



CITY OF ST. HELENS PLANNING DEPARTMENT

MEMORANDUM

TO: City Council
FROM: Jacob A. Graichen, AICP, City Planner
RE: Ordinance No. 3287 for first reading at the Oct. 19, 2022 Regular Session
DATE: October 7, 2022

Please see attached:

First, attachment is a “white paper” from CIS about risk management around sidewalk ordinances. It provides a good premise for this matter.

Second, are the proposed changes to the St. Helens Municipal Code to achieve Best Practices from CIS. Some of the management team met with a CIS representative in January, where we talked about a variety of issues including sidewalk liability.

They recommended a minor change, but upon further review by staff, it was observed that it should be more comprehensive. Risk management saves city coffers.

CIS has reviewed the proposal and said the “edits are worth the investment.”

Please approve this ordinance for first reading.

Defective Sidewalk Conditions: Who is at Fault?

Liability between municipalities and landowners for injuries sustained by pedestrians due to defective sidewalk conditions has been the subject of lawsuits and City ordinance enactments for years. In Oregon, municipalities generally own the sidewalks adjacent to private property owners' land, but most City ordinances provide that the landowners are responsible for maintaining the sidewalk fronting their property in a safe and usable manner.

Most City ordinances provide that a municipality may assess landowners for the cost the municipality incurs to maintain sidewalks if the landowner fails to perform his/her duty. Although these ordinances provide that abutting landowners are responsible for sidewalk maintenance and may be assessed the cost of repairs, they may not be liable for injuries or damages to third persons who use the sidewalk, unless the municipality enacts an ordinance that addresses liability. A Plaintiff who trips and falls on a City sidewalk typically sues the City and the adjacent property owner. Absent an ordinance that clearly and unambiguously transfers liability to the adjoining property the courts have typically held that the property owner owed no legal duty at all to the injured plaintiff.

In adopting a sidewalk liability ordinance that addresses these issues the City is requiring the persons in the best position to discover a sidewalk defect (the property owner) to act to protect the public. Cities are empowered under the Oregon Constitution to enact ordinances and regulations deemed necessary to protect the public health, safety, and welfare, and that such City ordinance are a permissible exercise of that power. Without such an ordinance, landowners would have no incentive to maintain adjacent sidewalks in a safe manner.

CIS has found that the homeowners' carriers for adjacent property owners will rarely accept a Cities tender of defense to the adjacent property owner unless the City has a liability shifting ordinance with indemnity provisions. In these cases, the City is left to jointly defend the case with the property owner incurring unnecessary costs.

Therefore, CIS strongly encourages as a best practice recommendation, Cities provide indemnification and defend the city language within their sidewalk ordinances that hold property owners responsible for maintaining the sidewalk fronting their property, as a responsibility and incentive to protect the overall health and safety of the greater community served.

underlined words are added
~~words stricken~~ are deleted

[...] means skipping text as it reads in the code (e.g., to focus on text being edited in this document)

CHAPTER 12.04 SIDEWALK CONSTRUCTION AND REPAIR

[...]

12.04.020 Duty to repair and clear sidewalks.

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

12.04.030 Liability for sidewalk injuries.

(1) The owner of real property responsible for maintaining the adjacent sidewalk shall be ~~primarily~~ liable to any person injured because of any negligence of such owner in failing to maintain the sidewalk in good condition, remove obstructions, and/or remove hazards to safe travel.

(2) If the city is required to pay damages for an injury to persons or property caused by the failure of a person to perform the duty, which this section imposes, the 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.