



**COUNCILMEMBER DAVID ALVAREZ**

**City of San Diego  
Eighth District**

**MEMORANDUM**

**DATE:** March 15, 2016

**TO:** City Attorney Jan Goldsmith

**FROM:** Councilmember David Alvarez

**SUBJECT:** Revising Council Policy 200-12: Sidewalk Maintenance Policy

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For years, the City has shifted the responsibility of sidewalk maintenance to abutting property owners via Council Policy 200-12 (attached), which relies on language from the California State and Highway Code, Section 5610 (attached). As written, this policy places the responsibility for sidewalk replacement on the abutting property owner unless an unsafe condition exists. The policy outlines six instances in which the City would replace a sidewalk. It also establishes a 50/50 matching program that allows residents and the city to share costs. This policy essentially forces property owners to pay for permanent repairs to damaged sidewalks in most instances. Consequently, very few sidewalks are actually repaired every year, but the City is held liable by the courts if someone is injured. In short, the approach taken by the City on this issue, in particular the 50/50 matching program, has not been effective and needs to be changed.

In a memorandum of law that you released on January 28, 2011, you discuss that the City could adopt an ordinance that would change who is responsible to maintain and repair sidewalks. Given the City's ability to draft such an ordinance, I would like to explore how the City could change Council Policy to ensure that it is the City's responsibility to repair broken sidewalks. This way the City can proactively repair sidewalks instead of waiting for someone to get injured to necessitate that repair.

At a City Council meeting in September of 2015, the City Sidewalk Assessment was discussed and there was interest from multiple City Councilmembers in shifting responsibility for sidewalk maintenance and repair to the City. The Council moved that such a proposal should be heard and discussed at an Infrastructure Committee meeting in January 2016. Although such a discussion has

not yet been docketed, I strongly believe that Council Policy 200-12 needs to be revised to shift the cost of maintaining sidewalks back to the City except in cases where it has been determined that an abutting property owner, or third party, damaged the sidewalk themselves. This should also include missing sidewalks in existing neighborhoods within the City. Additionally, the Council Policy should state that if the City is made aware of an unsafe sidewalk condition, that the City should replace that section of the sidewalk, instead of only patching it with asphalt, which quickly deteriorates.

In an effort to revise Council Policy 200-12 in the most straightforward and meaningful way possible, I would request that you review the existing language and provide suggestions as to how it can be re-written to accomplish the goals outlined above.

Thank you for your timely response to this matter.

CC: Honorable Mayor Faulconer  
Honorable City Councilmembers  
Andrea Tevlin, IBA

**COUNCIL POLICY****CURRENT**

SUBJECT:                    SIDEWALK MAINTENANCE POLICY  
POLICY NO.:                200-12  
EFFECTIVE DATE:        February 6, 1975

**BACKGROUND:**

The City's practices with regard to the maintenance of existing Portland Cement Concrete (PCC) sidewalks has for many years been based on the California Streets and Highways Code, Section 5610.

This section essentially places the responsibility for replacement of PCC sidewalk totally on the abutting property owner unless an unsafe condition exists because of some act of the City or some third party, such as allowing parkway trees to damage the sidewalk, permitting poor compaction of soil under a sidewalk, sidewalk damage caused by City utility intrusion, etc. Consequently, PCC sidewalk replacement at City expense is done only under the following conditions:

1.     Damage caused by parkway trees.
2.     Damage due to grade subsidence.
3.     Damage due to City utility cuts.
4.     Sidewalk fronting City-owned property.
5.     Sidewalk at street intersection (no abutting property).
6.     Damage due to heat expansion.

A significant portion of an existing unsafe sidewalk does not fall into any of the above categories, but is in such a condition because of its age. Naturally, these conditions are most prevalent in older parts of the community. Replacement of these unsafe old sidewalks therefore depends on the financial ability and willingness of the abutting property owners to do so. Experience indicates that few citizens avail themselves of the opportunity to replace an unsafe sidewalk. This is probably because they are reluctant to go through the process of obtaining a contractor, bids, permits, etc. All unsafe sidewalk conditions which come to the attention of the City are patched with asphalt to eliminate tripping hazards and assist in protecting the City from liability.

As a result of the aforementioned, there are now many areas of aged sidewalk which have been asphalt patched for safety, but which nevertheless are not satisfactory to the affected users. The problem is particularly acute in areas heavily used by senior citizens and small children.

**PURPOSE:**

The purpose of this policy is to modify the City's sidewalk maintenance practice to permit greater financial participation in the replacement of unsafe PCC sidewalks by the City.

