

ORDINANCE NO. 426

AN ORDINANCE REQUIRING THE CONSTRUCTION OF SIDEWALKS; REGULATING THE CONSTRUCTION, ALTERATION AND REPAIR OF SIDEWALKS; PROVIDING FOR THE CONSTRUCTION UPON OFFICIAL GRADE, REGULATING LIABILITY FOR INJURIES ON SIDEWALKS; REQUIRING THE REMOVAL OF SNOW AND ICE FROM SIDEWALKS; REGULATING THE USE OF THE SIDEWALK AREA; REQUIRING PERMITS FOR SIDEWALKS; PROVIDING FOR BARRICADES FOR EXCAVATION ADJACENT TO SIDEWALKS; SETTING PROCEDURES FOR A NOTICE, HEARINGS, AND ASSESSMENT OF LIENS ON ADJACENT PROPERTY FOR WORK DONE BY THE CITY OF MADRAS; PROVIDING FOR LIENS ON ADJACENT PROPERTY; ALL WITHIN THE CITY OF MADRAS, OREGON, AND REPEALING ORDINANCE NO. 138 AND DECLARING AN EMERGENCY.

The City of Madras ordains as follows:

SECTION 1: DEFINITIONS

Unless the context requires otherwise, the following shall mean:

- (1) **Person.** Any actual person, firm, corporation or other legal entity.
- (2) **Sidewalk.** The part of the street right-of-way between the curb lines or the lateral lines of a roadway and the adjacent property line that is intended for the use of pedestrians.

SECTION 2: DUTY TO REPAIR AND CLEAR SIDEWALKS

It is the duty of the owner or occupant of the land adjoining a street to maintain in good repair and remove obstructions from the adjacent sidewalk.

SECTION 3. LIABILITY FOR SIDEWALK INJURIES

- (1) The owner of real property is responsible for maintaining the adjacent sidewalk and shall be primarily liable to any person injured because of any negligence of such owner in failing to maintain the sidewalk in good condition.
- (2) If the City is required to pay damages for an injury to person or property caused by the failure of a person to perform the duty which this section imposes, that person shall compensate the City for the amount of the damages thus paid. The City may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.

SECTION 4. STANDARDS AND SPECIFICATIONS

Sidewalks shall be constructed, altered, and repaired in accordance with standards and specifications established by the City Council and on file in the Madras City Hall. The width and grade of the sidewalk shall depend upon the zone and the grade of adjacent property in accordance with the specifications filed in the Madras City Hall.

SECTION 5. SUBMISSION OF PLANS

No person shall construct, alter or repair a sidewalk without first submitting the plans and specifications for the proposed work to the Public Works Director and obtaining approval. After determining that the proposed work conforms to the applicable city standards and specifications established under Section 4 and the city regulations in effect at the time of construction of the sidewalks, the Public Works Director or designee shall give his approval for the proposed work.

[Section 5 amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 6. SUPERVISION OF WORK

The construction, alteration or repair of sidewalks shall be under the supervision of the Public Works Director or designee. The Public Works Director or designee may inspect any material and construction details as in his judgment may be necessary to insure compliance with applicable standards and specifications.

[Section 6 amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 7. REQUIRED SIDEWALK REPAIRS

- (1) When the Council determines that a sidewalk needs repair, it shall, by resolution, direct the City Administrator to issue a notice to the owner of the property abutting on said sidewalk.
- (2) The notice shall require that the owner of the property adjacent to the defective sidewalk to completely repair the sidewalk within 30 days after service of the notice. The notice shall also state that if the repair is not made by the owner, the City will repair the sidewalk, and the cost of repair will be assessed against the property adjacent to the sidewalk.
- (3) The City Administrator shall cause a copy of the notice to be served personally upon the owner of the property adjacent to the defective sidewalk or the notice may be served by registered or certified mail, return receipt requested. If, after diligent search, the owner is not discovered, the City Administrator shall cause a copy of the notice to be posted in a conspicuous place at each end of the area to be repaired on

the property abutting the sidewalk, and such posting shall have the same effect as service of notice by mail or by personal service upon the owner of the property.

