

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: February 12, 2013

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

FROM: Gerry F. Miller *GFM*
Chief Legislative Analyst

Assignment No.: 13-01-0067

SUBJECT: Resolution Opposing AB 22 (Blumenfield) - Sidewalk Repairs

CLA RECOMMENDATION: Adopt the attached Resolution (Parks - Perry) to include in the City's 2013-2014 State Legislative Program, OPPOSITION to AB 22 (Blumenfield) which would prohibit cities, counties or city/counties, including a charter city and county, that have an ordinance in operation which requires the locality to repair or reconstruct streets, sidewalks, or driveways that have been damaged as a result of tree growth, from repealing the ordinance without the concurrence of the local electorate, the costs of which are unknown, subjects local governments to heightened liability and intrudes on local home rule.

SUMMARY

Resolution (Parks-Perry) introduced January 23, 2013, advises that on December 3, 2012, Assembly Member (Blumenfield) introduced AB 22, a measure amending Section 5611.55 (Streets and Highways Code) relating to sidewalk repairs. AB 22 is an unwarranted preemptive intrusion on matters of local concern to California's cities and counties. The potential costs associated with the repair of tree root damaged sidewalks to be assumed by local jurisdictions are unknown and subjects local governments to heightened liability. Resolution (Park-Perry) recommends opposition to AB 22.

BACKGROUND

On May 30, 2012, the City Council adopted the Resolution (Parks - Perry) to OPPOSE AB 2231 (Fuentes) a measure similar to AB 22 requiring voter approval to repeal an ordinance where a local entity had assumed sidewalk repairs as the result of tree root damage. AB 2231 was not enacted and died in the last session.

Existing law requires owners of property fronting 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 permits 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 superintendents of streets have the authority to make the repair and the cost of the repair can be imposed as a lien on the property.

AB 22 would create a major shift in California State law by requiring cities and counties to seek voter approval to repeal a previously adopted code provision (by ordinance) requiring a local entity to repair or reconstruct streets, sidewalks or driveways that have been damaged as a result of tree growth. This mandate is extended to charter cities, charter counties and charter cities/counties and would supercede any inconsistent city or county Charter provisions. AB 22 is a significant preemption of local "home rule" prerogative on matters of local concern. Unlike AB 2231, this bill does not impose a state-mandated local program, where implementation costs would be subject to reimbursement through the Commission on State Mandates.

AB 22 creates unknown implementation consequences and substantial financial burdens on local governments by relieving adjacent property owners of their sidewalk repair responsibilities. AB 22 would 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.

The maintenance and repair of sidewalks and the implementation of those repairs are of substantial concern to California's local governments. With AB 22, the State is mandating that cities and counties seek voter approval in the repeal of requirements obligating a local government to repair tree root damaged sidewalks. The enactment of AB 22 could result in substantial sidewalk repair costs, significant financial disruption and diversion of funds from other core functions. AB 22 alters the long-standing statutory framework for sidewalk repair by shifting the burden from property owners to local governments. Potential costs to local jurisdictions are unknown. AB 22 would also subject local governments to heightened liability. AB 22 presents significant cost concerns to California's cities and counties.

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. Further, the City has not undertaken a complete determination of sidewalk disrepair and the costs to mitigate. Bureau of Street Services (BSS) 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, BSS is reviewing options to undertake a Citywide systemic survey of sidewalk conditions.

In the early 1970's, 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.

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. At that time, federal funds were available for this activity. 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 2000-01 and 2009-10, 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. In recent years, the City has had no active sidewalk repair program and funds were eliminated as a result of the City's ongoing fiscal condition.

Since September 2005, BSS and other departments have reviewed and reported on various implementation approaches to sidewalk repair. In February 2012, the Public Works Committee instructed BSS to determine a methodology to undertake a citywide survey of City sidewalks. 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 had 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 a preemptive State mandate. The tree root exception has been a cost burden that has exceeded the City's ability to readily resolve.

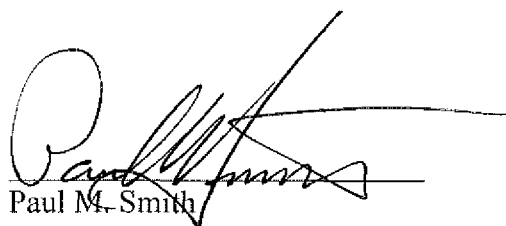
This new mandate would undermine the existing framework for local sidewalk repair programs and would impede the City's ability to implement a viable sidewalk repair program. While the Los Angeles City Council may elect to remove the tree root exception from the Municipal Code, such a decision should remain under the jurisdiction and authority of local legislative bodies and not be imposed by the State. This is an issue of local home rule.

DEPARTMENT NOTIFIED

Bureau of Street Services
City Attorney

BILL STATUS

12/03/12	Introduced. To print.
01/04/12	From printer.
01/14/12	Referred to Committee on Local Government.



Paul M. Smith
Analyst

13-002-514

JAN 23 2013

OFFICE OF THE CLERK OF THE CITY COUNCIL

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, currently pending before the State Assembly is AB 22 (Blumenfield) which would prohibit cities, counties and city/counties, including charter cities and counties, that have an ordinance in operation requiring the local entity to repair or reconstruct streets, sidewalks, or driveways that have been damaged as a result of tree growth from repealing the requirement without the concurrence of the local electorate; and,


WHEREAS, in May, 2012, the City Council adopted Resolution (Parks - Perry) to OPPOSE AB 2231 (Fuentes), a measure similar to AB 22, which was not enacted; and

WHEREAS, the City is facing various legal challenges relative to sidewalk repair and the enactment of AB 22 would place unknown burdens on local governments; 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 22 represents a burdensome procedural change on local legislative bodies, and 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 2013-2014 State Legislative Program, OPPOSITION to AB 22 (Blumenfield) which would prohibit cities, counties and city/counties, including charter cities and counties, that has an ordinance in operation that requires the locality to repair or reconstruct streets, sidewalks, or driveways that have been damaged as a result of tree growth, from repealing the ordinance without the concurrence of the local electorate, the costs of which are unknown, and subjects local governments to heightened liability.

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

JAN 23 2013

SECONDED BY: 

