



# SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

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October 1, 2013

## PROCEDURAL MEMORANDUM M-26 (APWA 23.15)

**TO:** Public Works Staff Involved in the Sidewalk Maintenance Process

**FROM:** Don Spagnolo, Transportation Programs

**VIA:** Dave Flynn, Deputy Director of Public Works

**SUBJECT: Sidewalk Maintenance Criteria**

### 1. OBJECTIVE

To establish formal procedures for sidewalk maintenance and repair under California Streets and Highways Code Sections (S&H §) 5600-5602, 5610-5618 and 5625-5630.

### 2. AUTHORITY

Per S&H §5610, the owners of lots “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.” Per S&H §5600, a 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.”

Per S&H §5625, “the cost of the repair may be assessed by the legislative body against the parcel of property fronting upon the sidewalk upon which such repair was made, and such cost so assessed, if not paid within five days after its confirmation by the legislative body, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record.”

### 3. PROCEDURE (APWA 23.15 Curbs, Gutters and Sidewalks)

The following establishes procedures for staff to follow in addressing sidewalk maintenance.

#### A. Notification of Sidewalk Condition

Public Works staff notified of a sidewalk condition that might endanger persons or property by (phone, email, on-line contact form, counter), Supervisors, Advisory Councils, staff, etc.

Upon notification the Superintendent of Streets will within 2 business days:

1. Send the property owner and the person in possession of the property an Initial Notice of Sidewalk Condition by certified/return receipt mail (sample attached)
2. Track the conditions in SAP (see attached flowchart).

#### B. Verify and Assess Sidewalk Condition

Following notification the Superintendent of Streets or designee will evaluate the condition of the sidewalk per the County Public Improvement Standards to determine if the sidewalk should be repaired or replaced. Grinding may be recommended when thresholds are exceeded. Sidewalks will be replaced in kind.

1. If repairs are not needed, the condition will be logged in SAP and closed out.
2. If repairs are needed
  - a. The condition shall be marked in orange paint (~2' on either side) to notify users; and
  - b. The Superintendent of Streets shall create a SAP notification regarding the condition of the sidewalk.; and
  - c. Preliminary design and cost estimates will be developed to include with the Second Notice of Sidewalk Condition. The County may participate when ADA ramps need repair. If the owner is responsible for less than 100% of the repair cost it will be shown in the estimate.

#### C. Notice to Repair Sidewalk

After confirming repairs or replacement is needed, a First Notice to Repair Sidewalk is sent to the owner or person in possession of the property, Homeowner Associations or utility company via certified mail by the Superintendent of Streets (sample attached).

The notice to repair sidewalk shall "particularly specify" the following per S&H Section 5614:

- What work is required to be done
- How it is to be done
- What materials shall be used in the repair
- Specify that if the repair is not commenced within two weeks after notice is given and diligently and without interruption prosecuted to completion, the costs of repairs may result in a lien on the property
- A copy of the encroachment permit application will be mailed with the notice of Determination of Deficiency

- Repairs needed due to utility vaults, covers or pedestals will be directed to the utility company.

Following the initial notice, a second notice via certified mail shall be mailed within 7-10 days. The second notice shall reference the initial notice, include the same information as the initial notice, and shall state that if the repair is not commenced within the time period set forth in the initial notice, 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. This notice shall be recorded with the County Clerk-Recorder's office.

#### **D. Construction**

##### **1. Repair by Owner**

The owner must obtain an encroachment permit prior to performing any work within the county right-of-way. Provisions for design review, inspection, and payment are covered under the encroachment permit process. The Encroachment Engineer will work with the Superintendent of Streets regarding the previous notices and recommendations.

##### **2. Repair by County**

If the sidewalk repair is not commenced within two (2) weeks after the initial notice (i.e applied for encroachment permit) or the repairs are not completed within sixty (60) days after the issuance of encroachment permit and there has been no time extension granted, then the County may pursue the repairs.

#### **E. Board of Supervisors Assessment Hearing**

The Superintendent of Streets will hold hearings at the Board of Supervisors to place liens on parcels where the County has completed sidewalk repairs. Hearing dates should be scheduled within six (6) weeks after completion of the repairs.

The board letter shall include the following per S&H §5617, "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."

