

CITY OF MILWAUKIE

ORDINANCE NO. 1697

AN ORDINANCE OF THE CITY OF MILWAUKIE AMENDING CHAPTER 12.04 (ORDINANCE NO. 1221) PERTAINING TO SIDEWALK REPAIR AND CHAPTER 12.12 (ORDINANCE NO. 524) PERTAINING TO SIDEWALK OBSTRUCTION AND ADDING NEW PENALTY PROVISIONS TO BOTH OF THESE CHAPTERS OF THE MILWAUKIE MUNICIPAL CODE.

WHEREAS, the City of Milwaukie has applied for funding to implement a sidewalk repair program; and

WHEREAS, Chapters 12.04 and 12.12 pertain to sidewalk repair and obstruction; and

WHEREAS, the City Council finds that it would be beneficial to update these chapters because the underlying ordinances were adopted in 1970 and 1949 respectively; and

WHEREAS, the City Council finds that because of public safety and liability considerations, it would be beneficial to have uniform and effective penalties for sidewalk violations; now, therefore:

THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

Section 1.

Section 12.04.010 of the Milwaukie Municipal Code is hereby repealed.

Section 2.

Section 12.04.020 of the Milwaukie Municipal Code is hereby amended to read as follows:

"12.04.010 Duty of property owners.

A. It is made the duty and routine obligation of all owners of land adjoining any street in the city to maintain in good repair the sidewalks in front of the land.

B. For purposes of this section, a sidewalk shall be deemed not in good repair, if among other things:

1. Panels or pieces of same are displaced more than one-half inch from adjacent panels or pieces; or,

2. Entire pieces or panels are absent, or there exist pieces or panels broken into parts smaller than one square foot; or,

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3. The grade from one piece or panel to the adjacent piece changes by more than one-half inch per foot in any direction; or

4. Handicap access ramps or driveways deviate from the slopes and dimensions included in the standards and specifications set by the city.

This list is not intended to be exclusive.

C. The city manager, office engineer or a designee shall have the power and authority to determine the grade and width of all sidewalks, the material to be used, and the specifications for the repair upon any street or part thereof, or within any district in the city."

Section 3.

Section 12.04.030 of the Milwaukie Municipal Code is hereby amended to read as follows:

"12.04.020 Notice of defective sidewalks.

If the owner of any lot or part thereof or parcel of land fails to maintain the sidewalk along such property, it shall be the duty of the city manager, the office engineer or a designee to mail to the property owner a notice entitled "Notice to Repair Sidewalk." The notice may also be posted on the property adjacent to the sidewalk.

Such notice shall direct the owner, agent or occupant of the property to immediately repair the sidewalk according to specifications prescribed by the city. The person mailing, and if applicable, posting the notice shall file with the city recorder an affidavit of the mailing (and posting) of such notice, stating the date, to whom the notice was addressed, the address to which the notice was mailed and place of posting, if applicable. The notice shall be sent to the last known address of the owner or agent, as shown on city or county records, and to the attention of the occupant at the property's street address. A mistake in the name of the owner or agent, or a notice sent in the name of other than that of the true owner or agent of such property, or any mistake in address, shall not invalidate the notice. The owner, agent or occupant of the premises shall cause the repairs to be made within the time specified by the notice."

Section 4.

Section 12.04.040 of the Milwaukie Municipal Code is hereby renumbered as Section 12.04.030.

Section 5.

Section 12.04.050 of the Milwaukie Municipal Code is hereby amended to read as follows:

"12.04.040 Repair by city.

If the owner, agent or occupant of any such lot or parts thereof, or parcel of land, fails, neglects or refuses to make the sidewalk repairs within the time designated, the city manager may, for safety purposes, cause the repairs to be made and keep an accurate account of the cost of the labor and materials used in making the repairs, including legal, administrative and engineering costs, for each lot or parcel of land and shall make available a report containing such information upon the city council's request.

Section 6.

Section 12.04.060 of the Milwaukie Municipal Code is hereby amended to read as follows:

"12.04.050 Charges for repairs by city.

