

ORDINANCE 13-08

AN ORDINANCE ADDING CHAPTER 7.9 TO TITLE 7 OF THE CLOVIS MUNICIPAL CODE PERTAINING TO SIDEWALK AREA MAINTENANCE AND REPAIR

THE CITY COUNCIL OF THE CITY OF CLOVIS DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. Pursuant to section 5610 of the California Streets and Highways Code, landowners adjacent to public sidewalk areas are responsible for maintaining such sidewalk areas in a safe condition that does not interfere with the public's convenience.
- B. Pursuant to section 5615 of the Streets and Highways Code, the superintendent of streets and repairs (in Clovis, the Public Utilities Director) may repair and maintain a sidewalk area if the adjacent landowner does not, and assess and charge the abutting landowner for the cost of such repairs and maintenance.
- C. Under the Streets and Highways Code and the Clovis Municipal Code, the adjacent landowner currently bears no responsibility to the general public for maintaining safe conditions on adjacent sidewalk areas, other than a duty of ordinary care, and cannot be held liable for personal injuries borne by the general public resulting from unsafe sidewalk area conditions.
- D. This Ordinance is designed to clarify the sidewalk area maintenance responsibilities of adjacent landowners, and to expressly make them liable to members of the general public for personal injury or property damage that results from the landowner's failure to maintain the adjacent sidewalk area.

SECTION 2. Adoption.

Chapter 7.9, and Sections 7.9.01 through 7.09.07, of Title 7 of the Clovis Municipal Code, is hereby added to read as follows:

Chapter 7.9

SIDEWALK AREA MAINTENANCE AND REPAIR

Sec. 7.9.01 Purpose and applicability.

It is the purpose of this chapter to provide sidewalk area maintenance and repair procedures which are alternative and supplementary to the procedures set forth in 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 procedures set forth in the Streets and Highways Code or those set forth in this chapter, or some combination thereof. In the event of any conflict between the provisions of the Streets and Highways Code and this chapter, the provisions of this chapter shall control.

Sec. 7.9.02 Definitions.

For purposes of this chapter, the following definitions apply:

- (a) "Defective sidewalk" means a sidewalk area where, in the judgment of the director, the vertical or horizontal line or grade is altered or displaced to the extent that a safety hazard exists, or the sidewalk area is in such a condition as to endanger property or persons using the sidewalk area in a reasonable manner, or is in such a condition as to interfere with the public convenience in the use thereof.
- (b) "Director" means the Public Utilities Director, or his/her designee; "Director" shall have the same meaning as the term "superintendent of streets" as utilized in the Streets and Highways Code Section 5600 et seq.
- (c) "Lot," "lots" or "portions of a lot" means a parcel of real property located within the City adjacent to or fronting on any portion of a sidewalk area, and when used in connection with the phrase, "adjacent to or fronting on the defective sidewalk," or variation thereof, shall refer to the property in front of or along the side of the defective sidewalk.
- (d) "Maintain and repair" shall mean maintenance so that the sidewalk area remains in a condition that is not dangerous to property or persons using the sidewalk area in a reasonable manner and in a condition that will not interfere with the public convenience in use of the sidewalk area, and shall include, but not be limited to: maintenance and repair of sidewalks including grinding, removal and replacement of sidewalks; maintenance and repair of curbs and gutters; removal and filling or replacement of parking strips; removal of weeds and/or debris; supervision and maintenance of permissible signs and removal of impermissible signs; tree root pruning and installing root barriers; trimming of trees, shrubs and/or ground cover including areas within park strips and between the property line of the adjacent property and the street pavement line. Any root pruning, trimming or removal of trees or shrubs as a part of sidewalk maintenance and repair is subject to the provisions of Chapter 10.1 of this code.
- (e) "Owner" means any person owning a lot, lots, or portions of a lot within the City, adjacent to or fronting on any portion of a sidewalk area.
- (f) "Person" shall include a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them
- (g) "Sidewalk area" means that portion of a street between the street pavement line and the adjacent property line, including curbs and gutters, sidewalks, a park or parking strip, bulkheads, retaining walls, or other works for the protection of any sidewalk area, including any sidewalk, curb and gutter located on side yard frontage.

Sec. 7.9.03 Owner's duty to maintain and repair sidewalk areas.

