

Communication from Public

Name: Paula Pearlman, on behalf of Willits Class

Date Submitted: 03/21/2022 12:57 PM

Council File No: 21-1469

Comments for Public Posting: On behalf of the Plaintiff Class in Willits, et al. v. City of Los Angeles (Willits), CV 10-5782 CBM (C.D. Cal.), the following Public Comment is submitted for the Council's consideration regarding Council File No. 21-1469, Sidewalk Maintenance and Repair Program. Class Counsel, on behalf of the Willits class, opposes using any Willits settlement funds to pay for a sidewalk conditions survey, inventory and/or assessment as that would be an improper and impermissible use of settlement funds. Simply put, a conditions survey and assessment is not expressly identified in the Settlement Agreement as a proper use of the funds. Class Counsel specifically requested that the City undertake a sidewalk inventory and conditions assessment as one of its obligations of the Settlement Agreement, but the City refused. Accordingly, while we are supportive of a sidewalk inventory and assessment, it cannot be paid for from existing Willits settlement funds. It must be funded through other resources. BACKGROUND The Willits Plaintiff Class sued the City on August 4, 2010, in the US District Court for the Central District of California alleging violations of the Americans with Disabilities Act and other federal and state laws because the conditions of the City's public rights of way, including sidewalks, curb ramps, crosswalks and other walkways, were inaccessible to people with mobility disabilities. After significant litigation, the parties entered into a settlement agreement on August 26, 2016, culminating with the Willits Settlement Agreement. The Settlement Agreement provides for an Annual Commitment of \$31 Million (adjusted for inflation) to make sidewalks accessible to people with mobility disabilities. The annual commitment can only be used for "Program Access Improvements and other uses expressly identified in this Settlement Agreement." (Settlement Agreement, II.C.) Both the Public Works and Personnel, Audits, and Animal Welfare Committees have considered a proposal to increase funding to accelerate sidewalk repairs prompted by the City Controller's November 17, 2021, Sidewalk Audit Report, Repairing L.A.'s Broken Sidewalk Strategy. At the January 24, 2022, Personnel, Audits, and Animal Welfare Committee hearing, Council Member Koretz (CD5) asked the City Attorney and Bureau of Street Services whether the Willits settlement funds could be used to pay for a sidewalk conditions inventory and assessment. A joint Public

Works and Personnel, Audits and Animal Welfare Committees' report (File no. 21-1469) transmitted to the City Council for action, was approved at the February 2, 2022, Special City Council Meeting (Agenda Item 25), necessitating this Public Comment. **OPPOSITION TO IMPERMISSIBLE USE OF SETTLEMENT FUNDING FOR CONDITIONS ASSESSMENT**

It is not permissible to use Willits settlement funds for other than its intended purposes, repairing the sidewalks and curb ramps. (Sec. 12.4 Use of the Annual Commitment for Program Access Improvements) While Willits counsel believe that an inventory and conditions assessment is important for achieving sidewalk accessibility, including prioritization of access work, the expenditure of monies from the Willits settlement for this purpose will have the effect of decreasing the sums that are available for access improvements. We proposed such a survey during the Willits settlement negotiations, but the City rejected it as a settlement term, prior to the parties settling on the amount of the Annual Commitment. For that reason, there is no specific term in the settlement agreement addressing this expenditure or the manner and scope of such a survey. (*Ratcliff Architects v. Vanir Construction Mgmt.*) Notably, the Repairing L.A.'s Broken Sidewalk Strategy, November 17, 2021, Controller's Audit, references that in 2012 the City rejected undertaking a comprehensive survey of sidewalks and parkways as being too costly (\$10M/2-3 years) at the time. Audit at 31. The City further rejected it just a few years later during the Willits negotiations. Generally, we are supportive of an inventory goal and for additional funding to achieve sidewalk accessibility. The motion includes an instruction to the BOE, BSS and LADOT to report within 30 days (from 2/2/22) "with a recommended scope and budget for a citywide sidewalk inventory and assessment as well as an assessment of the thoroughfares..." Further, the Audit recommends that the Community Investment for Families Department identify grant opportunities for sidewalk repair work and suggests that the Bureau of Engineering identify new technologies and methods that other cities have used for condition assessments. Audit at 35-36. The City Council Motion (2/2/22) also directs the CAO to investigate funding from the federal infrastructure bill or other sources and seeks additional funding requests from the Mayor's 2022-23 budget. These actions should be initiated without further delay. Paula Pearlman, on behalf of Willits Class and Counsel



March 21, 2022

<https://cityclerk.lacity.org/publiccomment/>

Council File Number: 21-1469

Council File Title: Sidewalk Maintenance and Repair Program / Curb Cuts / Backlog / Mobility / Safety

On behalf of the Plaintiff Class in *Willits, et al. v. City of Los Angeles (Willits)*, CV 10-5782 CBM (C.D. Cal.), the following Public Comment is submitted for the Council's consideration regarding Council File No. 21-1469, Sidewalk Maintenance and Repair Program.

