



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
February 18, 2015**

TO: Mayor and City Council

PREPARED BY: Michael Chandler, Senior Management Analyst
Tim Tucker, City Engineer

SUBJECT: Sidewalk Liability Ordinance and Sidewalk Repair Cost Sharing Reimbursement Program

DATE: February 11, 2015

RECOMMENDATION:

Conduct a public hearing and introduce an ordinance amending Title 12 of the City’s Municipal Code by adding Chapter 12.31, Sidewalk Maintenance and Repair, and finding that the adoption thereof is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines sections 15301, 15302 and 15061(b)(3) and adopt a resolution to approve the Sidewalk Repair Cost Sharing Reimbursement Program and allocate funding from unassigned fund balance in the amount of \$15,000 for same.

Staff met with the Franchise and Infrastructure Subcommittee in December 2013 and December 2014 to present and discuss various options for consideration. The Subcommittee’s recommendations are reflected in the proposed ordinance and Sidewalk Repair Cost Sharing Reimbursement Program, both of which are attached to this report.

BACKGROUND:

Several years ago, staff brought before Council the concept of introducing a “Sidewalk Liability Ordinance” for the purposes of codifying existing state law regarding sidewalk maintenance and repair and imposing a duty for injuries or damages to third parties caused by the property owner’s failure to maintain the abutting sidewalk. Council was receptive to the concept but wanted staff to develop and propose an assistance program in conjunction with the ordinance to encourage property owners to repair damaged sidewalks. Staff have refined both the Ordinance and Repair Cost Sharing Reimbursement Program and recently received the Franchise and Infrastructure Subcommittee’s recommendation to bring both items before the City Council for consideration.

The City pools its insurance programs with the Municipal Pooling Authority of Northern California (MPA) as one of 19 member public agencies. Over the past 10 years, sidewalk trip and fall claims against the City are second in severity behind only water damage claims, and third in frequency behind only water damage and auto collision claims. Many of sidewalk trip and fall claims the City receives do not actually involve City property. In fact, 9 of the 11 most recent trip and fall claims were on property which was the responsibility of another party. The risk with trip and fall claims is the severity of the injuries sustained, particularly those involving the elderly.

This risk is highlighted by the fact that 3 of the 9 non-City property sidewalk claims accounted for over \$220K of the \$226K in total incurred costs (meaning all losses paid to date and remaining open reserves). The City's average cost per sidewalk liability claim over the past 5 years also trends significantly higher than the risk pool average of \$9K per claim.

The City has over 100 miles of sidewalks within its jurisdiction. Routine inspections have improved through coordination with field staff such as meter readers and Police personnel, but the City still relies heavily on notification from the public. When a sidewalk defect is found, the City actively notifies residents of their duty to repair the sidewalk. Existing incentives include a Council-adopted no-fee encroachment permit and reduced clean-up deposit of \$250; however, some still choose not to comply, leaving the public at risk and the City vulnerable to lawsuits for trip and fall claims.

The California Streets and Highways Code 5600 et seq establishes a duty to the public by the fronting property owner to maintain the adjacent sidewalk in a safe condition. This law does not create a legal liability to the property owner for injuries caused by the unsafe condition of the sidewalk (unless the damage was caused by the property owner). Adopting a sidewalk ordinance is the mechanism necessary to establish clear legal liability of the property owner, but does not relieve the City of responsibility of its duties.

To date, 15 of the 19 member cities within MPA – and Contra Costa County – have adopted such sidewalk ordinances. MPA has worked with member agencies (including Martinez) to promote adoption of this ordinance. Its experience has been these ordinances have not created issues within the community or insurance industry. The ordinance is reflective of existing state law and many homeowner insurance companies understand that fact and further assume that the local public agency has adopted such an ordinance. Most consider such risks already in underwriting typical homeowners' insurance policies. As such, it is probable that most property owners are already paying for such coverage.

Key provisions of the proposed sidewalk ordinance are described below:

- 1) Affirms property owner's duty to repair and maintain the sidewalk area adjoining their property in a safe and non-dangerous condition.
- 2) Transfers liability to the property owner for injuries or damages to third parties caused by the property owner's failure to maintain the fronting sidewalk in a safe and non-dangerous condition.
- 3) Mandates compliance with City of Martinez Resolution No. 062-14 requiring preservation of sidewalk stamps to the maximum extent practicable.
- 4) Exceptions to adjacent property owner's responsibility for sidewalk damage are made in two scenarios:
 - a. The damage is caused by a utility structure, and the property owner has notified both the City and the appropriate utility company of any obvious damage or defects in the sidewalk.
 - b. The liability is otherwise assumed in a written agreement by another person or entity such as a homeowners association.
- 5) Effective date shall be 60 days after adoption instead of standard 30 as provided for in Government Code Section 36937. This additional time will allow for an informational public workshop on the Sidewalk Repair Cost Sharing Reimbursement Program prior to the Ordinance's effective date.