The report may include repairs to any number of parcels of property, whether contiguous to each other or not. The adoption of the report by the Board of Supervisors "shall be final and conclusive" per S&H §5618.

#### **F. Funding Options**

Per S&H §5625, "the cost of the repair may be assessed by the legislative body against the parcel of property fronting upon the sidewalk upon which such repair was made, and such cost so assessed, if not paid within five days after its confirmation by the legislative body, shall constitute a special assessment against that parcel of property, and shall be

a lien on the property for the amount thereof which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record.”

The **Superintendent of Streets** will seek direction from the Board on the NOTICE OF LIEN. The NOTICE OF LIEN may be recorded with the Office of the County Clerk-Recorder or turned over to the Office of the Assessor and Tax Collector. The lien would be removed upon any of the following conditions:

1. Direct payment by owner
2. Installation payments by owner (up to 5 per S&H)
3. At time of sale of property (payment via real estate transaction)

The Road Fund will be used to finance the program prior to collection of liens.

#### 4. CHECKLISTS/HANDOUTS

- ◆ **Procedural Flowchart** (attached)
- ◆ **Guidelines for Evaluating Repair Responsibility**

What is causing damage?	Where is it located?	Who is responsible for repairing the damage?
Trees	Private Property	Property Owner
	Public Right of Way (Easement)	Property Owner
	Public Right of Way (Fee Title)	County (unless installed by property owner)
Drainage Structure (Sidewalk Under drain)	Sidewalk and Curb	Property Owner
Drainage Structure (for Storm Drains)	Public Right of Way	County
Utilities (Pipes, Vault, Risers)	Private Property	Property Owner
	Public Right of Way	Utility Owner
Trees, Drainage Structures, Utilities	ADA Ramp	Property Owner (County will participate in ADA upgrades)

- ◆ **Templates** (The **Superintendent of Streets** will manage, update and add)
  - Notice to Landowner to Repair Sidewalk
  - Engineers Estimate for Sidewalk Repair

#### 5. STAFF RESPONSIBILITIES

## A. Implementation

The **Superintendent of Streets** will manage the program and act in the role of “superintendent of streets” for the purpose of the S&H.

## B. Training

The **Superintendent of Streets** is responsible for training maintenance crews to verify and assess the sidewalk conditions per the procedure. As the program develops, additional training materials will be developed.

## C. Tracking

The **Superintendent of Streets** is responsible for tracking all active and closed enforcement projects. The **Superintendent of Streets** is responsible for coordinating with **Public Works Accounting** the repayment of expended Road Funds used for construction. This will be inclusive of assessments.

## D. Sanctions

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## 6. PERFORMANCE MEASURES

- ◆ (Decreasing) Number of Sidewalk claims submitted Risk Management annually
- ◆ (Decreasing) Amount of Road Fund monies expended for sidewalk maintenance

## 7. DEFINITIONS

Superintendent of Streets as defined by the State Streets and Highway Code is delegated by the Director of Public Works.

Also see the San Luis Obispo County Department of Public Works Public Improvement Standards for applicable definitions.

## 8. REFERENCES/RESOURCES

- ◆ San Luis Obispo County Department of Public Works Public Improvement Standards (<http://www.slocounty.ca.gov/PW/DevServ/PublicImprovementStandards.htm>)
- ◆ California Streets and Highways Code ([http://www.leginfo.ca.gov/html/shc\\_table\\_of\\_contents.html](http://www.leginfo.ca.gov/html/shc_table_of_contents.html))

Attachments:

1. Flowchart
2. Sample *Letter of Initial Notice*
3. Sample *First Notice to Repair*
4. Sample *Second Notice to Repair*
5. Relevant sections of the S&H Code

File:

Reviewed by:

*Author (Michelle Matson)*

*County Counsel (Pat Foran)*

*Deputy Director of Public Works (Dave Flynn)*

*Director of Public Works (Paavo Ogren)*

*Human Resources Risk Management (John Schwind)*

*Public Works Development Services Division (Frank Honeycutt, Armand Boutte)*

*Public Works Roads Division (Jeremy Ghent)*

*Public Works Transportation Division (Glenn Marshall, Don Spagnolo)*

To be Reviewed by:

*County Board of Supervisors*

# ATTACHMENT 1

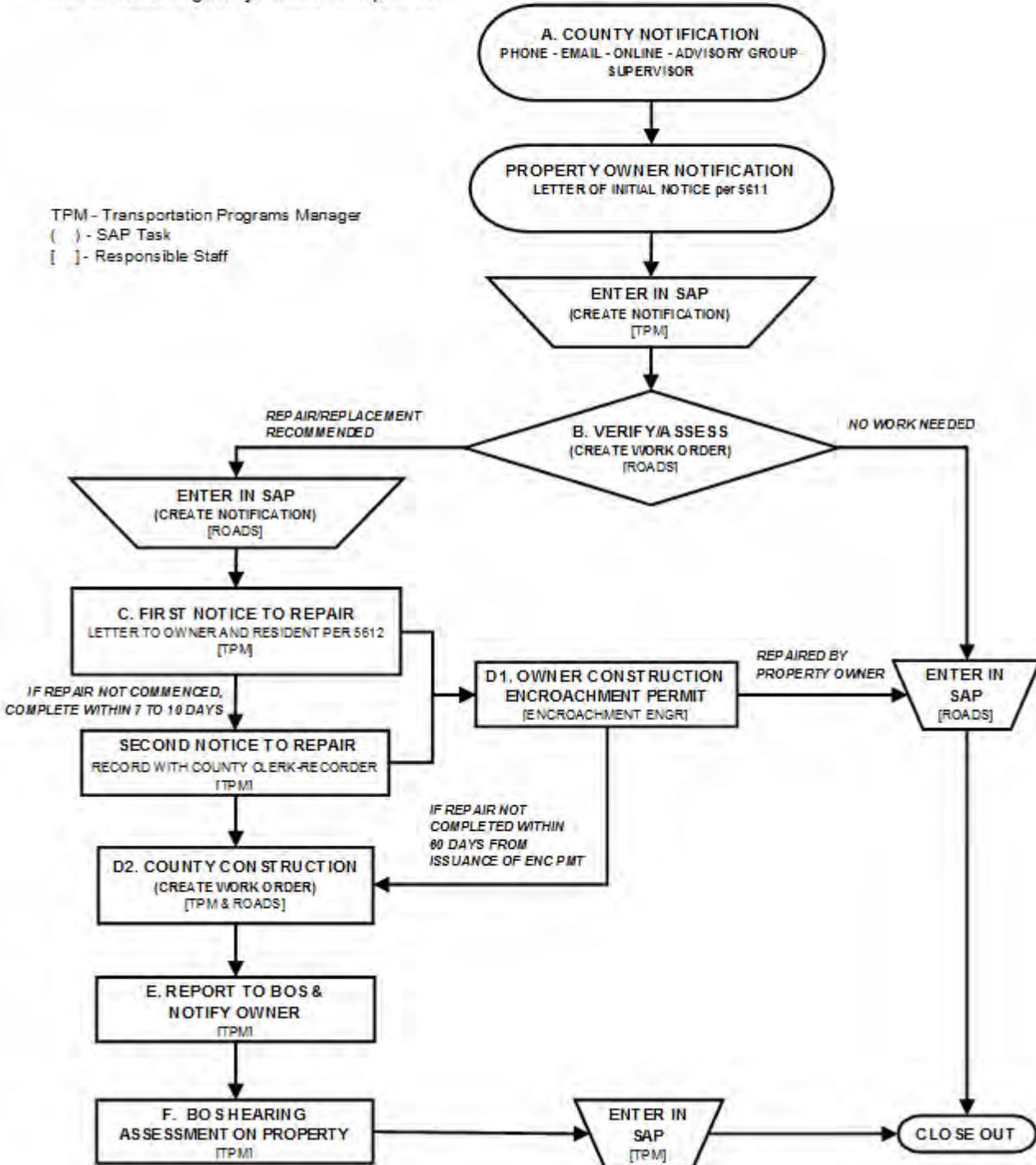


## SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS



### Procedural Memorandum M-26 Sidewalk Maintenance Criteria Streets and Highways Code Chapter 22

TPM - Transportation Programs Manager  
( ) - SAP Task  
[ ] - Responsible Staff



**ATTACHMENT 2**

CONSTRUCTIVE NOTICE  
RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:  
Transportation Programs Manager  
San Luis Obispo County Department of Public Works  
Room 207, County Government Center  
San Luis Obispo, CA 93408

