

ORDINANCE NO. 90-058

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF NOV 0 6 1990

AN ORDINANCE AMENDING DIVISIONS 1 AND 2 OF ARTICLE VII OF CHAPTER 38 OF THE CITY CODE RELATING TO SIDEWALK REPAIR AND RECONSTRUCTION

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

SECTION 1

Divisions 1 and 2 of Article VII, Chapter 38 are hereby amended to read as follows:

Division 1. Generally

Sec. 38.71 Definitions

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

- (a) **Director:** the Director of the Department of Public Works, 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.
- (b) **Repair:** removal of all or a portion of the existing sidewalk, as specified by the Director, and replacement in kind to specifications established by the Director, to a plane surface equivalent to that which existed prior to any sidewalk damage.
- (c) **Defective sidewalk:** a sidewalk where either or both of the following exist:
 - (1) a vertical displacement of one-half inch or more exists; or

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(2) irrespective of the quantitative displacement, where in the judgment of the Director, the vertical or horizontal line or grade is altered or displaced to an extent that a safety hazard exists or the sidewalk is in such a condition as to endanger persons or property or is in such a condition as to interfere with the public convenience in the use thereof.

(d) **Person:** any natural person, a partnership, corporation, or other entity, public or private.

(e) **Owner:** any person owning a lot, lots or portion of a lot within the City of Sacramento, and fronting on any portion of a public street, alley or place where a sidewalk exists.

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

Sec. 38.72 Owner's duty to repair defective sidewalk

An owner shall have the duty to repair any defective sidewalk fronting on such owner's lot, lots or portion of a lot. Where the 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, but the Director may grant permission to cut the root; provided, however, that if the root is other than a surface root, the Director shall consult with the Department of Parks and Community Services concerning the manner of dealing with the subsurface root.

Sec. 38.73 Enforcement of article

The City Manager, through the Director, shall enforce this article.

Sec. 38.74 Civil liability for injuries caused by defective sidewalk

An owner who has a defective sidewalk fronting on such owner's lot, lots or portion thereof shall bear the civil liability, if any, to a person suffering personal injury or property damage caused by the defective sidewalk. In the event that the City is held liable in any civil action for damages for personal injury or property damage caused by a defective sidewalk, the City shall be entitled to full indemnity from the owner.

Sec. 38.75 Purpose of Article

It is the purpose of this article 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 article, or some combination thereof.

Division 2. Procedure for repair of defective sidewalks

Sec. 38.76 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 thereof fronting on the defective sidewalk, to repair the defective sidewalk. The Director may also give such notice to the person in possession of the said lot, lots or portion thereof, in addition to the notice given to the owner.

Sec. 38.77 Service of notice

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

- (1) Personal service of a copy of the notice on the owner;
- (2) 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;
- (3) Personal service of a copy of the notice on the person in possession of the lot, lots or portion thereof, fronting on the defective sidewalk, if a copy of the notice so served is also mailed to the owner in accordance with subparagraph (2) above;
- (4) Posting the notice in a conspicuous place at the lot or lots fronting on the defective sidewalk, if a copy of the notice so posted is also mailed to the owner in accordance with subparagraph (2) above.

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 as was set forth in the initial notice.

Sec. 38.78 Contents of notice

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

- (1) that the sidewalk is a defective sidewalk;
- (2) the nature of the work required to be done, and the cost as estimated by the City;
- (3) the manner in which the work is to be done, including the specifications required by the City as to materials and workmanship; and
- (4) that if the repair is not commenced within the time specified in this division, or once commenced is not prosecuted diligently and without interruption to completion, 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 on the defective sidewalk. The Director shall, in the notice to repair, provide that the owner may elect to perform the repairs himself/herself, have the work performed by a licensed contractor, or have the work performed by the City, through a contractor selected by the City. The Director shall include with the notice an agreement, in such form as is 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. The owner shall make the election on the agreement and shall execute it and return it to the Director forthwith.

In addition, if bonds are to be issued to represent the security of any unpaid assessment, and the City Council has adopted a resolution to that effect, the notice to repair shall specify that bonds are to be issued for that purpose, payable over a period of not to exceed six years, and that the maximum interest rate of interest on the unpaid indebtedness shall not exceed the rate permitted by Section 53531 of the Government Code, payable semiannually.

Sec. 38.79 Time for commencement and completion of repairs

The repairs required by the notice to repair shall be commenced within sixty (60) days after the owner elects either to perform the repairs himself, or hire a licensed contractor to perform the repairs, or within sixty (60) days after service of the second notice, which ever occurs first, and once commenced the repairs shall be diligently and without interruption prosecuted to completion.

Sec. 38.80 Failure to make required repairs

If, after notice to repair has been given, the owner fails to make the repairs required by the notice within the time prescribed in this division, the Director shall cause the City to make the required repairs, and the cost thereof shall be a lien on the lot or lots of the owner, fronting on the defective sidewalk.

Sec. 38.81 Assessment proceedings

If the required repairs have been made by the City, the Director shall, upon completion of the repairs, commence proceedings for assessment of the cost of the repair against the lot, lots or portions of a lot fronting on the defective sidewalk. The proceedings for levy and collection of the assessment shall be taken in accordance with the provisions of Streets and Highways Code Sections 5616 through 5630, as those sections now exist or as they may be amended or renumbered.

Sec. 38.82 Alternative payment plan for assessment

Notwithstanding any provision of this Chapter or of the Streets and Highways Code to the contrary, if the owner demonstrates to the reasonable satisfaction of the City Director of Finance or designee that the payment of the assessment for repair of the defective sidewalk will constitute a severe financial hardship on the owner, then no action shall be taken to collect the assessment lien provided that the owner enters into an agreement to pay such assessment on such terms as may be acceptable to the owner and the Director of Finance. The City Manager shall have the authority to enter into and execute such agreement for the city. If the owner fails to perform the agreement, then the City shall have the right to collect said assessment lien 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.

DATE PASSED FOR PUBLICATION: October 30, 1990


DATE ENACTED: November 6, 1990

DATE EFFECTIVE: December 7, 1990



MAYOR

ATTEST:



CITY CLERK