Class Counsel, on behalf of the Willits class, **opposes** using any Willits settlement funds to pay for a sidewalk conditions survey, inventory and/or assessment as that would be an improper and impermissible use of settlement funds. Simply put, a conditions survey and assessment is **not** expressly identified in the Settlement Agreement as a proper use of the funds. Class Counsel specifically requested that the City undertake a sidewalk inventory and conditions assessment as one of its obligations of the Settlement Agreement, but the City refused. Accordingly, while we are supportive of a sidewalk inventory and assessment, it cannot be paid for from existing Willits settlement funds. It must be funded through other resources.

BACKGROUND

The Willits Plaintiff Class sued the City on August 4, 2010, in the US District Court for the Central District of California alleging violations of the Americans with Disabilities Act and other federal and state laws because the conditions of the City's public rights of way, including sidewalks, curb ramps, crosswalks and other walkways, were inaccessible to people with mobility disabilities. After significant litigation, the parties entered into a settlement agreement on August 26, 2016, culminating with the Willits Settlement Agreement.¹ The Settlement Agreement provides for an Annual Commitment of \$31 Million (adjusted for inflation) to make sidewalks accessible to people with mobility disabilities. The annual commitment can only be used for "Program Access Improvements and other uses expressly identified in this Settlement Agreement." (Settlement Agreement, II.C.)

Both the Public Works and Personnel, Audits, and Animal Welfare Committees have considered a proposal to increase funding to accelerate sidewalk repairs prompted by the City Controller's November 17, 2021, Sidewalk Audit Report, *Repairing L.A.'s Broken Sidewalk Strategy*. At the January 24, 2022, Personnel, Audits, and Animal Welfare Committee hearing, Council Member Koretz (CD5) asked the City Attorney and Bureau of Street Services whether the Willits settlement funds could be used to pay for a sidewalk conditions inventory and assessment. A joint Public Works and Personnel, Audits and Animal

¹ A copy of the Settlement Agreement and Release of Claims is on the Goldstein, Borgen, Dardarian & Ho website.

<https://gbdhlegal.com/wp-content/uploads/cases/Settlement-Agreement-and-Release-of-Claims.pdf>

Welfare Committees' report (File no. 21-1469) transmitted to the City Council for action, was approved at the February 2, 2022, Special City Council Meeting (Agenda Item 25), necessitating this Public Comment.

OPPOSITION TO IMPERMISSIBLE USE OF SETTLEMENT FUNDING FOR CONDITIONS ASSESSMENT

It is not permissible to use Willits settlement funds for other than its intended purposes, repairing the sidewalks and curb ramps. (Sec. 12.4 Use of the Annual Commitment for Program Access Improvements, Settlement Agreement and Release of Claims.) While Willits counsel believe that an inventory and conditions assessment is important for achieving sidewalk accessibility, including prioritization of access work, the expenditure of monies from the Willits settlement for this purpose will have the effect of decreasing the sums that are available for access improvements. We proposed such a survey during the Willits settlement negotiations, but the City rejected it as a settlement term, prior to the parties settling on the amount of the Annual Commitment. For that reason, there is no specific term in the settlement agreement addressing this expenditure or the manner and scope of such a survey.²

Notably, the *Repairing L.A.'s Broken Sidewalk Strategy*, November 17, 2021, Controller's Audit, references that in 2012 the City rejected undertaking a comprehensive survey of sidewalks and parkways as being too costly (\$10M/2-3 years) at the time. Audit at 31. The City further rejected it just a few years later during the Willits negotiations.

Generally, we are supportive of an inventory goal and for additional funding to achieve sidewalk accessibility. The motion includes an instruction to the BOE, BSS and LADOT to report within 30 days (from 2/2/22) "with a recommended scope and budget for a citywide sidewalk inventory and assessment as well as an assessment of the thoroughfares..." Further, the Audit recommends that the Community Investment for Families Department identify grant opportunities for sidewalk repair work and suggests that the Bureau of Engineering identify new technologies and methods that other cities have used for condition assessments. Audit at 35-36. The City Council Motion (2/2/22) also directs the CAO to investigate funding from the federal infrastructure bill or other sources and seeks additional funding requests from the Mayor's 2022-23 budget. These actions should be initiated without further delay.

Respectfully submitted,

Paula Pearlman, on behalf of Willits Class and Class Counsel

² In interpreting the provisions of a contract, the rules are well settled. "The contract must also be 'interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.' [Citation.] 'Such intent is to be inferred, if possible, solely from the written provisions of the contract.' [Citation.] ""In construing a contract which purports on its face to be a complete expression of the entire agreement, courts will not add thereto another term, about which the agreement is silent. [Citation.]"" [Citation.] When determining the intent of the parties, the court will consider a particular provision paramount over a general provision. [Citation.]" (*Ratcliff Architects v. Vanir Construction Management, Inc.* (2001) 88 Cal.App.4th 595, 601-602.)