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DATE

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

PROPERTY OWNER  
PROPERTY OWNER ADDRESS, STATE, ZIP

**SUBJECT: INITIAL NOTICE OF SIDEWALK CONDITION**

Dear PROPERTY OWNER:

You are hereby notified that a complaint has been filed with the Department of Public Works that improvements fronting your property are in a state of disrepair and in such a condition that it endangers persons and property and further interferes with the public convenience in the use of the right-of-way. The location and description of the complaint are as follows:

Property Address: PROPERTY ADDRESS, STATE, ZIP  
Property Legal: LEGAL DESCRIPTION OF PROPERTY

Description: SUMMARY OF COMPLAINT WITH SPECIFICS IF POSSIBLE

You are further notified that the Department of Public Works is investigating this complaint and may require you, the property owner, to repair improvements to current standards and at your sole cost and expense.

The Superintendent of Streets will provide a recommendation for action. If you dispute this finding you may contact our office for final determination by the Road Commissioner or his designee.

Please contact me if you would like to discuss this matter in more detail or to obtain information on construction, placement, or maintenance of sidewalks in the County right-of-way.

Sincerely,

STAFF NAME  
Transportation Programs Manager  
805/781-5252

Cc: Current resident, PROPERTY ADDRESS, STATE, ZIP  
Road File: ROAD No

## ATTACHMENT 3

DATE

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

PROPERTY OWNER  
PROPERTY OWNER ADDRESS, STATE, ZIP

**SUBJECT: FIRST NOTICE TO REPAIR SIDEWALK**

Dear PROPERTY OWNER:

You are hereby notified that the DESCRIPTION OF ISSUES of the sidewalk located at PROPERTY ADDRESS, COMMUNITY is in a state of disrepair, and in such a condition that it endangers persons and property and further interferes with the public convenience in the use of such sidewalk. This notice is given in accordance with the provisions of Sections 5611 to 5614, inclusive of the Streets and Highways Code of the State of California.

You are further notified that the following repairs to the above-described portion of the sidewalk are required to be made:

1. **by authorization via encroachment permit what work is required to be done**
2. **how the work is to be done**
3. **what materials shall be used in the repair**
4. **develop preliminary design and cost estimate applicable to the proeprty owner**

If within two weeks after you have been given this notice, you have not commenced and are not proceeding with diligence and without interruption to complete such repairs, the Superintendent of Streets will undertake such repair work.

You are further notified that in the event the Superintendent of Streets makes the repairs, the cost thereof shall be a lien upon your property described above.

Please contact me at your earliest convenience to discuss this matter and to obtain information on construction, placement, or maintenance of sidewalks in the County Right-of-Way.

Sincerely,

STAFF NAME  
Transportation Programs Manager  
805/781-5252

Attachment:

1. Encroachment Permit Applications
2. Photos

Road File: ROAD No

## ATTACHMENT 4

DATE

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

PROPERTY OWNER  
PROPERTY OWNER ADDRESS, STATE, ZIP

**SUBJECT: SECOND NOTICE TO REPAIR SIDEWALK**

Dear PROPERTY OWNER:

You are hereby notified that the DESCRIPTION OF ISSUES of the sidewalk located at PROPERTY ADDRESS, COMMUNITY is in a state of disrepair, and in such a condition that it endangers persons and property and further interferes with the public convenience in the use of such sidewalk. This notice is given in accordance with the provisions of Sections 5611 to 5614, inclusive of the Streets and Highways Code of the State of California.

You are further notified that the following repairs to the above-described portion of the sidewalk are required to be made:

5. **by authorization via encroachment permit what work is required to be done**
6. **how the work is to be done**
7. **what materials shall be used in the repair**
8. **develop preliminary design and cost estimate applicable to the proeprty owner**

If within two weeks after you have been given the FIRST NOTICE TO REPAIR SIDEWALK notice, you have not commenced and are not proceeding with diligence and without interruption to complete such repairs, the Superintendent of Streets will undertake such repair work.

