

ORDINANCE NO. _____ (CM)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE 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

WHEREAS, well-maintained sidewalks, driveways, curbs, and gutters provide safe and desirable paths for pedestrians and others to enjoy neighborhoods, commercial centers, and other areas in the City of Watsonville (“City”); and

WHEREAS, abutting property owners are often in the best position to quickly identify and address potentially dangerous conditions that might occur on sidewalks; and

WHEREAS, pursuant to California Streets and Highways Code section 5610, property owners are responsible for the maintenance and repair of sidewalks abutting their property; and

WHEREAS, the City desires to amend the City’s Municipal Code to clarify that the maintenance responsibility and liability associated with failure to adequately maintain sidewalk areas rests with the abutting property owners.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. ENACTMENT.

Chapter 2 (Sidewalks, Driveways, Curbs, And Gutters) Of Title 7 (Public Works) of the Watsonville Municipal Code is hereby repealed in its entirety and replaced as set forth in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 2. RECITALS.

The City Council finds and determines the foregoing recitals to be true and correct

and hereby makes them a part of this Ordinance.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) and 15060(c)(3) of the State CEQA Guidelines, because it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not a “project,” as defined in Section 15378 of the CEQA Guidelines.

SECTION 4. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 10. PUBLICATION.

This ordinance shall be published in the Watsonville Register-Pajaronian and/or Santa Cruz Sentinel in compliance with the provisions of the Charter of the City of Watsonville.

SECTION 11. EFFECTIVE DATE.

This ordinance shall be in force and take effect thirty (30) days after its final adoption.

Exhibit A

Chapter 2 SIDEWALKS, DRIVEWAYS, CURBS, AND GUTTERS

Sections:

- 7-2.01 Definitions.
- 7-2.02 Owner's duty to Repair Defective Sidewalk Areas.
- 7-2.03 Civil Liability for injuries to the public.
- 7-2.04 Permits.
- 7-2.05 Specifications.
- 7-2.06 Inspection, supervision, and fees.
- 7-2.07 Driveway approaches.
- 7-2.08 Notice to repair: Form.
- 7-2.09 Notice to repair: Time of work.
- 7-2.10 Service of notice to repair.
- 7-2.11 Notice to repair: Appeals.
- 7-2.12 Completion of work by City.
- 7-2.13 Costs of Repair.
- 7-2.14 Report of costs of work: Form.
- 7-2.15 Report of costs of work: Notice of hearing.
- 7-2.16 Report of costs of work: Hearing.
- 7-2.17 Costs of work: Lien.
- 7-2.18 Notice of lien: Form.
- 7-2.19 Lien: Effect: Foreclosure.
- 7-2.20 Payment of lien with property taxes.
- 7-2.21 Bond required.

Sec. 7-2.01 Definitions.

For the purposes of this chapter, certain words and phrases used herein are defined as follows:

- (a) "Contractor" shall mean any person, firm, or corporation engaged in the business of laying or constructing sidewalks, driveway approaches, curbs, or curbs and gutters and holding valid State and City licenses.

(b) “Sidewalk Area” shall mean the area between the property line of the parcel and the street line, which may include landscaping, such as shrubs, bushes, and trees, mailboxes and other items, and improvements, such as a sidewalk, pathway, parking strip, curb and gutter.

(c) “Defective Sidewalk Area” shall mean a Sidewalk Area where, in the judgment of the Superintendent of Streets, the vertical or horizontal line or grade is altered or displaced or such other condition that exists that interferes with the public convenience in the use of the Sidewalk Area.

(c) “Owner” shall mean a person, persons, and/or entity owning a lot, lots or portion of a lot within the City of Watsonville, and adjacent to or fronting any portion of a Sidewalk Area. For the purposes of this Chapter, “Owner” also includes agents of the Owner or persons in possession of the property and responsible for maintenance of the property.

(d) “Repair” shall mean elimination of a Defective Sidewalk Area by removal and replacement of all or a portion of the existing Sidewalk Area or by other means and shall include, but not be limited to, maintenance and repair of surfaces, curbs, and gutters, driveways, including grinding, removal and replacement of sidewalks, curbs, gutters, and driveways, removal and filling or replacement of parking strips, removal of weeds and/or debris, tree root pruning and installing root barriers, trimming of shrubs and/or ground cover, and trimming shrubs within Sidewalk Area.