Key provisions of the proposed Sidewalk Repair Cost Sharing Reimbursement Program include:

- 1) Reimburses 50% of cost up to a maximum of \$500 (or if on corner lots with work on both frontages, 50% of cost up to \$1,000) to remove and replace, repair or reconstruct sidewalks within the City that qualify as a dangerous condition.
- 2) Program eligibility limited to once every five (5) years.
- 3) Program will be funded as determined appropriate from year to year as a separate line item in the annual budget (proposed as \$15K in FY 14-15).
- 4) Reimbursements are made on a first come, first serve basis up to the amount of available and budgeted funds.
- 5) At the City's discretion and upon request of the property owner, the City will, in lieu of the rebate, perform saw cutting and/or concrete removal and disposal within a two-hour work window.

FISCAL IMPACT:

The fiscal impact of adopting the sidewalk ordinance is unclear at this time. MPA's Liability Claims Manager has estimated that passing such an ordinance often reduces the public agency's liability for sidewalk claims by 50% or more. Given the historical magnitude and extent of sidewalk claims against the City, this reduced liability is expected to have a positive impact on the City's future liability insurance premiums.

City funding for the initial rollout of the Sidewalk Repair Cost Sharing Reimbursement Program in FY 2014-15 is recommended at \$15,000 and will come from unassigned fund balance.

ACTION:

Conduct a public hearing to introduce an ordinance amending Title 12 of the City's Municipal Code by adding Chapter 12.31, Sidewalk Maintenance and Repair, and finding that the adoption thereof is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA guidelines sections 15301, 15302 and 15061(b)(3) and adopt a resolution to approve the Sidewalk Repair Cost Sharing Reimbursement Program and allocate funding in the amount of \$15,000 from unassigned fund balance for same.

Attachments:

1. Sidewalk Ordinance
2. Sidewalk Repair Cost Sharing Reimbursement Program
3. Resolution

APPROVED BY:



Interim City Manager

ORDINANCE NO. C.S.

AMENDING TITLE 12 OF THE CITY OF MARTINEZ MUNICIPAL CODE BY
ADDING CHAPTER 12.31 "SIDEWALK MAINTENANCE AND REPAIR" AND
FINDING THAT THE ADOPTION THEREOF IS EXEMPT FROM THE
REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES
SECTIONS 15301, 15302 AND 15061 (b)(3)

WHEREAS, the City Council of the City of Martinez wishes to provide for the maintenance and repair of sidewalks within the City of Martinez; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARTINEZ DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 12. Chapter 12.31 is hereby added to read as follows:

Chapter 12.31 SIDEWALK MAINTENANCE AND REPAIR

12.31.010 Purpose and Findings.

The purpose of this Section is to impose upon property owners the affirmative duty to repair and maintain the sidewalk area adjoining their property in a safe and non-dangerous condition. This duty runs to and in favor of members of the public using the sidewalk area.

12.31.020 Duty to Maintain Sidewalk.

A. Owner's Responsibility. Except as provided in subsection B of this section, the owner of property which fronts on sidewalk area shall maintain and repair the sidewalk area in a reasonably safe condition, at the owner's expense. If the owner makes an alteration to the sidewalk, the Owner must obtain an encroachment permit from the City prior to the work and use ordinary care in making the alteration and in keeping the altered portion of the sidewalk in a reasonably safe condition.

The provisions of Chapter 22 of Part 3 of Division 7 of the California Streets and Highways Code (Sections 5600 through 5630 inclusive), as they now exist or may hereafter be amended, are adopted as the procedure governing the maintenance and repair of sidewalks, driveways, and driveway approaches in the City. For the purposes of this Chapter, "sidewalk" shall have the same

meaning as defined in Section 5600 of the California Streets and Highways Code, and shall also include a "driveway" and a "driveway approach."