- (4) The person serving notice shall file with the Administrator a statement stating the time, place, and manner of service of notice.

[Section 7 amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 8. CITY MAY ALTER OR REPAIR SIDEWALK

If the repair of the sidewalk is not completed within thirty (30) days after service of the notice to repair, the City Administrator may direct the Public Works Department of the City of Madras to repair or complete the repair of the sidewalk. Upon completion of the repair of the sidewalk, the City Administrator shall submit a report to the Council. The report shall contain an itemized statement of the cost of repair and the proportionate share of the cost on each lot or parcel of land adjacent to the sidewalk upon which repair has been made.

[Section 8 amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 9. ASSESSMENT FOR REPAIRS OF SIDEWALKS

Upon receipt of the report the Council, by Ordinance, shall assess the cost of repairing the sidewalk against the property adjacent to the repaired sidewalk. The assessment shall be a lien against the property and may be collected in the same manner as provided for the collection of street improvement assessments.

SECTION 10. CONSTRUCTION OF SIDEWALKS

- (1) The cost of constructing a sidewalk shall be borne by the owner of the property on which the sidewalk abuts.
- (2) If a property owner petitions the Council for an order to build the sidewalk on the part of the street abutting his property, agrees to pay cash or make application to pay the cost in installments as provided in the Bancroft Bonding Act, ORS 223.205 to 223.300, waives the right of remonstrance, service and publication of notice of construction and the calling of bids, and consents to the assessment of the property upon which the sidewalk is to abut, the Council may order the construction of the requested improvement if in its judgment improvement should be made and may order the method of financing to be used.

SECTION 11. SNOW AND ICE REMOVAL

No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk shall permit:

- (a) Snow to remain on the sidewalk for a period longer than the first six hours of daylight on business days after the snow has fallen.
- (b) Ice to remain on the sidewalk for more than six hours of daylight on business days after ice has formed, unless the ice is covered with sand, ashes or other suitable material to ensure safe travel.
- (c) In the event the property owner shall fail to remove any ice or snow from their sidewalks, and the same becomes hazardous in the opinion of the Street Department for the City of Madras, the City may remove such snow and ice or cause the same to be removed and charge the cost of removal to the owner of the property abutting said sidewalk.
- (d) In areas where the buildings abut the sidewalk, snow or ice shall be placed on the 3 foot area of the sidewalk adjacent to the curb. No ice or snow shall be placed on the street or in the gutter where it can block runoff water or impede traffic.

[Section 11 renumbered from Section 12 by Ordinance No. 508, passed November 26, 1991.]

SECTION 12. EXCAVATIONS

Excavations within a public right-of-way shall not be allowed without first obtaining a right-of-way construction permit approved by the Public Works Director. Provisions of this section shall not apply to authorized construction projects provided that during the course of construction, reasonable safeguards are maintained to prevent injury or death.

[Section 12 renumbered from Section 13 and amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 13. SIDEWALKS PRIVATELY CONSTRUCTED

Whenever a property owner, having received notice to construct a sidewalk or on his own initiative shall desire to either construct a sidewalk himself or employ a private contractor to do so, he shall secure a permit from the office of the Public Works Director and shall comply with the grades set by the City for the abutting street, taking into account the drainage in the area where the sidewalk is to be constructed and that of abutting property on both sides of the street on which the sidewalk is to be constructed.

[Section 13 renumbered from Section 14 and amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 14. SIDEWALKS REQUIRED

