



# Agenda Report

**MEETING DATE:** Tuesday, October 25, 2022

**TO:** City Council

**FROM:** PUBLIC WORKS & UTILITIES DIRECTOR DI RENZO  
ASSISTANT DIRECTOR OF PUBLIC WORKS AND UTILITIES  
RODRIGUEZ

**THROUGH:** CITY MANAGER MENDEZ

**SUBJECT:** ORDINANCE REPEALING AND REPLACING CHAPTER 2  
(SIDEWALKS, DRIVEWAYS, CURBS, AND GUTTERS) OF TITLE  
7 (PUBLIC WORKS) OF THE MUNICIPAL CODE REGARDING  
SIDEWALK MAINTENANCE AND LIABILITY- 2nd READING

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## **RECOMMENDED ACTION:**

It is recommended that the City Council pass an ordinance repealing and replacing Chapter 2 (Sidewalks, Driveways, Curbs and Gutters) of Title 7 (Public Works) of the Watsonville Municipal Code regarding maintenance responsibilities and liability for failure to maintain sidewalks, driveways, curbs and gutters.

## **BACKGROUND:**

Sections 5600 et seq. of the Streets and Highways Code requires that owners of property abutting a sidewalk must maintain that sidewalk such that: 1) the sidewalk will not endanger persons or property; and 2) will not interfere with the public convenience. Property owners are NOT responsible for any maintenance of conditions created by anyone other than the property owner pursuant to a permit.

To enforce the requirement of the Streets and Highways Code, cities may impose civil liability on property owners for injuries arising from the condition of the adjacent sidewalk areas. To do so, the City must adopt an ordinance that clearly states that property owners are liable for these conditions. The City's current ordinance already states that property owners are responsible for maintaining the sidewalks in front of their homes. This new ordinance would explain that, if the property owners do not maintain the sidewalks, and someone is injured due to the lack of maintenance, the property owner is liable. Depending on the circumstances, the City could still be liable for dangerous conditions of public property, but revising our ordinance would create an additional level of defense.

Given that adjacent property owners are in the best position to quickly identify and address potentially dangerous conditions that might occur on sidewalks, many cities adopt ordinances similar to that before the Council tonight – that impose liability for the maintenance and repair of sidewalks on those property owners adjacent to sidewalk areas. Imposing liability on those property owners further incentivizes speedy repair of such dangerous conditions.

#### **DISCUSSION:**

Currently, Chapter 2 – Sidewalks, Driveways, Curbs and Gutters of Title 7 – Public Works of the Watsonville Municipal Code includes the following sections that outline various requirements relative to sidewalk maintenance and repair:

- Sections 7-2.01 through 7-2.05 and 7-2.19 cover definitions plus the procedures and requirements of obtaining permits, utilizing the City’s published standards, inspections and associated fees required for any work related to construction of Chapter 2 items.
- Sections 7-2.06 through 7-2.10 cover the Notice to Repair issued to property owners and items relative to timing and appeals.
- Sections 7-2.11 through 7-2.18 cover completion of work by the City, hearing notices, and liens should the City be required to perform necessary work and then recover cost from the property owner.

The City’s current municipal code reiterates the Street’s and Highway’s Code’s requirement that property owners maintain the sidewalks adjacent to their property. The current Code, however, does not include an enforcement mechanism to ensure that the property owners undertake that responsibility. Currently, if someone is injured as a result of a defective sidewalk, there is an argument that the City could be liable for those injuries, regardless of the Streets and Highways Code and Municipal Code provisions providing that property owners are responsible for maintenance.

The proposed amendments do not impose different or additional maintenance obligations on property owners, as compared to what is already required by State law or the City’s current Municipal Code. This Ordinance, if adopted, would make three changes:

1. Clarify the areas that property owners are required to maintain and define how the City expects these sidewalks areas to be repaired should they become defective. These new definitions are intended to provide more detailed expectations of property owners, so they are on notice of the manner in which they are to maintain the sidewalk areas abutting their properties.
2. Impose liability on property owners for failure to maintain sidewalks abutting their properties in a non-defective condition.
3. Add several new sections to Chapter 2, and amend various existing provisions throughout for clarity and consistency.

#### Owner’s Duty to Repair Defective Sidewalks (proposed Section 7-2.02)

This section includes additional language identifying specific sections and provisions of the Streets and Highways Code of the State of California, imposing sidewalk maintenance responsibilities on adjacent property owners. This section also confirms that costs associated with repair and maintenance are the responsibility of the property owner. However, as detailed below, the City has several payment options for property owners to assist with these costs. Moreover, the City Council may determine that the City should provide direct financial assistance to property owners in conducting these repairs, like San Francisco and Berkeley. These types of programs are discussed in more detail below.

#### Civil Liability for injuries to the Public (proposed Section 7-2.03)

This section includes language citing the property owner's responsibility for maintenance and, if as a result of their failure to properly maintain or repair defective sidewalk, clarifying that the property owner is liable for resulting damages or injury. Again, this is a common practice in many cities in California. It is intended as a mechanism to enforce property owners' responsibility to maintain sidewalk areas.

#### Service of notice to repair (proposed Section 7-2.10)

This section requires the City to provide Owners, as defined to include either the legal owner or the person in lawful possession of the property (i.e. tenants), with notice of the need to repair any sidewalk areas adjacent to their property.