A. On completion of the repairs by the city, the city manager or city finance director shall determine the cost as defined in Section 12.04.040. The city manager or city finance director shall send a bill for the costs, by regular mail, to the owner of the property or the owner's agent, to the same address as the notice to repair, or to any later known address. The bill shall advise the property owner or owner's agent that within 30 days, the owner or owner's agent must pay the bill in full. Upon approval by the city manager or city finance director, the owner or owner's agent may sign an agreement to pay the bill in installments. The installment program will allow applicants to make installment payments with interest for a period not to exceed five years. The city finance director shall administer the installment program and may adopt any rules, regulations or forms necessary to administer the program. Beginning 30 days from the date of mailing of the bill, any unpaid bill will accrue interest at the current Local Government Investment Pool rate plus a two percent (2%) administrative fee until paid.

B. Thirty days from the date of mailing of the bill, the city manager or city finance director is authorized to place a lien on the property.

C. Foreclosure proceedings may be initiated to collect any lien due for more than 60 days.

D. The city may also use any other remedies available to it to recover any unpaid bills, the interest thereon, and any costs or penalties.

E. In addition to the procedures set out above, the council may establish local improvement districts for the purpose of repairing or reconstructing sidewalks and assessing and collecting the costs in accordance with the city's local improvement procedures."

Section 7.

Section 12.04.070 of the Milwaukie Municipal Code is hereby amended to read as follows:

"12.04.060 Liability of property owner.

The owners of land adjoining any street in the city shall be liable to any person suffering injury by reason of any defect in the sidewalk in front of the land. The city disclaims any liability to any person suffering personal injury or property damage by reason of the owner's negligence in failing to maintain a sidewalk abutting the owner's property in good repair. Said property owner(s) shall be liable to the City of Milwaukie for any amounts which may be paid or incurred by the city by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of said property owner's failure to satisfy the obligations imposed by this chapter to maintain in good repair the sidewalks in front of the land."

Section 8.

Section 12.04.080 of the Milwaukie Municipal Code is hereby repealed.

Section 9.

Chapter 12.04 of the Milwaukie Municipal Code is hereby amended by adding Section 12.04.070 to read as follows:

"12.04.070 Enforcement.

The provisions of Chapter 1.08, 'Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures' may be used to enforce this chapter."

Section 10.

Chapter 12.04 of the Milwaukie Municipal Code is hereby amended by adding Section 12.04.080 to read as follows:

"12.24.080 Penalties.

Violation of Section 12.04.010 is punishable, upon conviction, by a fine of not more than two hundred fifty dollars (\$250.00). When the violation is a continuous one, each day the violation continues to exist shall be deemed a separate violation."

Section 11.

Section 12.12.010 of the Milwaukie Municipal Code is hereby amended to read as follows:

"12.12.010 Overhanging shrubs or trees.

A. It is made the duty and routine obligation of all owners or occupants of land adjoining any street or sidewalk in the city to trim overhanging shrubs or trees and to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property.

B. It shall be unlawful for the owner or occupant of any real property in the city to permit any tree, shrub or any fixed object located on the real property or the abutting right-of-way to overhang any sidewalk within the city at a height of less than eight feet; or to overhang any other traveled portion of any street within the city at a height of less than twelve feet. Trees, shrubs, and any growth or fixed object which are not trimmed or placed so as to meet the above specifications shall be deemed to present an unreasonable risk of harm to persons or property."

Section 12.

Chapter 12.12 is hereby amended by adding Section 12.12.015 to read as follows:

"12.12.015 Notice of overhanging trees or shrubs.

If the owner or occupant of any real property adjoining any street or sidewalk in the city fails to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property, it shall be the duty of the city manager, the office engineer or a designee to mail to the property owner a notice entitled "Notice to Remove Street or Sidewalk Obstruction." The notice may also be posted on the property adjoining the street or sidewalk.

Such notice shall direct the owner, agent or occupant of the property to immediately trim overhanging shrubs or trees and to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property according to specifications prescribed by the city. The person mailing, and if applicable, posting the notice shall file with the city recorder an affidavit of the mailing (and posting) of such notice, stating the date, to whom the notice was addressed, the address to which the notice was mailed and place of posting, if applicable. The notice shall be sent to the last known address of the owner or agent, as shown on city or county records, and to the attention of the occupant at the property's street address. A mistake in the name of the owner or agent, or a notice sent in the name of other than that of the true owner or agent of such property, or any mistake in address, shall not invalidate the notice. The owner, agent or occupant of the premises shall cause the trimming or removal to be accomplished within the time specified by the notice."