(e) “Superintendent of Streets” shall mean the City Engineer and/or the Superintendent of Streets of the City.

Sec. 7-2.02 Owner’s duty to Repair Defective Sidewalk Areas.

(a) Anything in this chapter to the contrary notwithstanding, the Repair of Defective Sidewalk Areas may be had and taken in accordance with this part and the procedure set forth in Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code as may hereafter be amended from time to time. In the event of any conflict between the provisions of said Chapter 22 of Division 7, Part 3, of the California Streets and Highways Code and this Chapter 2 of Title 7, the provisions of Chapter 2 shall control.

(b) The Owner shall maintain and Repair any Defective Sidewalk Areas between the property line of the lots and the street line. The Owner shall pay the costs and expenses therefor, including a charge for the City of Watsonville's costs of inspection and administration whenever the City awards a contract for such maintenance and Repair or handling of any lien placed on the property due to failure of the Owner to promptly pay such costs and expenses, pursuant to Sections 7-2.12 through 7-2.21.

Sec. 7-2.03 Civil Liability for injuries to the public.

Each Owner required by Section 7-2.02 to Repair a Defective Sidewalk Area shall owe a duty to members of the public to keep and maintain the Sidewalk Area in a nondefective condition, in a manner that does not interfere with the public convenience in the use of the sidewalk. If, as a result of the failure of any Owner to maintain or Repair Defective Sidewalk Areas as required by Section 7-2.02, any person suffers injury or damage to person or property, the Owner shall be liable to such person for the resulting damages or injury.

Sec. 7-2.04 Permits.

(a) Required. It shall be unlawful for any person to construct, Repair, or reconstruct, or cause to be constructed, repaired, or reconstructed, any sidewalk, driveway approach, curb, gutter, or curb and gutter without first obtaining a written permit therefor from the office of the Superintendent of Streets or an officer designated by him/her. Where a Defective Sidewalk Area is caused in whole or in part by a tree root or roots, the Owner shall nevertheless have the duty to Repair the Sidewalk Area. The Superintendent of Streets may grant permission to cut the roots after consulting with the City arborist.

(b) Application. A written application for a permit shall be on a form approved by the Superintendent of Streets and shall contain a statement of experience in such work and a statement assuming all liability which may develop during or from the performance of the work. The application shall be submitted to the Superintendent of Streets for his/her approval or disapproval before the permit is issued. Any requirements of the Superintendent of Streets shall be agreed to by the applicant and shall be noted on the permit.

(c) Appeals. Should the applicant disagree with the requirements of the Superintendent of Streets, he may file a written notice of appeal within five (5) days with the Council, and the Council may approve, disapprove, or modify such permit.

(d) Blanket permits. A contractor may not be required to make written application or obtain a written permit. The Superintendent of Streets may require contractors to submit written applications and receive written permits by fixing a date after which all contractors shall submit written applications for permits and by mailing a notice thereof to the contractors at addresses shown on the City license records.

(e) Work to be in public interest. No permit shall be issued if it has been determined that the proposed work is against the public interest and convenience or if the Superintendent of Streets has instituted formal proceedings to do the work under the Charter and laws of the City and/or general laws of the State.

Sec. 7-2.05 Specifications.

All work shall be done in accordance with the specifications and standards for sidewalks, driveway approaches, curbs, gutters, or curbs and gutters on file in the office of the Superintendent of Streets to which reference is hereby made for further particulars. No materials shall be used in the construction, Repair, or reconstruction of any sidewalk, driveway approach, curb, gutter, or curb and gutter except as is specified by the Superintendent of Streets. The lines and grades for doing such work shall be set by the Superintendent of Streets or a qualified person designated by him.

Sec. 7-2.06 Inspection, supervision, and fees.

All work shall be done under the direction, supervision, inspection, and to the satisfaction of the Superintendent of Streets. Fees shall be charged for permits, grades, and inspection services if a schedule of charges is approved by the Council and is on file in the office of the Superintendent of Streets.

Sec. 7-2.07 Driveway approaches.