- Other minor modifications within this Chapter 2 include
- minor modifications clarifying language in sections covering the Notice to Repair, to include instructions regarding how repairs must be completed and when such sidewalk repairs must begin; and minor modification to references of the Improvement Act of 1911 to include reference to California Streets and Highways Code § 5000 *et seq.*

### New Sections

#### Definitions (amendments to Section 7-2.01)

The Ordinance adds new definitions of the terms "Sidewalk Area," "Defective Sidewalk Area," and "Owner," and adds additional detail to the existing definition of "Repair." These new definitions are intended to clarify what property owners must do to ensure the abutting sidewalk areas are maintained in safe condition. The definitions are consistent with other cities' municipal codes which similarly impose liability to enforce the maintenance obligation on property owners.

If the City Council does not adopt this Ordinance, the City's existing municipal code sections will remain in place. This means that property owners will still be responsible for maintaining abutting sidewalks (including the costs of doing so), but if someone is injured as a result of a property owner's failure to maintain, *only* the City will face potential liability for those injuries.

#### **FOLLOW UP FROM FIRST READING:**

At the October 11, 2022 City Council meeting, the Council held a Public Hearing and then approved the Ordinance for first reading. During the Council discussion, the Council asked for additional information from staff.

## EDUCATION ON SIDEWALK REPAIR

An important item to note is that the City of Watsonville Municipal Code includes language that identifies the adjacent property owner's responsibility to maintain and repair defective sidewalks; *this has been in place since 1956*. Information is available on the City's website at the following location: <https://www.cityofwatsonville.org/841/Streets-Sidewalks>

In an effort to inform and educate our community over the years, City staff has included sidewalk repair requirements and information in the Our Town newsletter that is distributed to all residents in their utility bills. Additionally, a number of years ago, staff made a presentation to local realtors to inform them on City requirements relative to sidewalk repair.

With this language update, City staff will perform additional outreach to ensure our community is aware of these requirements. This outreach will include:

- updates in Our Town newsletter
- posts on the City's social media platforms
- updates to local realtors

## SIDEWALK REPAIR IN OTHER CITIES

The City of Watsonville Municipal Code language relative to Sidewalk Repair and property owner responsibility is consistent with other surrounding jurisdictions, including the City of Santa Cruz, City of Monterey, County of Santa Cruz, and City of Gilroy. Once a jurisdiction becomes aware of a sidewalk deficiency, the property owner is sent a "Notice to Repair" letter and given a specific amount of time in which to complete the repair. The repair must be made in accordance with jurisdiction standards and performed by a licensed and bonded contractor. An encroachment permit is also required for the work.

In the City of Watsonville, the property owner has the option to enter into an agreement with the City for the repairs. This option is known as the City's Sidewalk Repair Program. With this option, a City hired contractor would perform the repairs at competitive prices. As the contractor is under contract with the City, no additional encroachment permit (nor the fee for the encroachment permit) would be applicable, but the property owner is responsible for the cost of the repairs. The City offers various payment options for property owners to reimburse the City for the cost of the repairs:

- 1) repair cost paid in full by the owner when the work is performed;
- 2) owner can enter into a payback agreement with the City for the cost of repairs plus a 10% administrative fee with a 12 month, interest free payment plan that the City would bill monthly; or
- 3) the repair cost could be added to the property tax bill (including County administrative fees and interest) for collection by the County of Santa Cruz.

With larger repairs resulting in higher costs, the payback term of 12 months can be extended to 24 months. *The City of Watsonville is the only jurisdiction in our county that provides the*

*above described option – which makes repair payments less of a burden on the property owners.*

## **COSTS**

Potential Financial Liability to the City of Watsonville: Of special importance in this language update is the clarification of liability. As stated previously, while the city may not be able to relieve itself of liability for dangerous conditions of public property entirely, the proposed language in a city’s municipal code provides for an additional level of defense. Whether the City can be held liable for injuries arising from a dangerous condition of sidewalks generally depends on many factors, including whether a city is on notice of any dangerous conditions prior to any injuries. Given that *adjacent property owners are in the best position to quickly identify and address potentially dangerous conditions that might occur on sidewalks*, adopting this ordinance language that imposes liability for the maintenance and repair of sidewalks on those property owners adjacent to sidewalk areas is in the best interest of the City and its residents. Imposing liability on those property owners further incentivizes speedy repair of such dangerous conditions.

Burden on Property Owners: The proposed amendments do not impose any new responsibilities on property owners. Rather, the amendments simply create an enforcement mechanism to ensure that property owners conduct necessary repairs and maintain abutting sidewalks in a safe condition. While staff understands that this responsibility places the financial burden on the property owner, the City has proven to take a proactive approach in assisting our residents through various options described above. Should Council want to pursue further financial assistance to property owners for these necessary safety repairs of sidewalks, Council and staff can explore the City’s general fund budget for possible funding programs such as resident grants or cost sharing. Any potential City financial support would be separate action from the current proposed ordinance language update and would likely be explored during the City’s budget considerations. As such, sidewalk financial assistance program(s) would be weighed against other budget priorities.

As stated previously, this recommended ordinance: 1) clarifies and highlights the responsibility property owners have relative to maintaining safe sidewalks adjacent to their properties; and 2) clarifies and highlights their associated liability.

## **STRATEGIC PLAN:**

The proposed Ordinance supports Strategic Plan Priorities:

- 3 - Infrastructure & Environment
- 6 - Public Safety

## **FINANCIAL IMPACT:**

None anticipated at this time.

## **ENVIRONMENTAL REVIEW:**

This ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in

section 15378) of the CEQA guidelines (title 14, chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment directly or indirectly.

**ALTERNATIVE ACTION:**

Not adopting the revised ordinance could continue to expose the City to liability as it relates to accidents that occur in defective sidewalks, however the Council could choose to not adopt the revised Ordinance. If the Council would like to make any substantial changes to the Ordinance, staff will bring back a revised version, consistent with Council's direction, at a future meeting for introduction and first reading.

**ATTACHMENTS AND/OR REFERENCES (If any):**

None.