It is unlawful for any person, firm or corporation owning any building, lot or premises in the City, fronting on any portion of an improved street or way where a sidewalk is laid to allow any portion of such sidewalk in front of such building, lot, or premises to be out of repair, or to become, be or remain defective, or to become, be or remain dangerous to the users thereof for any reason. Such person, firm or corporation must at all times keep each such sidewalk in such condition that it will not endanger persons or property passing thereon, will not interfere with public convenience in the use thereof, or be or remain an obstruction or impediment to normal, customary and usual pedestrian or vehicular traffic. Such property owner shall be responsible for all maintenance and repairs, including that required to repair damage caused by tree roots, needed to keep the sidewalk improvements in a safe condition.

The Owner has the primary and exclusive duty to perform such maintenance and repair, whether or not notified by the City and whether or not the City has performed similar maintenance in the past. The City may notify the Owner when the sidewalk is out of repair, in conformance with California Streets and Highways Code sections 5610 and following.

The Owner shall comply with City of Martinez Resolution 062-14 requiring the preservation of sidewalk stamps commemorating the government work plan date or other significant information related to the time of the original construction to the maximum extent practicable.

B. Exceptions. An adjacent property owner is not responsible for sidewalk damage and repair if

1. The damage is caused by a utility structure, such as a PG&E structure, telephone pole or structure, storm drain, cable television structure, fire hydrant, or similar utility structure, and the property owner has notified both the City and the appropriate utility company of any obvious damage or defects in the sidewalk.

2. Another entity or individual, such as a homeowner's association, commercial property association, or other individual or entity, has entered into a written agreement or covenant with the property owner and the City pursuant to which such other individual or entity assumes responsibility for sidewalk damage and repair.

12.31.030 Liability of Owner.

The owner required by Section 12.31.020 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area free from sidewalk defects and in a safe and non-dangerous condition. If, as a result of the failure of any owner to maintain the sidewalk area in a non-dangerous condition as required by Section 12.31.020, any person suffers injury or damage to person or property, the owner shall be liable to such person for the resulting damages or injury.

12.31.040 Persons in Possession.

If the owner is not the person in possession of the property, then the responsibilities, duties and liabilities imposed by this chapter are also imposed on the person in possession of the property.

12.31.050 Joint Owners.

If more than one party is an owner, then the responsibilities, duties and liabilities established by this Chapter are joint and several as to each party.

12.31.060 Assessments on Property.

If the owner fails to maintain or make repairs to the sidewalk area after notice is provided pursuant to Chapter 22 of Part 3 of Division 7 of the California Streets and Highways Code (Sections 5600 through 5630 inclusive), then the City may undertake such maintenance and repairs and confirm and collect assessments for the costs and expenses of such maintenance and repair as set forth in California Streets and Highways Code Sections 5616 through 5630 including but not limited to placing a lien on owner's property, having the assessment placed on the property tax rolls or any other method of collection legally available to the City.

SECTION 2. CEQA. The adoption hereof is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15301 (Existing Facilities), 15302 (Replacement or Reconstruction) and 15061(b)(3) in that the ordinance calls only for the repair or replacement of existing sidewalks that have become damaged or are in need of repair. No new facilities are contemplated by or required to be constructed as a result of the adoption of this ordinance. It can therefore be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment.

SECTION 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

SECTION 4. Effective Date. This Ordinance shall take effect sixty (60) days after adoption as provided by Government Code Section 36937.

SECTION 5. Posting. At least five (5) days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk.

Within 15 days after adoption the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for and against the ordinance in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: _____
Rob Schroder, Mayor

ATTEST: _____
Deputy City Clerk

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I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 18, day of February, 2015, and duly passed and adopted at a Regular Meeting of said City Council held on the day of , 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ
CITY CLERK, CITY OF MARTINEZ

Martinez Sidewalk Repair Cost Sharing Reimbursement Program

It is the responsibility of the abutting property owner to repair, replace or reconstruct all broken or defective sidewalks and to maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the traveled portion of the public street.

To assist residents with the cost of repairing, replacing, or reconstructing sidewalks, the City will rebate to residents 50% (up to a maximum of \$500) of the cost to remove and replace, repair, or reconstruct sidewalks that meet the requirements of this Program. Such potential rebates will continue only until budgeted funds allocated for such purposes are exhausted. Nothing in this Program shall require the City Council to make any budget allocation of any amount in any budget year. At the City's discretion and upon the request of the property owner, the City may, in lieu of rebate, perform saw cutting and/or concrete removal and disposal within a two-hour work window.

Prior to removing a sidewalk, residents must complete the attached sidewalk rebate application form and encroachment permit application and deliver to City Hall for determination of eligibility for the rebate.

