

# OVERVIEW OF LEGAL OWNERSHIP ANALYSIS FOR SIDEWALKS & TREES

Presented by: the City Attorney's Office

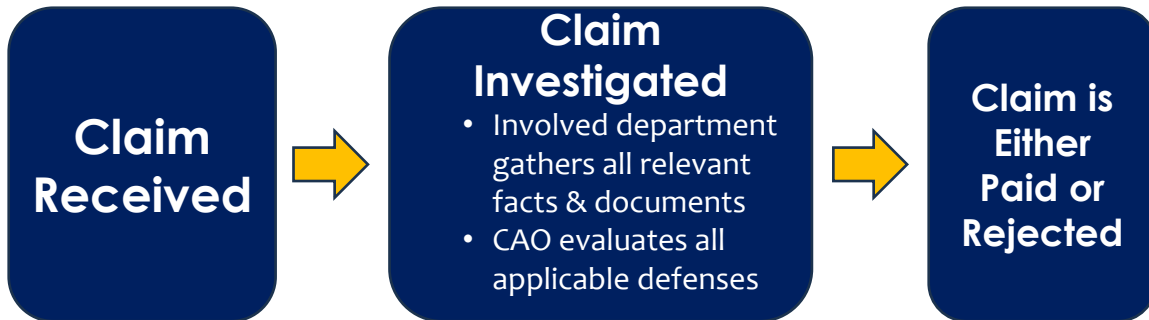
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1

## Claims Process

- When a claim is received, the CAO investigates claims in conjunction with the involved department to determine if the claim should be paid.



2

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2

## Property Ownership Is Crucial in Analyzing Public Entity Liability

- When Plaintiffs allege the City is responsible for personal injuries or property damage based on a theory of dangerous condition of public property, **Plaintiffs have the burden** to prove that the City owned (or controlled) the property that caused the harm.
- Because there are several factors and statutory codes the Court uses to determine ownership, it requires a legal analysis.
- If Plaintiffs do not meet their burden of proof, they cannot prevail on their claim against the City. The CAO is committed to vigorously defending the City.

*Who bears the burden of proof?*



3



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3

## What is Real Property?



Pursuant to Civil Code Sections 657-660:

Real Property is defined as land and that which is permanently affixed thereto and/or not readily moveable therefrom (**including trees and sidewalks**).



The CAO evaluates who owns the land where trees are planted or on which sidewalks are located to determine who legally owns a tree or sidewalk.

If adjacent property owner owns the land in fee simple where a tree is planted



They legally own the tree

4



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4

## Easement v. Fee Simple Ownership

### Easement

Civil Code Section 801

Public right-of-way: easement that grants limited use rights to nonowners of the land.

- Easement is **not** legal ownership.
- Easement is a *limited* right.
- Easement confers rights but not necessarily duty.



### Fee Simple

Civil Code Section 829

Fee ownership: grants the owner of land in fee

"The right to the surface and to everything permanently situated beneath or above it."



5

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5

## Who Owns the Tree or Sidewalk ?

It is a common misconception that the City owns all:



Sidewalks



Parkway Strips



Trees Along Roads

- The CAO researches ownership on a case-by-case basis.
- Ownership necessarily includes duties. (e.g. car, land, etc.)
- There is a presumption that private property ownership extends to the center of the street.\*

\* See Civil Code section 831 and Jones v. Deeler (1984) 152 Cal.App.3d 798.

6



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6

## The RMC Imposes a Duty on Adjacent Property Owners

The Riverside Municipal Code:

**Places the duty to maintain sidewalks, parkways and trees therein on the adjacent property owners.**

- Requires property residents and owners to maintain landscaping in the public right of way in a non-dangerous condition\*
- Requires property residents and owners to maintain the sidewalk in the public right of way in a non-dangerous condition\*\*



\*See RMC Sections 6.14.020 and 13.06.090  
\*\*See RMC Section 13.10.010

7

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7

## RMC 13.10.030 Liability for Injuries to Public



**“The property owner or person in possession** required by Section 13.10.010 to maintain and repair the sidewalk and/or trail areas shall owe a duty to members of the public to keep and maintain the sidewalk and/or trail areas in a safe and nondangerous condition...”



8

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8

## How Does Riverside Compare To Other Jurisdictions?

| City           | Responsibility  | Municipal Code Section(s)   |
|----------------|---|---|
| San Bernardino | Adjacent property owner and/or occupant duty to maintain "trees, hedges, shrubs, and any other growth" in the public right of way. "Duty to Maintain and Repair Sidewalks and Curbs". | <ul style="list-style-type: none"> <li>• 12.40.130</li> <li>• 12.92.040</li> </ul>                      |
| Beaumont       | Duty of adjacent property owners to maintain street trees. "Duty of Property Owners to Maintain Sidewalks" including parkways.  | <ul style="list-style-type: none"> <li>• 12.20.030</li> <li>• 12.20.040</li> <li>• 12.30.010</li> </ul> |
| Yucaipa        | "abutting property owner...shall indemnify and hold harmless the City [for dangerous conditions of sidewalk]"   | <ul style="list-style-type: none"> <li>• 12.08.020</li> <li>• 12.08.070</li> </ul>                      |
| Redlands       | Duty of adjoining property owner to maintain public right of way  | <ul style="list-style-type: none"> <li>• 12.12.120</li> </ul>   |



9

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9

## Key Take-Aways



The CAO relies on PW to tell us if they City has any type of interest in property involved in litigation.



While PW can tell us what type of interest, if any, the City has in the property, the determination of who legally owns is a legal conclusion that the lawyers will litigate in court.



Riverside Municipal Code provisions obligating adjoining property owners/residents to maintain sidewalks and vegetation in the public right of way are similar to surrounding City statutes.



The CAO greatly appreciates PW's help and support in defending the City against these types of claims.



10

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10

# Questions



11

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