

Chapter 12.24

SIDEWALK REPAIR, MAINTENANCE AND LIABILITY

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12.24.010 Definitions

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

“City Tree” City Tree means any woody plant which is growing within the public right-of-way along a city street and has a trunk four inches or more in diameter at four and on-half feet above normal ground level.

"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.

"Director" means 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 amended or renumbered.

“Good Faith Effort” Owner’s diligent and honest effort to take deliberate action to obtain cost estimates and a timeline for and work and repair

"Lot," "lots" or "portion of a lot" means a parcel of real property located within the city of Colfax, 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.

"Owner" means a person owning a lot (residential, commercial, industrial), or portion of a lot within the city of Colfax, and fronting any portion of a public street, alley or other place, where a sidewalk exists.

“Private Tree” A private tree is a tree whose trunk is completely outside of the City right-of-way.

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

“Sidewalk” As used in this chapter “sidewalk” includes a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls or other works for the protection of any sidewalk or of any such park or parking strip.

“Standards of Repair” Over 99 percent of the sidewalk area should be free of vertical misalignments greater than ¼ inch, horizontal cracks greater than ¾ inch, or spalled areas greater than ½-inch. Repair should include grinding, crack filling and patching.

12.24.020 Owner's duty to repair defective sidewalk.

A. 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 an arborist.

B. For properties on corner lots which may have an increased burden (more than one sidewalk, and American with Disabilities (ADA) requirements for special ramps/treatment etc.), sidewalk repair will be evaluated on a case-by-case basis, and at the City Manager’s discretion the city may waive the requirement for the repair.

C. The City will evaluate “sidewalks to nowhere” on a case-by-case basis. For sidewalks that are in remote areas or that do not provide meaningful connections, the City Manager has the discretion to waive the repair requirement.

D. For sidewalks on hillsides that are substantially separated from the adjacent sidewalk, the City shall evaluate requirements for repair on a case-by-case basis at the discretion of the City Manager.

E. Notwithstanding the foregoing, if the Owner believes that damage to the sidewalk was caused by a City Tree, the Owner shall so notify the Director in writing. If the Director determines that all or a

portion of the damage to the sidewalk was caused by a City Tree, the City shall repair the damage to the sidewalk caused solely by the City Tree. , The City's repair of such damage does not alter or affect the provisions of Section 12.24.040 and 12.24.050 hereof.

F. Notwithstanding the foregoing, if the Owner believes that the damage to the sidewalk was caused by the City, the owner shall so notify the Director. If the Director determines that all or a portion of the damage to the sidewalk was caused solely by the City, the City shall repair the damage to the sidewalk caused by the City. The City's repair of such damage does not alter or affect the provisions of Section 12.24.040 and 12.24.050 hereof.

12.24.030 Enforcement of chapter-Specifications. The Director shall enforce this chapter and establish criteria and specifications for each type of repair.

12.24.040 Civil liability for injuries.

Each Owner required by Section 12.24.020 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 12.24.020, any person suffers injury or property damage, the property Owner shall be liable to such person for the resulting injury or damage.

12.24.050 Indemnity.

An Owner shall defend and indemnify the city and its employees and consultant staff 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 12.24.020. 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.

12.24.060 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 California 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.

12.24.070 Notice to repair.

When the City Manager or Public Works 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.

12.24.080 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.

12.24.090 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;
- C. The manner in which the work is to be done, including the specifications required by the city as to materials and workmanship;
- D. If after 90 days, and a good faith effort has been made to work if the property owner on a solution, 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. Provided that the Owner may elect to perform the repairs him 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 with reimbursement by the property Owner;
- 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.

12.24.100 Time for commencement and completion of repairs by Owner.

- A. The Owner shall commence the repairs required by the notice to repair within ninety (90) days after the Owner elects either to perform the repairs as outlined in Section 12.24.090 E, or within ninety (90) days after service of the second notice, whichever occurs first. Once commenced, the repairs shall be completed diligently and without interruption.

B. The city may grant time extension(s) on a case-by-case basis if a good faith effort has been made toward repairing the sidewalk.

12.24.110 Failure to make required repairs.

It is the City's intent to work with property owners and provide flexible solutions. 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 negotiated with the Owner, via payment installment plan, or voluntarily placed by the Owner of the payment on the tax rolls, and if all else fails then 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.

12.24.120 Payment for repairs.

A. The Owner is responsible for paying 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 thirty (30) days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the Finance Department may initiate proceedings to make the cost of the work performed by the City of a special assessment against the parcel(s) of property fronting the repaired sidewalk(s).

C. Notwithstanding any contrary provision of this chapter or the California Streets and Highways Code, if the Owner demonstrates to the reasonable satisfaction of the city Finance Department 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 Finance Department. This could include a request for installment payments, or a request for the amount to be added voluntarily to the property's tax rolls. 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.

12.24.130 Assessing costs of sidewalk repairs upon nonpayment of invoice.

A. If the Owner has not provided payment thirty (30) days after receipt of an invoice for the work provided by the city for repair of a defective sidewalk, the Finance Department 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 Finance Department 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 the City Council, 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 Finance Department. The notice shall set the date and time by which shall be filed with the Finance Department. No objection or protest received after that date and time shall be considered.

12.24.140 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 the City Council.

12.24.150 Notice of hearing.

The Finance Department 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 Finance Department.

12.24.160 Hearing and decision.

At the time fixed for consideration of the protest, the City Council 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 City Council following a public hearing may make revisions, corrections, or modifications of the matter as they deem just, and City staff shall submit the report (as revised, corrected or modified) to the City Finance staff for adjustment and/or collection. The 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. The decision of the City Council on all protests or objections shall be final and conclusive.

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 sidewalk(s). 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 commences within thirty (30) days after the assessment is confirmed by the City Council.