

IBA Review of Changes to the City's Sidewalk Maintenance Policy

Infrastructure Committee, Item 8

November 14, 2018



Independent Budget Analyst



Overview

Report responds to Rules Committee Action

- Councilmember Alvarez's office presented proposed changes to the Sidewalk Maintenance Policy to Rules Committee
- Action requires District 8, IBA, City Attorney, and City staff to work collaboratively to report to Infrastructure Committee with additional financial and legal analysis
- Report discusses addressing existing barriers to fixing sidewalks as alternative to expanding policy
- Report includes lessons learned from other municipalities

Background

Current Policy

- 1935 – state law has required property owners to maintain sidewalks adjacent to their property
 - Unless caused by a third party
- 1975 – Council adopted Sidewalk Maintenance Policy and shifted responsibility to the City under six circumstances
- City offers 50/50 Cost-Share Program for damage caused by age and deterioration
 - Damage caused by property owner or third party ineligible

Background

Proposed Policy

- Places cost of replacing unsafe sidewalks entirely on the City
 - Unless damage is caused by the property owner or third party
- No need for 50/50 Cost-Share Program, therefore eliminated
- Requires City to replace sidewalk within 90 days of being notified
 - Due to concerns raised by City Attorney's Office, **analysis only focuses on revisions that shift responsibility to City**

Fiscal Impacts

Under proposal City covers larger share of backlog

- City would be additionally responsible for damage due to age and deterioration
- Sidewalk Condition Assessment completed in 2015
 - Identified 85,503 locations needing repair
- Assessment did not decipher entity responsible for repair
- TSW updating funding needs and will report to Committee

	Maintenance	Capital
Locations	52%	48%
Costs	\$6.6 million	\$46.1 million
Total Costs	\$52.7 million	

Liability Impacts

Under proposal, increased liability

- City Attorney's Office and Risk Management Department indicate proposal would:
 - Weaken City's defense when faced with claims and lawsuits
 - Result in City taking on a greater share of damages
- Our Office reviewed information obtained from City Attorney's Office that help illustrate these concerns
- Future complainants could point to City's failure to implement its own policy, as evidenced in past case
- Cases citing generic defects will likely be harder to share damages, as evidenced in 9 prior cases

Barriers to Fixing Sidewalks

Having a Clear Goal and Tracking Progress

- City does not have a plan and timeline to address the sidewalk repair backlog
- Plan could inform budget decisions and provide clarity on funding trade-offs
- Plan would support the City's larger asset management efforts
- Plan would help track progress

Barriers to Fixing Sidewalks

Spending Capital Funds

- Lack of staffing has delayed projects getting to the construction contract bid and award phase
- Staff needed to identify, scope, and plan locations for contracts
- Delays correspond to delayed spending and funds carried forward from previous years
- Two additional positions provided in the FY 2019 Adopted Budget to address this need

Barriers to Fixing Sidewalks

No Enforcement of Property Owner Fixes

- Current policy does not require follow-up or enforcement activities for sidewalk repair that is responsibility of property owner
- Leads to portion of sidewalks left unaddressed
- Better education to the public on the benefits of cost-sharing program could result in more repairs
 - Splitting costs with City
 - No expensive permit required

Lessons Learned from Other Municipalities

Enforcement

- Many cities place lien on property if sidewalk not fixed, as provided in state law
- Some offer payment plans to pay the lien
- San Francisco offers property owners ability to participate in City competitively bid sidewalk contracts
- Others require sidewalks to be fixed upon sale of property

Lessons Learned from Other Municipalities

Americans with Disabilities Act Challenges

- ADA challenges exist regardless of whether property owner or city takes responsibility for sidewalks
- Sidewalk programs dictated by 30-year settlement agreements
- Long Beach: \$200 million
- Los Angeles: \$1.4 billion then will transfer responsibility to property owners
- Sacramento must allocate 20% of its transportation funds

Conclusion

Recommendation

- **We recommend that TSW prepare a plan to address the sidewalk backlog that incorporates:**
 - **updated costs, a reasonable timeline, staffing needs, possible funding sources, and an ongoing maintenance plan, including when City should plan for another condition assessment**
- **City could also explore ways to improve participation in 50/50 Cost-Sharing Program or enforcement activities so that property owner fixes are not left unaddressed**