- (1) Except as otherwise provided in Section 14(1)(a)-(c), concurrent with the issuance of a building permit for construction of a dwelling or business structure, or an addition to a dwelling or business structure, the value of which is \$10,000.00 or more as identified on the applicable building permit, the property owner (or the property owner's designee) shall obtain a right-of-way permit and construct, or arrange for the construction of, a sidewalk meeting city standards within the dedicated public right-of-way along the entire property frontage on which a sidewalk in good repair does not then exist. If the subject property is located in a residential zone and the building permit concerns the construction of a dwelling or an addition to a dwelling, the value of which is \$10,000.00 or more as identified on the building permit, and the subject property has more than one property frontage on which a sidewalk in good repair does not then exist, the Public Works Director will select the property frontage upon which the sidewalk shall be constructed. If the sidewalk is constructed concurrent with the improvements for which the building permit was issued, the required sidewalk shall be constructed within the building permit construction period or within one year after the right-of-way permit is issued, whichever period is lesser.
 - (a) An owner may make payment to the city in lieu of constructing the required sidewalk if any of the following occur: (1) the actual cost to construct the required sidewalk, as reasonably determined by the public works director, exceeds the cost to construct the subject dwelling or business structure, or addition to the subject dwelling or business structure, as the case may be; (2) the actual cost to construct the required sidewalk, as reasonably determined by the public works director, exceeds 5% of the value (as identified on the building permit) of the to be constructed dwelling or business structure, or addition to the subject dwelling or business structure, as the case may be; or (3) the subject property is located in a residential zone and the building permit concerns the construction of a dwelling or an addition to a dwelling, and the subject property has no curbs then-existing along the frontage of the subject property.
 - (b) Upon the occurrence of an event described under Section 14(1)(a), in lieu of constructing the required sidewalk the property owner may make payment to the city in an amount equal to 5% of the value (as identified on the building permit) of the to be constructed dwelling or business structure, or addition to the subject dwelling or business structure, as the case may be. Any payment received (and interest accruing on such payments received, if any) shall be credited and applied towards the property for which the building permit is issued. If a property is partitioned or otherwise subdivided all amounts received shall be proportionally allocated (based upon square footage) among the resulting parcels or lots.

- (c) When the amount collected for any given property is sufficient to construct the entire sidewalk required by this Section 14.1, the city will arrange for the construction of such sidewalk. At any time the property owner may elect to voluntarily install the sidewalk pursuant to, and in accordance with, this Ordinance. Upon completion, the city will refund to the property owner any amounts collected from the property owner as payment in lieu for the subject property; provided, however, any interest accruing on amounts collected will not be paid to the property owner.”

[Section 14 (1) amended by Ordinance No. 857, passed April 22, 2014.]

- (2) The Public Works Director may issue a permit and certificate allowing non-compliance of the provisions of subsection (1) to the owner, builder or contractor when in his opinion, the construction of the sidewalk is impractical for one or more of the following reasons:

- (a) Sidewalk grades have not and cannot be established for the property in question within a reasonable period of time.
- (b) Future installation of public utilities or street paving which would not of necessity cause severe damage to the sidewalk.
- (c) Right-of-way would not be sufficient to accommodate the sidewalk on one or both sides of the street.
- (d) Topography or contours make the construction of a sidewalk impractical.
- (e) The non-compliance provided for in Sections (a) and (b) shall be temporary and shall cease to exist when grades are established for sidewalks by the City of Madras or when the public utilities or street paving has been constructed. The permit shall indicate the reason for its issuance on a non-compliance basis.

[Section 14 (2) amended by Ordinance No. 857, passed April 22, 2014.]

- (3) If the owner, builder or contractor considers the construction of a sidewalk impractical for any reason other than those listed in subsection (2), the Planning Commission shall recommend to the Council whether a permit or certificate of non-compliance shall be or shall not be granted, and the Council may grant a permit and certificate of non-compliance.

- (4) If a sidewalk is not constructed within the time required for these sections, then the City may construct it for the full street frontage in front of the property and proceed with the construction assessment and collection of costs.

[Section 14 renumbered from Section 15 and amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 15. PENALTY

Violation of this ordinance is punishable by a fine not to exceed \$300.00. Each day's violation of a provision of this ordinance shall constitute a separate offense.

[Section 15 renumbered from Section 17 and amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 16. EMERGENCY CLAUSE

Now, therefore, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after the date of its passage and signing by the Mayor.

[Section 16 amended by Ordinance No. 508, passed November 26, 1991.]

SECTION 17. Renumbered to Section 15.

SECTION 18. REPEAL ORDINANCE NO. 138

Ordinance No. 138 passed and approved the 12th day of February, 1952, is hereby repealed.

Passed by the Council and approved by the Mayor March 13, 1984.