

ORDINANCE NO. 2010-010

Adopted by the Sacramento City Council

May 4, 2010

AN ORDINANCE REPEALING AND RENACTING CHAPTER 12.32 OF THE SACRAMENTO CITY CODE RELATING TO SIDEWALK REPAIR, MAINTENANCE AND LIABILITY AND AMENDING SECTION 18.04.020 OF THE SACRAMENTO CITY CODE RELATING TO STREET DEDICATIONS AND IMPROVEMENTS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1

Chapter 12.32 of the Sacramento City Code is repealed.

Section 2

Chapter 12.32 of the Sacramento City Code is reenacted as follows:

CHAPTER 12.32 SIDEWALK REPAIR, MAINTENANCE AND LIABILITY

12.32.010 Definitions.

As used in this chapter, the terms listed below shall have the meaning assigned them.

"Director" means the director of the department of transportation, or designee;
"director" shall have the same meaning as the terms "superintendent of streets" and
"city engineer" as those terms are utilized in the Streets and Highways Code, Division
7, Part 3, Chapter 22, as those provisions now exist or are hereafter amended or
renumbered.

"Repair" means elimination of a defective sidewalk by removal and replacement of all
or a portion of the existing sidewalk or by other methods.

"Defective sidewalk" means a sidewalk where, in the judgment of the director, the
vertical or horizontal line or grade is altered or displaced or such other condition exists
that interferes with the public convenience in the use of the sidewalk.

"Owner" means a person owning a lot, lots or portion of a lot within the city of
Sacramento, and fronting any portion of a public street, alley or other place, where a
sidewalk exists.

"Lot," "lots" or "portion of a lot" means a parcel of real property located within the city of Sacramento, fronting any portion of a public street, alley or other place where a sidewalk exists. When used in connection with the words, "fronting the defective sidewalk," or variation thereof, it shall refer to the property in front of or along the side of the defective sidewalk.

12.32.020 Owner's duty to repair defective sidewalk.

An owner shall maintain and repair any defective sidewalk fronting such owner's lot, lots or portion of a lot. Where a defective sidewalk is caused in whole or in part by a tree root or roots, the owner shall nevertheless have the duty to repair the sidewalk. The director may grant permission to cut the root(s) after consulting with the city arborist.

12.32.030 Enforcement of chapter; specifications.

The director shall enforce this chapter and establish criteria and specifications for each type of repair.

12.32.040 Civil liability for injuries.

Each owner required by section 12.32.020 to repair a defective sidewalk shall owe a duty to members of the public to keep and maintain the sidewalk area in a non-defective condition. If, as a result of the failure of any owner to maintain or repair the sidewalk as required by section 12.32.020, any person suffers injury or property damage, the property owner shall be liable to such person for the resulting injury or damage.

12.32.050 Indemnity

An owner shall defend and indemnify the City and its employees from any action, claim, or judgment, and any cost or expense incurred, including attorneys' fees, which arise from the owner's failure to maintain and repair the sidewalk as required in section 12.32.020. Nothing in this section creates an obligation on an owner to defend or indemnify the city from any action, claim or judgment to the extent any employee or instrumentality of the city caused the defective sidewalk which resulted in the claimant's injuries or damage.

12.32.060 Purpose of chapter

It is the purpose of this chapter to provide sidewalk repair procedures which are alternative and supplementary to the procedures set forth in the Streets and Highways Code, Division 7, Part 3, Chapter 22, commencing at Section 5600, as those sections now exist or may hereafter be amended or renumbered. The city, in each instance, may follow the procedure set forth in the Streets and Highways Code or those set forth in this chapter, or some combination thereof.

12.32.070 Notice to repair.

When the director has actual notice of the existence of a defective sidewalk, the director shall give written notice to the owner of the lot, lots or portion of the lot fronting the defective sidewalk, to repair the defective sidewalk. The director may also give notice to the person in possession of the lot, lots or portion of the lot, in addition to the notice given to the owner.

12.32.080 Service of notice.

The notice to repair shall be served on the owner by any of the following methods:

- A. Personal service of a copy of the notice on the owner;
- B. Mailing the notice to the owner by first class mail, postage prepaid, to the address of the owner as set forth on the last equalized assessment roll;
- C. Personal service of a copy of the notice on the person in possession of the lot, lots or portion of the lots, fronting the defective sidewalk, if a copy of the notice so served is also mailed to the owner in accordance with subsection B of this section;
- D. Posting the notice in a conspicuous place at the lot or lots fronting the defective sidewalk, if a copy of the notice so posted is also mailed to the owner in accordance with subsection B of this section;

If the notice is served on the owner by mail, the director shall, not more than thirty (30) days after the mailing of the initial notice to repair, mail to the owner in the same manner an additional notice to repair, marked "second notice," containing the same information set forth in the initial notice.

