MEMORANDUM OF LAW

DATE: October 12, 1988

TO: W. R. Evans, General Utility Supervisor,
Street Division, General Services Department

FROM: City Attorney

SUBJECT: San Diego Municipal Code Section 44.0119(B) -
Property Owner Responsibility

We have reviewed your request concerning the responsibility of a property owner to repair and maintain the sidewalks abutting his property pursuant to San Diego Municipal Code section 44.0119(B).

Your memo forwarded a letter from a property owner who denies any responsibility for the sidewalk maintenance in front of his property. He claims he transferred title to that portion to the City in 1971 for street realignment purposes. Based on the rough sketch of the property you included, it now appears that the City could own the land between Mr. Mouritzen's property line and the sidewalk in question and therefore be the abutting owner. If this is so, you question whether Mr. Mouritzen remains liable, or whether the City is now responsible.

The general rule is that an adjoining landowner has no duty to repair a public sidewalk in the absence of a statute shifting that responsibility to him. Schaefer v. Lenahan, 63 Cal.App.2d 324, 146 P.2d 929 (1944), petition for hearing denied, May 11, 1944; Holdridge v. Drewes, 257 Cal.App.2d 626, 630, 65 Cal.Reptr. 189 (1968). Similarly, any duty to repair the sidewalk runs with the land, thereby imposing liability upon the present owner for alterations made by predecessors in title. Holdridge v. Drewes, 257 Cal.App.2d at 630. Thus, the nominal responsibility to maintain the sidewalk is the City's.

San Diego Municipal Code section 44.0119(B) however provides that the owners of property abutting the sidewalks are responsible for sidewalk maintenance and repair. That section is based on Streets and Highways Code section 5610 which has been held to shift the costs for sidewalk repairs to the abutting private owners from the municipality. See, Schaefer v. Lenahan, 63 Cal.App.2d at 324.

In the situation you describe, however, it appears that the City became the owner of the property abutting the sidewalk by virtue of the transfer. Therefore, we do not interpret San Diego Municipal Code section 44.0119(B) to apply to Mr. Mouritzen.

On the other hand, Streets and Highways Code section 5610 does not refer only to "abutting owners." It instead refers to the duty of "the owner 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 . . . ╒toσ maintain any sidewalk . . .."
╒Emphasis added.σ
We note that because this statute shifts maintenance responsibility to an adjoining property owner, the same result may be permissible even if the City is the owner in fee of the parkway strip. That is, Section 5610 addresses the private owner's responsibility for the sidewalk maintenance independent of the ownership status of the parcel on which the sidewalk is located. Schaefer v. Lenahan, 63 Cal.App.2d at 324.

Mr. Mouritzen's responsibility can still be existent by virtue of this section rather than the San Diego Municipal Code. You therefore need to determine whether the portion between the curb line and the Mouritzen's property line is maintained as a park or parking strip.

Further, the City's responsibility may have been addressed in the documents transferring title from Mouritzen or by a separate agreement. We therefore recommend that you research the property file and also ascertain whether the City acquired the fee, or merely an easement. In the latter case, Mr. Mouritzen would remain the abutting owner and hence be liable for the maintenance under the San Diego Municipal Code, unless otherwise agreed. Otherwise, Mr. Mouritzen may continue to be liable under Streets and Highways Code section 5610.

As a separate matter, we note that the form of the notice of violation included in your memo is both confusing as prepared and may not be sufficient under Streets and Highways Code section 5611 to allow for the recovery of City costs. We therefore suggest you utilize the suggested form language in the attached copy of section 5611.

We are attaching copies of all pertinent sections for ease of reference.

JOHN W. WITT, City Attorney
By
Rudolf Hradecky
Deputy City Attorney

RH:mrh:710(x043.2)
Attachment
cc Harry Peterson

ML-88-89