Whenever a driveway approach is no longer needed or used as such, the Owner shall be required to replace the same with curb and sidewalk. Written notice shall be served in the manner provided in Section 7-2.10 of this chapter.

The Superintendent of Streets hereby is empowered to require the Owner of the property to construct, remove, and/or reconstruct driveway approaches which obstruct

the gutter or where drainage or other conditions are unsatisfactory. Written notice shall be given as provided in Section 7-2.08 of this chapter.

Sec. 7-2.08 Notice to repair: Form.

(a) When the Superintendent of Streets has actual notice of the existence of a Defective Sidewalk Area, he/she shall mail and/or deliver a notice in writing to the Owner of the property describing the condition and the Repairs and/or reconstruction required in front of such property, which notice shall be in a form substantially as follows:

City of Watsonville, California

NOTICE TO REPAIR _____

Date

To: _____

owner, person in possession of that parcel of land in the City of Watsonville, California, described as follows:

You are hereby notified that a portion of the sidewalk, driveway, curb, gutter, and/or curb and gutter located at the above address is out of repair and is in such condition that the same endangers persons and property and is in a condition to interfere with the public convenience and use thereof. Therefore, pursuant to the provisions of the Improvement Act of 1911 of the State of California ((California Streets and Highways Code § 5000 *et seq*) and Watsonville Municipal Code Title 7, Chapter 2, you are hereby notified that such repair must be started within two (2) weeks from the above date. Such repair must be made in accordance with the provisions of the laws of the City of Watsonville.

Work required to be done is repair to _____

You may elect to perform the repairs yourself, 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. Should you elect to perform the repairs yourself, you are required to obtain a permit for such work, pursuant to Watsonville Municipal Code section 7-2.04 within two (2) weeks from the date hereof. Should you elect to have the City perform the repairs, you shall nonetheless bear the costs of the repair. Based on the City's estimate, the cost for repairs is approximately _____.

You are further notified that if such repair is not commenced within two (2) weeks from the date hereof and diligently without interruption completed, the Superintendent of Streets will make such repair and the cost thereof, if not paid, will become a lien upon such property.

SUPERINTENDENT OF STREETS

Sec. 7-2.09 Notice to repair: Time of work.

(a) The written notice referred to in Section 7-2.08 of this chapter shall state the time after the notice date when work shall begin and such work shall be diligently and without interruption prosecuted to completion.

(b) Notwithstanding the provisions of Section 5614 of the state Streets and Highways Code and section 7-2.08 of this Chapter, the Superintendent of Streets may in his/her discretion, and for sufficient cause, extend the period within which required maintenance and Repair of Defective Sidewalk Areas must commence by a period of not to exceed ninety days from the time the notice referred to in Section 7-2.08 is given.

Sec. 7-2.10 Service of notice to repair.

(a) The notice to repair shall be served on the Owner by any of the following methods:

(1) posted in a conspicuous place on each parcel of property abutting or fronting on the Defective Sidewalk Area;

(2) personal service of a copy of the notice on the Owner;

(3) 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 Area, if a copy of the notice is also mailed to the Owner in accordance with subsection (d) of this section; or

(4) Mailing the notice to the Owner by first class, postage prepaid, to the address of the Owner was set forth on the last equalized assessment roll.

(b) If the notice is served on the Owner by mail, the Superintendent of Streets 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 prior to completion of work by the City pursuant to section 7-2.12.

Sec. 7-2.11 Notice to repair: Appeals.

The Owner of such posted property may appeal to the Council in accordance with the provisions of Chapter 4 of Title 1 of this Code.

Sec. 7-2.12 Completion of work by City.

Unless the Repair required in such notice is commenced within the time period specified in Section 7-2.09 and 7-2.10, or in case of an appeal to the Council, within the time period identified by Council unless such appeal shall be sustained, the Superintendent of Streets may make the Repair and/or cause the same to be made. If upon appeal to the Council the requirements of the original notice are modified, in making such Repair the Superintendent of Streets shall be governed by such modification.

Sec. 7-2.13 Costs of Repair.

Owners shall pay the costs and expenses of Repairs for Defective Sidewalk Areas, including a charge for the City of Watsonville’s costs of inspection and administration whenever the city awards a contract for such maintenance and Repair or handling of any lien placed on the property due to failure of the Owner to promptly pay such costs and expenses.