**POLICY:**

It is the policy of the City Council that the cost of replacing unsafe Portland Cement Concrete sidewalk:

- A.     Will be borne entirely by the City when:

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1. It has been damaged by parkway trees.
  2. It has been damaged by grade subsidence.
  3. It has been damaged by City utility cuts.
  4. It fronts on City-owned property.
  5. It exists at street intersections.
  6. It has failed because of heat expansion.
- B. Will be borne on a 50/50 matching basis under all other conditions; provided, however, that damage to sidewalks which the City Manager determines to have been caused by owners of property abutting damaged sidewalks or by third parties shall not be qualified for the 50/50 matching basis funding.

This policy applies only to conventional sidewalks built on-grade and is not meant to cover special circumstances such as sidewalks constructed over basements, garages or other unique features. Determination as to whether repairs are required shall be made by the City Manager.

HISTORY:

Adopted by Resolution R-212590 02/06/1975

## **STREETS AND HIGHWAYS CODE**

### **SECTION 5610-5618**

5610. The owners 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, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.

5611. When any portion of the sidewalk is out of repair or pending reconstruction and in condition to endanger persons or property or in condition to interfere with the public convenience in the use of such sidewalk, the superintendent of streets shall notify the owner or person in possession of the property fronting on that portion of such sidewalk so out of repair, to repair the sidewalk.

5612. Notice to repair may be given by delivering a written notice personally to the owner or to the person in possession of the property facing upon the sidewalk so out of repair, or by mailing a postal card, postage prepaid, to the person in possession of such property, or to the owner thereof at his last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the person owning such property as shown in the records of the office of the clerk.

5613. The postal card shall contain a notice to repair the sidewalk so out of repair, and the superintendent of streets shall, immediately upon the mailing of the notice, cause a copy thereof printed on a card of not less than 8 inches by 10 inches in size, to be posted in a conspicuous place on the property. In lieu of posting a copy of the mailed notice on the property as provided in this section, the superintendent of streets may, not less than seven days nor more than 10 days after the mailing of the first postal card notice, mail an additional postal card, postage prepaid, marked "Second Notice," to the person to whom the first postal card notice was addressed. The second notice shall otherwise contain the material required by this article, but shall not extend the time for commencing repairs specified in Section 5614.

5614. The notice shall particularly specify what work is required

to be done, and how it is to be done, and what materials shall be used in the repair and shall further specify that if the repair is not commenced within two weeks after notice is given and diligently and without interruption prosecuted to completion, the superintendent of streets shall make such repair, and the cost of the same shall be a lien on the property.

5614.1. The legislative body may adopt a resolution determining that bonds shall be issued and assessments collected and enforced pursuant to Part 5 of this division. In such event, the notice to repair shall specify that bonds shall be issued to represent the security of the unpaid assessments, payable over a period of not to exceed six years, and shall further recite a maximum rate of interest to be paid on the indebtedness, which shall not exceed 7 percent a year, payable semiannually.

5615. If the repair is not commenced and prosecuted to completion with due diligence, as required by the notice, the superintendent of streets shall forthwith repair the sidewalk. Upon the written request of the owner of the property facing the sidewalk so out of repair, as ascertained from the last equalized assessment roll of the city, or as shown in the records of the office of the clerk, the superintendent may repair any other portion of the sidewalk fronting on the property that is designated by the owner. The superintendent shall have power to prescribe the form of the written request. The cost of repair work done by request pursuant to this section shall be a part of the cost of repairs for which, pursuant to this chapter, subsequent notices are given, hearings held and assessment and collection procedures are conducted.

5616. Upon the completion of the repair, the superintendent of streets shall cause notice of the cost of the repair to be given in the manner specified in this article for the giving of notice to repair, which notice shall specify the day, hour and place when the legislative body will hear and pass upon a report by the superintendent of streets of the cost of the repair together with any objections or protests, if any, which may be raised by any property owner liable to be assessed for the cost of such repair and any other interested persons. If bonds are to be issued, the notice shall also contain the information required by Section 5614.1.

5617. Upon the completion of the repair, the superintendent of streets shall prepare and file with the legislative body a report specifying the repairs which have been made, the cost of the repairs, a description of the real property in front of which the repairs have been made and the assessment against each lot or parcel of land proposed to be levied to pay the cost thereof. Any such report may include repairs to any number of parcels of property, whether contiguous to each other or not.

5618. Upon the day and hour fixed for the hearing the legislative body shall hear and pass upon the report of the superintendent of streets, together with any objections or protests which may be raised by any of the property owners liable to be assessed for the work of making such repair and any other interested persons. Thereupon the legislative body may make such revision, correction or modifications in the report as it may deem just, after which, by motion or resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed. The legislative body may adjourn the hearings from time to time. The decisions of the legislative body on all protests and objections which may be made, shall be final and conclusive.

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