12.32.090 Contents of notice.

The notice to repair shall, at a minimum, contain the following information:

- A. That the sidewalk is a defective sidewalk.
- B. The nature of the work required to be done, and the cost as estimated by the city.
- C. The manner in which the work is to be done, including the specifications required by the city as to materials and workmanship.
- D. That if the repair is not commenced within the time specified in this chapter, or once commenced is not completed diligently and without interruption, the director shall immediately commence and complete the repair and the cost thereof shall become a lien on the lot or lots of the owner, fronting the defective

sidewalk.

- E. Provide that the owner may elect to perform the repairs himself or herself, have the work performed by a licensed contractor, or have the work performed by the city, through a contractor selected by the city or with city employees.
- F. An agreement, in a form established by the director, which sets forth the election of the owner and the city's requirements with respect to the manner in which the repairs must be performed.

12.32.100 Time for commencement and completion of repairs by owner.

The owner shall commence the repairs required by the notice to repair within sixty (60) days after the owner elects either to personally perform the repairs, or hire a licensed contractor to perform the repairs, or within sixty (60) days after service of the second notice, whichever occurs first. Once commenced, the repairs shall be completed diligently and without interruption.

12.32.110 Failure to make required repairs.

If, after notice to repair has been served, the owner fails to make the repairs required by the notice within the time set forth in this chapter or fails to respond and execute the agreement, the director shall, within a reasonable period of time, cause the city to make the required repairs, and the cost shall be a lien on the lot or lots of the owner, fronting the defective sidewalk. If the city is required to make the repairs because the owner fails to respond and execute the agreement or fails to make the repairs required by the notice, the city will repair the defective sidewalk by means of removal and replacement of the existing sidewalk.

12.32.120 Payment for repairs.

- A. The owner is responsible to pay the cost of all work provided by the city in connection with the repair of a defective sidewalk, including administrative and inspection costs, upon receipt of an invoice from the city.
- B. If the owner has not provided payment 30 days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the director of finance may initiate proceedings to make the cost of the work performed by the city a special assessment against the parcel(s) of property fronting the repaired sidewalk(s).
- C. Notwithstanding any contrary provision of this chapter or the Streets and Highways Code, if the owner demonstrates to the reasonable satisfaction of the city director of finance or designee that payment of the cost of repair of the defective sidewalk will constitute a severe financial hardship on the owner, then no action shall be taken to collect the repair cost provided that the owner enters into an agreement to pay the costs on terms acceptable to the director of

finance. The city manager shall have the authority to enter into and execute the agreement for the city. If the owner fails to perform the agreement, then the city shall have the right to collect the costs in the amount then owing after ten (10) days written notice is given to the owner. This remedy shall be in addition to any other remedies at law or in equity which the city may have.

12.32.130 Assessing costs of sidewalk repairs upon nonpayment of invoice.

- A. If the owner has not provided payment 30 days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the director of finance may initiate proceedings to make the cost of the work performed by the city a special assessment against the parcel(s) of property fronting the repaired sidewalk(s).
- B. The director of finance shall issue a Notice of Special Assessment to all owners who fail to pay for the work provided by the city for repair of a defective sidewalk. This notice shall provide a process for the owner to dispute the amount due with city staff; set forth a due date for payment; and provide a process for the owner to obtain a hearing before a lien hearing officer appointed by the city manager.
- C. In order for the owner to obtain a hearing before a lien hearing officer, the owner must first protest the charges with city staff. The notice shall be mailed to the address of the owner as shown on the last equalized assessment roll or such other address of the owners as may be known to the director of finance. The notice shall set the date and time by which shall be filed with the director of finance. No objection or protest received after that date and time shall be considered.

12.32.140 Lien protest process

A protest must be submitted in writing by way of personal delivery, email, fax, or mail. City staff will investigate the protest, and at the conclusion of the city staff resolution process, a "Finding of Facts" letter will be prepared and mailed to the owner. If the owner disagrees with city staff findings, he or she may request a formal hearing before a lien hearing officer.

12.32.150 Notice of hearing

The director of finance shall cause notice of the hearing before the lien hearing office to be mailed to an owner who requests a hearing. Notice shall be mailed not less than ten (10) days prior to the date of the hearing. The notice shall be mailed to the address of the owner as shown on the last equalized assessment roll or such other address of the owner as may be known to the director of finance.

