980s this belief is clearly incorrect. Most trees were planted by developers, which explains the predominance of ficus in areas that were built during the 1950s and 1960s before the City had clear standards for which species could be planted where. The *Willits* decision, at least the term sheet, appears to side step all these issues by making the City responsible for repairing all sidewalks but remaining silent on future liability.

As is often mentioned by City arborists, there is no such thing as a "bad" tree, just poor choices of locations for certain species given the amount of space their roots need to spread out. What

precise liability the City should have for not better regulating the planting of trees is unclear. Also of concern is the fact that most problematic tree species will re-damage a repaired sidewalk in around half a dozen years. Asking homeowners to pay all or part of the cost to repair a sidewalk that will have to be replaced in a handful of years is very problematic.

FUNDING IDEAS

One concept that has been proposed recently by Budget Advocate Jack Humphreville and endorsed by the Los Angeles Alliance of Neighborhood Councils, is to set aside future growth in the DWP transfer tax for repairing sidewalks. The advantage to this idea is that the City could bond against this revenue and fix all or most of the sidewalks fairly quickly, perhaps adding a requirement that residential property owners pay at least half the replacement cost and that commercial owners pay three-quarters or all. This concept would work similarly to the Council's unofficial decision to raise trash fees up to the level of full cost recovery and then to set aside that additional revenue for hiring more police (after first placing it into the General Fund).

A second proposal adopted recently by the South Robertson Neighborhood Council would fund the repair of all of the City's sidewalks within 11 years through a bond, paid for equally by an increase in the gas tax (1/2%) and City coffers. The proposal seeks the creation of a new unit separate from Public Works that would report to the Mayor and Controller and oversee the hiring of private contractors to perform the repairs. Unlike the Humphreville "catch and release" proposal, in the SORO concept the City would remain responsible for all future maintenance of sidewalks after their repair, apparently the same as what *Willits* calls for.

Another concept that exists within the Department of Public Works under the Bureau of Street Lighting is the formation of assessment districts. Although none has been formed to date to repair damaged sidewalks in residential areas, there do exist districts that maintain existing stretches of sidewalk in certain business districts. The obvious hurdle to expanding this concept is that most property owners do not see themselves as responsible for sidewalk repair and would therefore not agree to voluntarily tax themselves to pay for this service. Finally, a bond could be proposed to property owners, perhaps coupled with other street and lighting projects.

LABOR CONCERNS

The elephant in the room in the discussion of sidewalk repair and City funding is labor. In the past, SEIU, which represent the Bureau's workers, has indicated its strong opposition to the City using public funds to subsidize private crews to repair sidewalks. Councilmember Parks' model is unique and has worked largely because of his use of District 8 funds and his lack of a close relationship with any City union. The Council will need to tackle this issue head on and likely will not agree to fund a majority of any repair that uses private workers. At the very least, labor should be given a chance to work with the Bureau to develop a cheaper public option for sidewalk repair, perhaps relying greatly on apprentice workers, who might be paid in part using federal and state employment grants, as was done with its curb cutting program in the 1990s.