Program Elements:

- Reimburse owner, tenant or contractor 50% of cost per fronting street where work occurs (up to a maximum of \$500, or, if corner lots with work on both frontages, 50% of cost up to \$1,000) to tear out and replace, repair, or reconstruct sidewalks that qualify as hazardous as described in this Program, a maximum of once every five (5) years.
- Program may be funded at the discretion of Council as a separate line item in the annual budget.
- Reimbursement is limited to extent of annual budgeted funds, if any, available on a first come, first serve basis.
- Funds will be allocated for any eligible location in the City as determined by the City Engineer.

Quality Controls:

To be eligible for reimbursement, all of the following must occur:

- A right-of-way, no fee Encroachment Permit must be obtained with a \$250 refundable deposit. Proper insurance shall be provided as part of the Encroachment Permit application.
- Martinez staff perform initial site review, during which areas of removal are marked and photos taken to verify site is eligible for reimbursement.
- Martinez staff perform form inspection.
- Martinez staff perform final inspection.
- Materials and workmanship comply with City of Martinez construction standards.
- Permittee has sole responsibility to coordinate the necessary inspections.

Eligibility:

- Only Martinez properties are eligible.
- Existing residences are eligible.
- Commercial properties are eligible.
- Eligible work is the replacement of sidewalk and/or driveways in the right-of-way parallel to the street for repair of trip hazards.
- Extension of walkway where it does not currently exist is not eligible.

Qualifying Sidewalk Conditions Include:

- Lifts or depression equal to or greater than $\frac{3}{4}$ - inch.
- Cracks greater than $\frac{1}{2}$ inch.
- Spalling over 25% of the surface.
- Chipped edges over 4 inches.
- Any sidewalk defects determined by the City Engineer to be a potential hazard to pedestrian travel.

Sidewalk Application Form

Date: _____

Name of Applicant: _____

Street Address: _____

Please describe the location and illustrate below a picture of the sidewalk to be replaced, including the width, length and thickness:

Provided budgeted funds are available, the City may allow 50% reimbursement, or up to \$500, whichever is less, (or, if corner lots with work on both frontages, 50% of cost up to \$1,000) for the removal and replacement of sidewalks that qualify as a defective sidewalk as outlined in the Martinez City Municipal Code. In lieu of reimbursement, the City offers removal and disposal of concrete depending on availability of crews.

Inspected by: _____ **Date:** _____

Recommendations:

By signing below, you agree and accept the City of Martinez's recommendations for your sidewalk.

Applicants Signature: _____ **Date:** _____

Follow up inspection/approval to pay: _____, Inspector.

RESOLUTION NO. -15

**APPROVING THE SIDEWALK REPAIR COST SHARING REIMBURSEMENT PROGRAM
AND A BUDGET ADJUSTMENT IN THE AMOUNT OF \$15,000 FOR SAME
FROM UNASSIGNED FUND BALANCE WHICH HAS
SUFFICIENT FUNDS TO COVER THE TRANSACTION**

WHEREAS, the City has provided for several years various incentives for property owners to maintain and repair sidewalks which are the property owners' responsibility, including no-fee permits and inspections, and reduced clean-up/security deposits; and

WHEREAS, the City Council directed staff to develop a comprehensive sidewalk repair Cost Sharing Reimbursement program ("Cost Sharing Reimbursement Program") in conjunction with introducing a sidewalk maintenance and repair ordinance to assist the abutting property owner with expenses related to sidewalk maintenance and repair; and

WHEREAS, creation of such a comprehensive Cost Sharing Reimbursement Program is expected to encourage property owners to repair damaged sidewalks; and

WHEREAS, staff has developed the attached Cost Sharing Reimbursement Program, key tenets of which include reimbursement of eligible and related expenses once every 5 years in the amount of 50% of cost up to a maximum of \$500 (or up to \$1,000 if on corner lots with work on both frontages); and

WHEREAS, initial funding for the Cost Sharing Reimbursement Program is recommended to be \$15,000 and made available on a first come, first serve basis; and

WHEREAS, a budget adjustment in the amount of \$15,000 from unassigned fund balance is needed to fund the Cost Sharing Reimbursement Program for FY 2014-15; and

WHEREAS, future program funding will be provided if and as determined appropriate by the City Council as a separate line item in the annual budget.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Martinez hereby approves the attached Sidewalk Repair Cost Sharing Reimbursement Program.

BE IT FURTHER RESOLVED that the City Council approves the revision to the Fiscal Year 2014-15 Budget to transfer \$15,000 from unassigned fund balance to appropriate funds for the Sidewalk Repair and Cost Sharing Reimbursement Program.

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I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 18th day of February, 2015, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