




MEETING DATE: 5/16/05  
ITEM NO. 17 B

## COUNCIL AGENDA REPORT

DATE: MAY 11, 2005

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER 

SUBJECT: PROVIDE DIRECTION TO STAFF REGARDING SIDEWALK REPLACEMENT POLICY AND THE IMPLEMENTATION OF A 50/50 COST SHARING PROGRAM FOR SIDEWALK, CURB, AND GUTTER REPLACEMENT

### RECOMMENDATION:

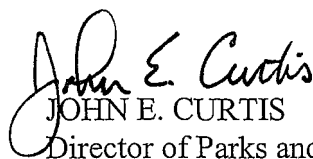
Provide direction to staff regarding sidewalk replacement policy and the implementation of a 50/50 cost sharing program for sidewalk, curb, and gutter replacement.

### BACKGROUND:

Staff presented a report to the Town Council on December 6, 2004 on a possible 50/50 Cost Sharing Program for repair and replacement of concrete curb, gutter, and sidewalks. That report provided general information about the cost sharing program and direction was given to staff for bringing further details about this program for Council consideration and public input in early 2005.

The Los Gatos Town Code Section 26.10.060(d) states, "nothing in this chapter shall be deemed to impose any liability upon any member of the Town Council, or the Town or any of its officers or employees, or to relieve the owner and the occupant of any private property from the duty to keep the property, and the sidewalks and parkway in front of the property in safe condition, and not hazardous for public travel." This section of the Town Code is in conformance with the State Highway Code in its placement of the duty to keep sidewalks safe with the adjacent property owner. It is the current Town policy, not the Town Code, which places this responsibility on the Town itself.

PREPARED BY:

  
JOHN E. CURTIS

Director of Parks and Public Works

Reviewed by: PS Assistant Town Manager OK Town Attorney \_\_\_\_\_ Clerk Administrator  
4c Finance \_\_\_\_\_ Community Development

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The Town of Los Gatos has historically been performing all repair and replacement of concrete curb, gutter, and sidewalk at no cost to the property owners as a part of an annual Capital Improvement Program project. This work has been necessitated due to the damage of curb, gutter, and sidewalks caused by tree roots which is a problem town-wide. Town crews performed these repairs with in-house resources up to about ten years ago. However, as staff reductions took place over recent years, the ability to do the repair and replacement of damaged concrete by maintenance forces is no longer possible and all such work is contracted out with the amount of annual removal and replacement dependent on budget allocations.

Sidewalks, curbs, and gutters continue to fail and continue to present safety hazards to pedestrians, increasing liability to the Town. Even once sidewalks are repaired with root pruning, the Town can expect an area to need repair/replacement again on an ongoing basis.

This report recommends for Council consideration a 50/50 cost sharing sidewalk replacement program. This report also responds to questions raised by Council when the cost sharing sidewalk replacement program was initially discussed at the Council meeting of December 6, 2004.

#### DISCUSSION:

##### I. Current Sidewalk, Curb, and Gutter Repair and Replacement Policy

The following is the current procedure of the Town of Los Gatos in addressing curb, gutter, and sidewalk repair and replacement issues. This procedure covers both concrete inspection and repair/replacement.

##### Inspection

The sidewalks in the Town of Los Gatos are inspected by Parks & Public Works maintenance staff based on the following schedule, whether driven by complaints to the Town or by observation of Town staff:

- Sidewalks in heavily traveled pedestrian areas (i.e. downtown, public facilities, etc.) are inspected once a year.
- Sidewalks in other areas are inspected once every 3 years.

##### Repair/Replacement

After the inspection and determination of concrete curb, gutter, and sidewalk deficiency, the following steps are taken by the Parks and Public Works Department:

- The extent and scope of the concrete deficiency are documented.
- Maintenance crews take appropriate measures (i.e. patch with asphalt, grind concrete, etc.) to temporarily eliminate trip and fall problems for the site.
- PPW then makes a determination as to the best strategy for repair or replacement of damaged concrete.