Sec. 7-2.14 Report of costs of work: Form.

Upon completion of the Repair the Superintendent of Streets shall prepare and file with the Council a report specifying the repairs or improvements which have been made, the cost of the repairs or improvements, 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 and improvements to any number of parcels of property, whether contiguous to each other or not.

Sec. 7-2.15 Report of costs of work: Notice of hearing.

Upon completion of the Repair by the City pursuant to Section 7-2.12, the City Clerk shall cause notice of the repair to be served upon the Owner pursuant to the provisions of section 7-2.10 at least ten (10) days prior to the hearing to the Owner of such property, which notice shall specify the day, hour, and place when the Council will hear and pass upon a report by the Superintendent of Streets of the costs of the Repair, together with any objections or protests, if any, which may be raised by any Owner liable to be assessed for the cost of such Repair and any other interested persons.

Sec. 7-2.16 Report of costs of work: Hearing.

Upon the day and hour fixed for the hearing, the Council 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 Owners liable to be assessed for the work of making such Repairs and any other interested persons. Thereupon the Council may make such revisions, corrections, or modifications in the report as it may deem just, after which, by motion of or resolution, the report as submitted, or as revised, corrected, or modified, shall be confirmed. The Council may adjourn the hearing from time to time. The decisions of the Council on all protests and objections shall be final.

Sec. 7-2.17 Costs of work: Lien.

The cost of the Repair may be assessed by the Council 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 (5) days after its confirmation by the Council, 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 are paid or until it is discharged of record.

Sec. 7-2.18 Notice of lien: Form.

The Superintendent of Streets may file in the office of the County Recorder a certificate substantially in the following form:

NOTICE OF LIEN

Pursuant to the authority vested in me by the Improvement Act of 1911 (California Streets and Highways Code § 5000 *et seq.*) and the provisions of Chapter 2 of Title 7 of the Watsonville Municipal Code, I did on the _____ day of _____, 20____, cause the sidewalk, curb, or park or parking strip, bulkheads, retaining walls, or other works in front of the real property hereinafter described to be repaired and improved, and the Council of the City of Watsonville did, on the _____ day of _____, 20____, by Resolution No. _____ assess the cost of such repair upon the real property hereinafter described and the same has not been paid, nor any part thereof, and the City of Watsonville does hereby claim a lien on said real property in the sum of \$_____, and the same shall be a lien upon said real property until the said sum of \$_____, with interest at the rate of six (6%) per cent per annum from the said _____ day of _____, 20____, has been paid in full and discharged of record.

The real property hereinabove mentioned and upon which a lien is claimed is that certain piece or parcel of land lying and being in the City of Watsonville, County of Santa Cruz, State of California, and particularly described as follows:

Dated this _____ day of _____, 20____.

Superintendent of Streets

Sec. 7-2.19 Lien: Effect: Foreclosure.

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 limitations 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 the Improvement Act of 1911 (California Streets and Highways Code § 5000 *et seq.*).

Sec. 7-2.20 Payment of lien with property taxes.

As an alternative method of collection of the amount of the lien, the Council, 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, 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. If City taxes are collected by County officials, the notice of lien shall be delivered to the County Auditor, who shall enter the amount thereof on the County assessment book opposite the description of the particular property, and the amount shall be collected together with all other taxes against the property. 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. 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. All laws applicable to the levy, collection, and enforcement of City taxes and County taxes are hereby made applicable to such special assessment taxes.

Sec. 7-2.21 Bond required.

Any contractor doing work under private contract on the public streets and/or sidewalks of the City shall first execute a good and sufficient bond in the sum of One Thousand and no/100ths (\$1,000.00) Dollars for the faithful performance of any work they may

undertake on such public streets for the protection of the City and against damage to any street, sidewalk, or structure, or materials therein, which bond shall inure not only to the benefit of the City but also to that of any property owner who may employ such contractor to do such work. Such bond shall be either that of a surety company or a private bond with two (2) good and sufficient sureties who shall justify in double the sum. Such bond shall be subject to approval by the Superintendent of Streets.