The owner of a lot, lots or portions of a lot adjacent to or fronting on any portion of a sidewalk area shall maintain the sidewalk area in a safe and non-dangerous condition, and shall repair such sidewalk area and pay the costs and expenses therefor,

including, but not limited to, charges for the City's costs of inspection and administration whenever the City undertakes sidewalk maintenance and repair pursuant to sections 7.9.05 and 7.9.06 of this chapter, and including the costs of collection and placing any assessment lien on the property due to failure of the owner to promptly pay such costs. The procedures set forth in Streets and Highways Code Sections 5600 et seq. shall apply to the imposition and collection of costs and assessments.

Sec. 7.9.04 Liability for injuries to public.

The owner required by Section 7.9.03 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a safe and non-dangerous condition as required by Section 7.9.03, any person suffers injury to or damage to person or property, the owner shall be liable to such person for the resulting damage or injury.

Sec. 7.9.05 Notice to repair.

Where the director has actual notice of the existence of a defective sidewalk, the director may give written notice to repair the defective sidewalk to the owner of the lot, lots or portions thereof adjacent to or fronting on the defective sidewalk. Service of the notice to repair shall be by either regular U.S. mail or by personal service. The notice to repair shall particularly specify what work is required to be done and how the same is to be done and what materials shall be used in the repair; that if the owner proceeds to undertake the repair by private contract, his/her activities will be governed by the provisions of this chapter; the time period within which the repair must be commenced by the owner; and that if the repair is not commenced within such time period and prosecuted diligently without interruption to completion, the director may proceed with the repair, and the cost shall be a lien on the property upon the owner's failure to timely reimburse the City for such cost pursuant to section 7.9.06. The materials and construction work shall be in strict conformance with the applicable portions of the City's standard specifications as they now exist, or as they may hereafter be amended.

Prior to commencing repairs, the owner will apply for and obtain an encroachment permit from the Planning and Development Services Department. For the purposes of this section, the owner is deemed to timely commence the repair of the defective sidewalk by the filing of an application for an encroachment permit within the time period specified in the notice to repair.

The owner may request that the City perform the repair work. If so requested, the City may, at its sole discretion, perform the repair work with City forces, or may contract with a vendor of the City's choosing to perform the work. In either case the property owner will remain responsible for all costs of repair. As provided in Chapter 7.6 of this code, the owner may request financing of the repairs costs, not to exceed Two Thousand Five Hundred (\$2,500), from the City's Curb, Gutter, and Sidewalk Revolving Fund. The owner is deemed to have timely commenced repair of the defective sidewalk upon approval by the City Manager of the owner's request for financing. Bills for required repairs that were not commenced within the time frame as specified by the notice may not be financed through the City's Curb, Gutter, and Sidewalk revolving fund.

The Director may direct City forces to correct minor sidewalk repairs limited to grinding and/or ramping if such repairs can be made in compliance with all applicable laws and regulations. Said repairs are at the sole discretion of the City, and they in no way relieve the owner of the liabilities identified in Section 7.9.04, nor do they set a precedent for future repairs.

Sec. 7.9.06 Failure to make required repairs.

If the person(s) provided with a notice to repair fails to commence the repairs within the time period specified in said notice, or timely commences the repair but fails to diligently prosecute the same without interruption to completion, the director may thereafter cause the City to make the required repairs and bill the person(s) for the cost thereof. If such person(s) fails to pay the cost within the time period specified in the payment invoice, the unpaid sum shall be a lien on the lot, lots or portions thereof adjacent to or fronting on the defective sidewalk.

SECTION 3. Severance Clause.

The City Council declares that each provision of this ordinance is severable and independent of every other provision. If any portion of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held in valid, and further declares its express intent that the remaining provisions of this ordinance should remain in effect after the invalid portion has been eliminated.

SECTION 4. Effective Date.

This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

APPROVED: March 4, 2013



Mayor



City Clerk

The foregoing ordinance was introduced and read at a regular meeting of the City Council held on March 4, 2013, and was adopted at a regular meeting of said Council held on March 11, 2013, by the following vote, to wit:

AYES: Councilmembers Armstrong, Ashbeck, Magsig, Whalen
NOES: None
ABSENT: Mayor Flores
ABSTAIN: None

DATED: March 11, 2013



City Clerk