12.32.160 Hearing and decision

At the time fixed for consideration of the protest, the lien hearing officer shall hear the matter from City staff, together with any objections and evidence, of the owner(s) liable to be assessed for the cost of repair or reconstruction. The lien hearing officer shall follow, as nearly as practicable, those procedures that the city council would have followed had it conducted the hearing. The lien hearing officer may make revisions, corrections, or modifications of the matter as he or she may deem just, and shall submit the report (as revised, corrected or modified) to the city finance staff for adjustment and/or collection. The director of finance shall send the results of the hearing to the protesting owner by first class mail and shall include the date and time of the public hearing to be held by the city council in accordance with Section 12.32.170 of this chapter. The decision of the lien hearing office on the report and on all protests or objections shall be final and conclusive.

12.32.170 Hearing before city council – Special Assessment confirmed – Manner of collection
–Time for contest of assessment.

Upon receipt of the director of finance's report, the city council shall schedule a public hearing at which it shall confirm, reject or modify the report. The public hearing shall be limited to the issue of whether the hearing before the lien hearing officer was conducted in accordance with applicable city ordinances. Only those owners who both file an objection or protest and appear before the lien hearing officer shall be permitted to protest at the city council meeting.

Upon confirmation of the report by the city council, the sidewalk repair costs contained therein shall constitute a special assessment against the property fronting the repaired sidewalks. Thereafter, such assessment may be collected at the same time and in the same manner as ordinary secured property taxes are collected, and shall be subject to the same penalties and the same procedures of sale as provided for delinquent ordinary secured property taxes. The assessments shall be subordinate to all existing special assessment liens previously imposed upon the property and paramount to all other liens except those for state, county and municipal taxes with which it shall be upon parity. The lien shall be continued until the assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of secured property taxes shall be applicable to such special assessments.

The validity of any assessment made under the provisions of this title shall not be contested in any action or proceeding unless the same is commenced within thirty (30) days after the assessment is confirmed by the city council.

Section 3

Section 18.04.020 of the Sacramento City Code is amended to read as follows:

18.04.020 Generally.

- A. No building or structure shall be erected or enlarged, and no building permit shall be issued therefore, on any lot if the lot abuts on a dedicated street, or a future street designated on a community plan, or on a street right-of-way designated in the current right-of-way width guidelines established pursuant to Section 18.04.170 of this chapter, unless:
1. The one-half of the street or streets located on the same side of the street centerline as the lot has been dedicated and improved for the full street frontage of the lot and one traffic lane on the far side of the street for travel is constructed in accordance with the dedication and improvement standards for such street or streets pursuant to Sections 18.04.170, 18.04.180, 18.04.190 and other applicable provisions of this chapter; or
 2. Such dedication and improvements have been assured to the satisfaction of the city's director of transportation or the director's designated representative.

The dedication and improvement requirements of this chapter shall also apply to the construction or alteration of all off-street parking areas, off-street loading or unloading areas, off-street pickup and delivery areas, and storage, sale, rental or service areas which are subject to the requirements of Chapter 10.24 of this code. The term "building permit," as used in this chapter, shall include the permit required by Chapter 10.24.

As used in this chapter, the word "lot" shall mean and include one lot or parcel of record, or more than one individual lots or parcels of record which have been combined for purposes of development, construction or improvement as a single unit of land.

- B.1. An owner of real property fronting a public street that is improved with street paving and curbs and gutters shall not be issued a building permit for new construction when concrete sidewalks have not been installed unless the owner, either as part of the construction covered by the building permit or under separate agreement satisfactory to the building inspector, constructs public sidewalks to city standards.
2. The provisions of this subsection B shall apply to all property in other than residential use except in industrial areas where a "V" type curb and gutter has been installed.
 3. The provisions of this subsection B shall only apply to property in residential use in blocks where the frontage of existing sidewalks, when added to the frontage of unimproved properties, constitutes more than fifty (50) percent of the front footage of such block.

4. The term "block" as used in this section means property facing one side of any street between an intersecting street and the next intersecting street or between an intersection street and the end of a street which terminates in other than an intersection.
5. The city council may, upon application of a property owner affected by the provisions herein, waive the requirements for installation of sidewalks because of unusual circumstances or hardship.

Adopted by the City of Sacramento City Council on May 4, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, and Mayor Johnson.

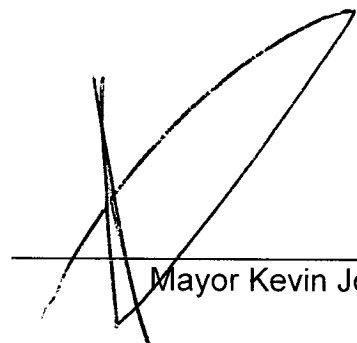
Noes: None.

Abstain: None.

Absent: Councilmember Waters.

Attest:


Shirley Concolino, City Clerk


Mayor Kevin Johnson

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