You are further notified that in the event the Superintendent of Streets makes the repairs, the cost thereof shall be a lien upon your property described above.

Please contact me at your earliest convenience to discuss this matter and to obtain information on construction, placement, or maintenance of sidewalks in the County Right-of-Way.

Sincerely,

STAFF NAME  
Transportation Programs Manager  
805/781-5252

Attachment:

3. Encroachment Permit Applications
4. Photos

Road File: ROAD No

**ATTACHMENT 5**  
**STREETS AND HIGHWAYS CODE 5600-5602, 5610-5618, 5625-5630**

5600 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.

5601 This chapter shall only apply to maintenance and repair...and shall not be used for the construction of new improvements

5602 This chapter constitutes a separate and alternate procedure for performing the work...

5610 The owners...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...

5611 When any portion of the sidewalk is out of repair...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.

5613 ...immediately upon the mailing of the notice, cause a copy (>8"X10") 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.

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 (#1) 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 ... 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... the superintendent of streets shall forthwith repair the sidewalk. Upon the written request of the owner of the property... the superintendent may repair any other portion of the sidewalk fronting on the property that is designated by the owner.

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 ...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 ...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 decisions of the legislative body on all protests and objections which may be made, shall be final and conclusive.

5625 The cost of the repair may be assessed by the legislative body against the parcel of property fronting upon the sidewalk upon which such repair was made, and such cost so assessed, if not paid within five days after its confirmation by the legislative body, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record.

5626 The superintendent of streets may file in the office of the county recorder of the county in which the parcel of property is located, a certificate substantially in the following form...NOTICE OF LIEN

5627 From and after the date of the recording of the notice of lien, all persons shall be deemed to have had notice of the contents thereof. The notice of lien may include claims against one or more separate parcels of property, whether contiguous or not, together with the amount due, respectively, from each such parcel. The statute of limitation shall not run against the right of the city to enforce the payment of the lien. If any such lien is not paid the city may file and maintain an action to foreclose such lien in the same manner and under the same procedure, so far as applicable, as that under which delinquent bonds are foreclosed under this division.

5628 As an alternative method of collection of the amount of the lien, the legislative body, after confirmation of the report of the superintendent of streets, may order the notice of lien to be turned over to the assessor and the tax collector of the city, whereupon it shall be the duty of those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land. The notice of lien shall be delivered to the county auditor before the date fixed by law for the delivery of the assessment book to the county board of equalization.

5628.1 The legislative body shall have the power, in its discretion, to determine that the payment of assessments of one hundred dollars (\$100) or more may be made in annual installments, not to exceed five, and that the payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the legislative body, not to exceed the rate permitted for bonds by Section 53531 of the Government Code. Interest shall begin to run on the 31st day after the confirmation of the assessments by the legislative body. Determinations of the legislative body shall be expressed by resolution at any time prior to the confirmation of the assessments.

5629 Thereafter the amount of the lien shall be collected at the same time and in the same manner as ordinary city taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary city taxes.

5629.1 If bonds are to be issued to represent the security of the unpaid assessments, upon confirmation of the report by the legislative body the superintendent of streets shall give notice to pay by mail and by publication substantially in the manner provided by Sections 4320 and 4321 of this code. The period for payment in cash stated therein shall be 30 days following the date of confirmation of the report. Upon completion of the cash payment period, the superintendent of streets shall file with the county recorder a certificate substantially in the form set out in Section 5626, giving notice therein

that interest is payable at a rate to be fixed upon the sale of bonds, which rate shall not exceed the rate permitted for bonds by Section 53531 of the Government Code, and shall begin to run on the 31st day after the confirmation of the report. Thereafter the provisions of Part 5 (commencing with Section 6400) shall be applicable and payments on assessments at bond shall be made as therein provided. The bonds may be issued and sold as the legislative body directs and may be dated at any time after the expiration of the cash payment period.

5630 "Whenever the property fronting on a sidewalk required to be maintained and repaired pursuant to the provisions of this chapter lies within one city or unincorporated territory of a county, and the sidewalk required to be so maintained and repaired lies within another city or unincorporated territory of a county, the superintendent of streets of the city or county having jurisdiction over the sidewalk shall have full authority to serve notices to repair..."