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- Generally, if there is uplift of concrete less than one inch, grinding is used to address the problem. If the uplifted concrete is more than 1 inch, that section of concrete is removed and replaced with new concrete. Tree roots are pruned prior to the placement of new concrete.
- PPW will perform the repair or replacement of damaged concrete either by Town maintenance crews or a contractor hired by the Town through a competitive bidding process.
- The cost for the repairs or replacement of damaged concrete is paid by the Town as funding allocations accommodate such work.

II. Benchmarking

The ongoing damage caused by tree roots and overall age of the concrete facilities presents a challenge to the Town with reduced resources both in staffing and funding allocations. This issue is not unique to Los Gatos. Many other municipalities have developed policies to share the concrete repair and replacement costs with property owners. The following table shows how other agencies in the area handle this issue:

CONCRETE REPLACEMENT PROGRAM BY OTHER AGENCIES

AGENCY NAME	PROGRAM ARRANGEMENT
Belmont	Property Owner Pays 100% of Cost
Foster City	Property Owner Pays 100% of Cost
San Jose	Property Owner Pays 100% of Cost
Monte Sereno	Property Owner Pays 100% of Cost Except Where City Installed Sidewalk near Daves Avenue School
Gilroy	50/50 Cost Share Between the City and Property Owner
Mountain View	50/50 Cost Share Between the City and Property Owner
Fremont	50/50 Cost Share Between the City and Property Owner
Morgan Hill	50/50 Cost Share Between the City and Property Owner
Redwood City	50/50 Cost Share Between the City and Property Owner
Saratoga	City Pays 100% of Cost but revising program to property owners pays 100%
Campbell	City Pays 100% of Cost - reducing budget from 200K to 100K in fiscal year 2005/06
Los Altos	City Pays 100% of Cost
Milpitas	City Pays 100% of Cost
Palo Alto	City Pays 100% of Cost
Los Altos Hills	No Sidewalks

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### III. Proposed Policy

Staff is proposing that the Town revise current policy to align more closely with the statements found in the Town Code. However, rather than change to a position of fully assigning the property owner the financial liability for providing safe sidewalks, staff is recommending that the financial liability be shared equally between the Town and the property owner, both commercial and residential.

While this proposal for revising the current policy and program is closer to the Town Code, it should be noted that Council has the ability to set policy which interprets the code. The current interpretation is that the Town is financially responsible for the condition of sidewalks, curbs, and gutters, while the code makes the property owner responsible for the safety of the public in these areas. A change in policy would create an equally shared financial responsibility for the improvements in the right-of-way that fronts a given property.

The value of this policy revision lies in the ability of the Town to improve literally twice as much frontage structure annually as it has been able to in the past or to improve the same amount of sidewalks at half the cost. With recent budgetary cuts in maintenance programs and the need to stretch limited capital improvement dollars for sidewalks, curbs, and gutter replacement, this policy change would enable the Town to come closer to achieving the goal of having safe pedestrian ways and reducing the liability of the Town due to trip and falls.

### IV. Proposed Program

Based on Council input at the December meeting and on the review of other cities' programs, staff is recommending the proposed 50/50 Sidewalk, Curb, and Gutter Replacement Program for Los Gatos. An informational brochure would be prepared for public outreach and usage.

The proposed Town of Los Gatos 50/50 Sidewalk, Curb, and Gutter Replacement Program is intended to make the process of repair and replacement of concrete simple and convenient for residents and property owners. A typical project in this proposal will have the following steps:

1. Inspection and Notification of Need for Repair/Replacement

The Town inspection program will identify sidewalk segments that require repair according to the existing technical criteria. The Town would next contact the property owner with a notice to replace the sidewalk and/or curb/gutter. The Town Inspector will discuss the scope of any concrete replacement with the property owner before any agreement for work is reached. The 50/50 agreement would apply only to sidewalk, curb, and gutter that requires replacement due to safety concerns. This process will be followed regardless of how the Town determines that a sidewalk is deficient, be it by complaint, inspection, or any other means of observation.

