City of Gilroy

STAFF REPORT

Agenda Item Title:	**Receive Draft Updates of the City's Annual Shared Cost Sidewalk Replacement Program**
Meeting Date:	May 6, 2024
From:	Jimmy Forbis, City Administrator
Department:	Public Works
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STRATEGIC PLAN GOALS Maintain and Improve City Infrastructure

RECOMMENDATION

This is an information item for City Council to receive and provide feedback on proposed updates of the City's Annual Shared Cost Sidewalk Replacement Program (PW Project No. 800320).

EXECUTIVE SUMMARY

The Public Works Department wishes to streamline implementation of the Annual Shared Cost Sidewalk Replacement Program (Program) through the establishment of a single annual construction contract managed by the City for replacement of damaged sidewalks using a more efficient process. Priority locations are to be set by the City based on staff review of various factors such as along main school routes. There are no proposed changes to the current percentage of cost sharing by abutting property owners. It should also be noted that the proposed Program updates are consistent with the City Municipal Code and the State of California Streets and Highways Code (please refer to Attachment 1).

BACKGROUND

The City has had a share-cost sidewalk repair program since 2006. The City Council approved FY 2024-2028 budget that funds the City's Annual Shared Cost Sidewalk Replacement Program using the Sidewalk Repair Reserve Fund (Fund 200) for an

annual total amount of $500,000 covering design, construction and construction support (PW Project No. 800320).

The Department of Public Works currently has a Program list of over 140 locations going as far as year 2014. Implementation of improvements has been subject to responsiveness of the abutting property owners and their ability to fund all repairs upfront (such as replacement of sidewalk, curb and gutter, and trees) and later seek reimbursement from the City for applicable items. This ongoing process consumes a significant amount of staff resources, limits the City's ability to implement improvements in a timely manner, and there is no effective enforcement mechanism.

The current Program identifies the need to repair public sidewalks, which is the responsibility of adjacent property owners and the City offers to share the costs. The Program is not exclusive to residential properties though a majority of the requests and implementation takes place in residential areas. The current Program is set on a reimbursement basis where the City reimburses 50% of the damaged sidewalk replacement cost, 100% of the damaged curb and gutter replacement cost, and 100% of public tree removal and replacement cost. The City allocates a fixed amount of funding to the Program each fiscal year, and when the money is exhausted, the City can no longer accommodate requests for participation in that year's Program. Below are the currently practiced sidewalk repair program procedures:

- The City is contacted by a property owner or a road user regarding sidewalk deficiencies at a particular location thereby initiating the process.
- The City Inspector meets on-site with the property owner to determine the extent of the needed repairs, and the work eligible to be covered by the Program. A project Scope of Work is generated and signed by the City Inspector and the property owner.
- The Scope of Work is used by the property owner to obtain bids for the project. A list of previously vetted eligible contractors is provided by the City without endorsing or recommending these contractors.
- The property owner then seeks bids from a minimum of three contractors. These vetted contractors have a valid State of California Contractor's License (A,B,C-8,C-12), Worker's Compensation, general liability insurance, current registration with the California Department of Industrial Relation (DIR), and a current City of Gilroy Business License.
- The City Inspector reviews the bids with the property owner and identify the lowest responsible qualified bidder. The owner must contract with the lowest responsible bidder to be eligible for reimbursement from the Program.
- The owner enters into a contract with the contractor with the lowest responsible bid, and a copy of the contract is given to the City before any work begins.
- The contractor obtains an encroachment permit and any street tree permits from the City free of charge. If requested, the City Inspector is available to meet with the contractor to go over the work to be done.

- The work is then done by the contractor. The work must be constructed to the City of Gilroy Standards, and inspected and approved by the City Inspector to be eligible for reimbursement.
- The property owner pays the contractor in full for all construction costs, and receives a reimbursement from the City for the City's portion of the costs upon receipt and approval of the final invoice from the contractor.

Limitations of the existing process are:

- Residents have to pay up front – Residents are asked to front the funds and get reimbursed by the City for applicable items after their construction.
- Residents have to do a lot of the work – Obtain three bids, establish a contract with the contractor, and coordinate the construction work.
- No consistency of repairs – Participation is throughout the City and work is performed by various contractors resulting in a patchwork of new sidewalk segments and lack of consistency.
- The City is not getting good value for its sidewalk repair dollars – Contractors are only doing small one house at a time repair projects; bid prices are high due to the small scope of projects.
- The process consumes a significant amount of staff resources – This is due to time and efforts spent on reaching out and engaging properties owners, multiple follow-ups in an attempt to initiate the individual projects, sending warning letters without a real enforcement mechanism in place, overseeing various projects spread throughout the year, overseeing various contractors workmanship, and limited ability to prioritize locations based on the level of damage and served pedestrians.
- Limited enforcement - The current Program is set up in such a way that staff identifies the deficient sidewalk, and then sends out a letter to property owner to take a corrective action. There is no additional measure that forces the property owner to take immediate action past this point, and often the letter is disregarded. It should be noted that the State Streets and Highways Code allows for the City to take the lead on implementation and bill the property owner for the work to repair the sidewalk fronting the property (see Attachment 1).