Section 13.

Section 12.12.020 of the Milwaukie Municipal Code is hereby amended to read as follows:

"12.12.020 Removal by city.

If the owner, agent or occupant of any real property adjoining any street or sidewalk in the city, fails, neglects or refuses to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property within the time designated, the city manager may, for safety purposes, cause the trimming or removal to be accomplished and keep an accurate account of the cost of the labor and materials used, including legal, administrative and engineering costs, for each lot or parcel of land and shall make available a report containing such information upon the city council's request."

Section 14.

Chapter 12.12 of the Milwaukie Municipal Code is hereby amended by adding Section 12.12.025 to read as follows:

"12.12.025 Charges for removal by city.

A. On completion of the trimming or removal by the city, the city manager or city finance director shall determine the cost as defined in Section 12.12.020. The city manager or city finance director shall send a bill

for the costs, by regular mail, to the owner of the property or the owner's agent, to the same address as the notice to repair, or to any later known address. The bill shall advise the property owner or owner's agent that within 30 days, the owner or owner's agent must pay the bill in full. Upon approval by the city manager or city finance director, the owner or owner's agent may sign an agreement to pay the bill in installments. The installment program will allow applicants to make installment payments with interest for a period not to exceed five years. The city finance director shall administer the installment program and may adopt any rules, regulations or forms necessary to administer the program. Beginning 30 days from the date of mailing of the bill, any unpaid bill will accrue interest at the current Local Government Investment Pool rate plus a two percent (2%) administrative fee until paid.

B. Thirty days from the date of mailing of the bill, the city manager or city finance director is authorized to place a lien on the property.

C. Foreclosure proceedings may be initiated to collect any lien due for more than 60 days.

D. The city may also use any other remedies available to it to recover any unpaid bills, the interest thereon, and any costs or penalties."

Section 15.

Chapter 12.12 of the Milwaukie Municipal Code is hereby amended by adding Section 12.12.030 to read as follows:

"12.12.030 Liability of property owner.

The owners of land adjoining any street or sidewalk in the city shall be liable to any person suffering injury by reason of failure to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property. The city disclaims any liability to any person suffering personal injury or property damage by reason of the owner's negligence in failing to trim overhanging shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property. Said property owner(s) shall be liable to the City of Milwaukie for any amounts which may be paid or incurred by the city by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of said property owner's failure to satisfy the obligations imposed by this chapter to trim overhanging

shrubs or trees or to remove any growth or fixed object which creates an unreasonable risk of harm to persons or property."

Section 16.

Chapter 12.12 of the Milwaukie Municipal Code is hereby amended by adding Section 12.12.040 to read as follows:

"12.12.040 Enforcement.

The provisions of Chapter 1.08, 'Short-Form Uniform Complaint and Citation Method and Code Enforcement Procedures' may be used to enforce this chapter."

Section 17.

Section 12.12.030 of the Milwaukie Municipal Code is hereby amended to read as follows:

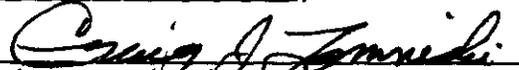
"12.12.050 Violation - Penalty.

Violation of Section 12.12.010 is punishable, upon conviction, by a fine not exceeding one hundred dollars (\$100.00). When the violation is a continuous one, each day the violation continues to exist shall be deemed a separate violation."

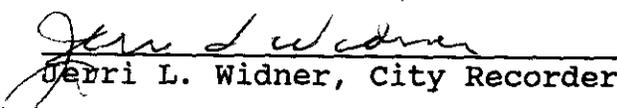
Read for the first time on February 19, 1991 and moved to a second reading by unanimous vote of the City Council.

Read for the second time and adopted by the City Council on February 19, 1991.

Signed by the Mayor on February 19, 1991.


Craig Lomnicki, Mayor

Attest:


Terri L. Widner, City Recorder

Approved as to form:


City Attorney
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