2. Identify Cost and Enter into Cost Sharing Agreement

After the scope of work is determined, the Town will provide the property owner the cost for the work along with an agreement between the Town and the property owner to share the cost of the work. This cost will be based on a fixed contract price which the Town will have awarded in advance to a pre-selected concrete contractor.

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3. Issue Notice to Proceed to Contractor

Prior to initiating any work under this program, staff would identify a contractor using the competitive bidding process with an estimated amount of work. After signing the agreement between the Town and property owner, the Town will direct the contractor to perform the repairs and replacement. The Town will inspect the work once complete. The property owner will be billed for their share.

4. Billing

After completion of the work, the Town will send a bill to the property owner for 50% of the cost. In the event that the property owner refuses to pay, and does not demonstrate a hardship (if Council approves consideration of "hardship" as discussed below), a lien can be placed on the property for the amount that the property owner would be required to pay for that portion of the work.

5. Project Management

The Town would then pay the contractor for the work and close out the project. In this program, the Town will be responsible for all construction, inspection, and management of the project. Staff believes this approach will be most convenient for Town property owners in that they would not need to get involved in hiring contractors, managing and inspecting the work, or handling contract documents.

V. Council Questions from December 6, 2004 Meeting

1. Typical Cost and Consideration for Cost Caps

For a typical localized repair, staff's estimated cost to replace curb, gutter, and sidewalk is \$1,000. This estimated cost is for a 10' long section of curb, gutter, and sidewalk which is caused by tree root damage. The property owners may choose to have more concrete work done for aesthetic reasons beyond the scope of repairs caused by root damage and would be fully (100%) responsible for the additional cost, as the object of the program is to create a safe pedestrian way. It is not anticipated that repair would cost more than \$1,000, but this cannot be guaranteed. A cap on the cost of the sidewalk repair is not proposed as that could limit the amount of repair possible on any given property.

2. Provision for Hardship Cases

If the Council desires to include a hardship clause in this program, staff suggests that the Town use the County median incomes as published by the federal Housing and Urban Development Department (HUD) and set a threshold for qualifying for hardship. If a 50% threshold were used, families of four earning \$53,050 or less would qualify (based on the current median income for this category of \$106,100). To obtain a hardship determination, the property owner would be required to file a request for consideration with the Clerk Administrator, including a copy of their most recent Federal income tax return. Under this program, the Town would pay for 100% of the sidewalk, curb, and gutter repair in cases of demonstrated hardship. This provision is presented in concept only; further details would need to be developed pursuant to Council direction.

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CONCLUSION:

Staff recommends that the Council adopt the concept of the proposed 50/50 Sidewalk, Curb, and Gutter Replacement Program and direct staff to return with a detailed program for public hearing, adoption and implementation.

This program, if adopted, would apply uniformly to all property owners, regardless of zoning. However, it is a program with the express purpose of eliminating safety hazards and not for beautifying sidewalks that have merely grown old or discolored.

ENVIRONMENTAL ASSESSMENT:

This is a project as defined under CEQA but is Categorically Exempt (Section 15301). A notice of Exemption will not be filed.

FISCAL IMPACT:

The Town's portion of the 50/50 cost sharing will be paid out of the annual budget for the concrete sidewalk, curb, and gutter replacement program. Once the budgeted funding has been expended, the sidewalk replacement program will either be completed for the year or additional funding will need to be allocated for this work by the Town Council, depending upon the existing need and available funding at the time.

Presently \$50,000 is proposed in the Fiscal Year 05-06 budget from GFAR to reconstruct curb, gutter, and sidewalk. The program, if implemented, would enable approximately 1,000 lineal feet of work to be done annually. Presently, only half that amount of sidewalk repair can be contracted out and the impact is between fixing approximately 50 sidewalk locations and being able to repair 100 locations annually at the same cost to the Town.