

From: [Eduardo Sarmiento](#)
To:
Subject: E-Comment For JULY 27, 2021 CITY COUNCIL MEETING ITEM XIIIb
Date: Tuesday, July 27, 2021 3:24:25 PM
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JULY 27, 2021 CITY COUNCIL MEETING

ITEM XIIIb: ORDINANCE TO REQUIRE PROPERTY OWNERS TO REPAIR THE SIDEWALK AREA ABUTTING THEIR REAL PROPERTY AND TO EXTEND TO PROPERTY OWNERS' LIABILITY TO THIRD PERSONS FOR INJURIES ARISING FROM PROPERTY OWNERS' FAILURE TO MAINTAIN THE SIDEWALK AREA FREE OF HAZARDS.(City Attorney Michael Jenkins)

After this city council item and before the city council meeting ends this evening, I highly recommend that every Hermosa Beach homeowner and business owner walk out to their sidewalk and take dated photos of the current condition of the sidewalk fronting (or at the side/rear) their property. Make a note of the owner of any utility vaults/pedestals in this sidewalk and take dated photos of their condition.

The following questions/statements/suggestions I pose to the City Manager, City Council and our Contract City Attorney:

- How many of the 2,095 locations throughout the city of Hermosa Beach identified as sidewalk/ADA deficiencies in the following 2017 Report (Page 14 and Appendix G) <https://www.hermosabeach.gov/home/showpublisheddocument/11994/637001018228830000> (that the City's Consultant Fugro were paid \$25,940 to prepare) have been repaired/corrected by the city since they were first observed/noted/brought to the city's attention five years ago.....23% of which had trips of 1/4 - 1/2" high and 21% of which had trips of more than 1/2" high?

How many claims have been submitted to the city in the last 5 years for trip and falls at these 934 locations?

Are you seriously proposing to turn these 2,095 trip and fall/ADA deficient locations over to 2,095 Hermosa Beach homeowners/commercial building owners to repair/replace? And for these 2,095 homeowners/businesses to assume liability for any trip and fall lawsuits before they are repaired/replaced?

- And what about those 563 locations that Fugro assigned a TBD notation to? A number of these locations have retaining walls and full elevated patios, steps, rockeries, plants, trees and redbrick constructed where the sidewalk should be; several power poles, several guide wires, several fire hydrants and several City-installed No Parking and Stop signs all of which have to be demolished/relocated/raised to achieve required ADA clearance and construct new sidewalk? Quite a number of these 563 locations have severe slope changes; settled

utility trenches, missing sidewalk panels and 1,000s of feet of missing sidewalk!

Are you honestly proposing to turn these 563 "major problem" locations over to 600+Hermosa Beach homeowners/commercial building owners to demolish/repair/replace/remove/relocate? And for these 600+ homeowners/business owners to assume liability for any trip and fall and/or pedestrian/car accident lawsuits before they are removed/relocated/repared?

- What about the 1,234 ADA curb ramps in the city that have been identified by Fugro as deficient?

I know you cannot seriously be considering turning the responsibility of reconstructing these deficient curb ramps over to the 1,234 unfortunate Hermosa Beach home owners/business owners who have corner lots? And for these 1,234 homeowners/business owners on these corner lots to assume liability for any ADA lawsuits before new code-compliant ramps are constructed?

- What about the 57 streets in the city with no sidewalk?

Please tell me that you are not proposing to turn these over to Hermosa Beach home owners who own homes on these 57 streets to install sidewalk which in a lot of cases will require substantial grading? And for the homeowners on these 57 streets to assume liability for any trip and fall and/or pedestrian/car accident lawsuits before new sidewalk is installed?

I will finish up by saying that unfortunately it appears that this Ordinance was thrown together by our City Attorney Michael Jenkins with ZERO input from Public Works staff. Nowhere is there any mention whatsoever of the importance of city staff/homeowners/commercial building owners determining the cause of any future sidewalk deterioration (because at this stage I truly hope City Council realize that it would be SO wrong and inappropriate for them to turn over these 2,095 defective sidewalk locations; 1,234 deficient curb ramps and 57 streets with no sidewalk that staff has known about for over 5 years to homeowners/business owners who did not create these deficiencies.....(except for obviously the elevated patios and retaining walls that were constructed on city property with city staff approval!)

After all, if some sane and realistic version of this ordinance does pass in the future, the last thing the city needs is for city staff and homeowners and commercial building owners alike to spend inordinate amounts of time trying to determine responsibility for the damage. The city needs to draft a policy (as part of this proposed Ordinance) that will avert disputes over the cause of sidewalk deterioration thereby increasing the amount of City resources available to actually undertake some Capital Improvement Projects like street paving!! This policy would obviously have to include discussion like "If a City tree causes repeated sidewalk damage, who is responsible for the repairs?" "If City staff allowed a Contractor to store material/drive over/park on sidewalk, who is responsible for the repairs?" "If City staff permits a Utility Company to excavate the sidewalk, who is responsible for settled utility trenches/the repairs?" And with respect to homeowners/business owners being 100% liable, we should NOT be veering away from State Law!

"It is important to note the limits of sidewalk liability ordinances. Because municipal liability for torts is a matter of statewide concern, such liability "may not be regulated by local ordinances inconsistent with state law as established by the Tort Claims Act." (City of Ontario v. Superior Court (1993) 12 Cal.App.4th 894, 899-900 citing Societa per Azioni de Navigazione Italia v. City of Los Angeles (1982) 31 Cal.3d 446, 463.) This precludes a city from absolving itself of liability but does allow concurrent liability of adjacent property owners. Sidewalk liability ordinances "provide an additional level of responsibility for the maintenance of safe sidewalks on the owners

whose property is adjacent to and abuts the sidewalk.” (Gonzales, supra at 1139.) “These owners are often in the best position to quickly identify and address potentially dangerous conditions that might occur on the sidewalks, as opposed to the city.”

Like quite a number of my fellow Hermosa Beach neighbors, I also will withhold my absolute judgement based on individual councilmember votes and I also am respectfully requesting this City Manager, Contract City Attorney and Council to show some common sense, decency and respect for your constituents and business owners.

Thank you for your time

Anne Zaworski