For context, from January 2022 to date, the City has processed approximately 41 sidewalk repair reimbursements under the current Program for a total cost of about $294,000. The individual reimbursement amounts ranged from $600 to $21,000. Of the 41 total, 34 were for residential properties, and the remaining seven (7) were for commercial properties. The reimbursement amount range varies significantly due to the varying scope of service each property owner performed. Lower reimbursement amounts typically only included sidewalk repair, while higher reimbursed amounts included additional items such as curb and gutter, asphalt and tree replacements, which were 100% reimbursed by the City. In addition, given that procurements were done on an individual basis, the unit prices paid also vary for each reimbursement. Below table represents the average sidewalk repair cost reimbursed as part of large and small jobs. The average owner share of 50% of the sidewalk repair is between $1,500 to $2,800.

Average Sidewalk Repair Cost Reimbursed				
Scope	Square Feet	Unit Price (Per Sq. Ft)	Cost	50% Owner Share
Large Jobs (Sidewalk, Curb and Gutter, Asphalt and Tree Replacement)	360	$ 15.56	$ 5,601.60	$2,800.80
Small Jobs (Sidewalk)	117	$ 24.86	$ 2,908.62	$1,454.31

The City currently has a comprehensive database of sidewalk and curb ramp deficiencies throughout the city. In the spring of 2019, City Council funded a project to identify and assess the deficient sidewalks and curb ramps throughout the city, and the retained firm (Streetscan) used video and Artificial Intelligence (AI) technology to perform this project. This developed database is available and has been used for example in determining locations of new curb ramps constructed using CDBG funds.

Proposed updates to the process of implementing the City's Annual Shared Cost Sidewalk Replacement Program are listed below:

- Identification of sidewalk repairs is carried out by City staff in an equitable manner throughout the city taking into account the existing levels of deficiency, served traffic generators such as schools, reported concerns, and other rating factors and based on the available database.
- City staff notify the property owners in writing of the assessed deficiencies, as well as provide an explanation of the Program including financial responsibility of the property owners and cost sharing, work planned by the City and associated invoicing of the property owners following project construction, and consequences of lack of payment by a reasonably set due date.
- The Public Works CIP project is prepared for all sidewalk repairs including applicable work such as tree removal, replacement of curb and gutter, pavement repair, replacement of driveway approaches, and replacement of sidewalk segments. The CIP project is then advertised for bid, the contract is awarded, the property owners are notified in advance of the work, and the sidewalk work is completed.
- Following completion of the project, the City sends an invoice to each of the impacted property owners stating the actual share of the cost with a payment due date of 90 days from the date of the invoice. A reminder is sent to the property owners 30 days in advance of the due date. A payment arrangement option will also be made available for those wishing to request one, with a not to exceed term of six months.
- If the property owners do not pay in full or fail the payment arrangement, their fair share cost is applied as a lien against their property, and is collected through the annual special assessment collection process on their annual property tax bill.
- The proposed cost sharing is consistent with current practice as follows:

- Sidewalk Replacement Caused by a Private Tree – 100% Property Owner Cost
- Sidewalk Replacement Caused by a Public Tree – 50% City Cost / 50% Property Owner Cost
- Private Tree Replacement – 100% Property Owner Cost
- Public Tree Replacement – 100% City Cost
- Curb and Gutter Replacement Caused by a Public or a Private Tree – 100% City Cost
- Driveway Approach Replacement – 100% Property Owner Cost
- Limit City cost share to repairs adjacent to individual commercial properties to $30,000 (the currently practiced limit is $20,000).

ANALYSIS

Anticipated advantages of the proposed process updates:

- There is no up-front large sum of money out of pocket from the property owner – The City funds all project repairs and invoice the property owner for only their share of the work.
- There is significantly less work for the homeowner – The City takes the lead on coordinating the project, the bids and the construction. The only work for the property owner is to pay the invoiced payment share.
- Improve efficiency and increase the amount of work performed annually towards the City's strive for a walkable and accessible street system. At the end of the annual project, there would be no patchwork performed at uncoordinated locations by various contractors.
- Increase the amount of repairs citywide using the same amount of annual funds – Sidewalk repairs are advertised under a single project. The bids would be lower since the expected price for repairs would be lower due to volume (i.e. lower unit bid price) and less mobilization costs. This in turn would increase productivity using the same amount of funds allocated annually.
- Reduce demands on staff resources by increasing efficiency – Less time and effort will be needed for Program administration and coordination. For example, the City Inspector will need to coordinate with one contractor's team and focus attention on quality control, thereby replacing the current piecemeal approach.

Disadvantage of the proposed changes:

- While this approach is both allowed by the current City of Gilroy Code and the State of California Streets and Highways Code, one potential issue would be the uncertainty of property owners paying their fair share, and the City having to lien private properties for lack of payment.

Timeline for implementation:

Based on City Council consideration and review during the May 6th meeting (Draft Updates) and further consideration for approval during the June 17th meeting (Revised Program Updates incorporating comments), staff wishes to commence implementation of an improved process starting with the upcoming fiscal year.

ALTERNATIVES

Example alternatives to the staff proposed updates can be:

- To retain the current City's Annual Shared Cost Sidewalk Replacement Program without any changes;
- The City to fully fund 100% of all repairs without seeking cost sharing by property owners; or,
- The City to fully fund all repairs without seeking cost sharing of only low-income owner occupied properties (Determined per the California Alternate Rates for Energy (CARE) Program) of residential properties.

FISCAL IMPACT/FUNDING SOURCE

The City Council approved the FY 2024-2028 Capital Improvement Program budget that funds the City's Annual Shared Cost Sidewalk Replacement Program using the Sidewalk Repair Reserve Fund (Fund 200) for an annual total amount of $500,000. The amount is intended to cover design, construction and construction support (PW Project No. 800320). No changes to the currently approved budget are recommended by staff.

Staff recommends utilizing funds to remain by the end of June 2024 (a preliminary estimate of about $280,000 after the ongoing reimbursements) to fund minor repairs such as shaving sidewalks uplifted by up to two inches under a separate/second annual contract for four fiscal years, FY 2025-2028. This recommendation aims to expedite repairs throughout the city and reduce demands on the overall annual Program. It should also be noted that the referenced minor repairs are typically carried out by different type of contractual services.

PUBLIC OUTREACH

In addition to the public hearing opportunities during the City Council meetings on May 6th (Draft Program Updates) and on June 17th (Revised Program Updates incorporating feedback comments), City staff will also conduct public outreach through a social media campaign to encourage the community's participation and seek their input.

NEXT STEPS

Review and incorporate applicable comments shared by City Council and community members as part of revising the City's Sidewalk Repair and Replacement Program. Staff will return to the City Council on June 17th, 2024 for consideration and approval of the revised Program Updates and commence implementation of the Program under a single annual contract commencing in FY 2025.

Attachment:

1. Applicable City and State Code Sections

Attachment 1

Applicable City and State Code Sections

City of Gilroy Sidewalk Ordinance

The Gilroy Municipal Code currently requires an adjacent property owner to maintain the adjacent sidewalk area. If not maintained, the code allows for the City to make the repairs and bill or lien the property owner for the unpaid work:

ARTICLE X. MAINTENANCE AND REPAIR OF PUBLIC USE EASEMENT AREA, Section 20.115 – Maintenance and Repair of Public Use Easement Area – Sub-section b indicates that:

(b) The owners of lots or portions of lots subject to a public use easement area, and persons in possession of such lots by virtue of any permit or right ("property owners") shall repair and maintain such public use easement areas and pay the costs and expenses therefore, including a charge for the City's costs of inspection and administration whenever the City awards a contract for such maintenance and repair, and including the costs of collection of assessments for the costs of maintenance and repair under subsection (a), above, of this section or handling of any ***lien placed on the property due to failure of the property owner to promptly pay*** *such assessments. The property owners shall have the primary and exclusive duty to perform such repairs and maintenance, whether or not the City has notified the property owners of the need for such repairs or maintenance or has performed similar maintenance or repairs in the past.*

State of California Streets and Highways Code Related to Sidewalk

Chapter 22 of the Streets and Highways Code, Article 2 on Maintenance of Sidewalks states:

The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto. Ca. Sts. and High. Code § 5610

Chapter 22 of the Code also provides further direction related to a City's right to maintain public sidewalk along the frontage of a private property. The first section below specifies that the Superintendent of Streets (City Engineer by reference) may, after providing sufficient notice to a property owner, arrange for repairs to be made, and for the property owner to be billed for those repairs:

The notice shall particularly specify what work is required to be done, and how it is to be done, and what materials shall be used in the repair and shall further specify that if the repair is not commenced within two weeks after notice is given and diligently and without interruption prosecuted to completion, the superintendent of streets shall make such repair, and the cost of the same shall be a lien on the property.

The Code goes further to say that the legislative body (City Council) may then place a lien on the property for failure to pay:

The cost of the repair may be assessed by the legislative body against the parcel of property fronting upon the sidewalk upon which such repair was made, and such cost so assessed, if not paid within five days after its confirmation by the legislative body, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record.