

TITLE V PHYSICAL ENVIRONMENT

CHAPTER 2 SIDEWALK REGULATIONS

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5-2-1 PURPOSE. The purpose of this chapter is to maintain sidewalks in a safe condition; to require owners of abutting property to maintain, repair, replace, construct, reconstruct or remove sidewalks. In the event a section or sections for existing sidewalk are removed, it is the responsibility of the property owner to make the area safe for public use. Iowa State Code (364.12(d)) and City Ordinance have established that the maintenance, repair or removal of sidewalks shall be the responsibility of the adjoining property owner. Tingley City Ordinances does provide the City of Tingley the ability to require an owner to repair sidewalk damaged by property owner, or tenant, adjacent to their property. The City, in fair practice, does not have the authority to recommend contractors nor does the City have any funds allocated to offset the costs that property owners will incur to repair their sidewalks. The City shall be as consistent as possible when marking sidewalk squares for repair. If a complaint is received on a property, that property and property in the immediate vicinity are required to be repaired, replaced or removed.

5-2-2 DEFINITIONS. As used in this chapter, the following terms have these meanings:

1. Defective Sidewalk. Any public sidewalk exhibiting one or more of the following characteristics:

- a. vertical separations equal to three-fourths (3/4) inch or more.
- b. horizontal separations equal to three-fourths (3/4) inch or more.
- c. holes or depressions equal to three-fourths (3/4) inch or more and at least four (4) inches in diameter.
- d. spalling over fifty (50) percent of the surface of a single square of the sidewalk with one or more depressions equal to one-half (1/2) inch or more.
- e. spalling over less than fifty (50) percent of a single square of the sidewalk with one or more depressions equal to three-fourths (3/4) inch or more.
- f. a single square of sidewalk cracked in such a manner that no part thereof has a piece greater than one square foot.
- g. a sidewalk with any part thereof missing to the full depth.

h. a change from design or construction grade equal to or greater than three-fourths (3/4) inch per foot.

2. **Sidewalk Improvements and/or Culverts.** The construction, reconstruction, repair, replacement, or removal of a public sidewalk or the excavating, filling, or depositing of material, **including culverts or tubing, in the public right of-way in connection therewith. Any culverts, removed by the property owner without City's permission, deemed necessary under any driveway, sidewalk or any other access to the owner's property, in new or existing sidewalks or driveways, shall be re-installed at owner's expense. Before installing a culvert, permission must first be obtained from the City. The property owner shall be responsible for the cost of the culvert itself. Culvert repairs, replacement or removal, not in conjunction with City maintenance, shall be the responsibility of the property owner to make repairs or make the sidewalk or culvert safe for the public, and, in the event the owner fails to do so, the City shall have the right to make the repairs. If the property owner fails to reimburse the City for the cost of said repairs, the cost shall be certified to the Council Treasurer and specially assessed against the property as by law provided. The size of the culvert or section of sidewalk to be installed shall be determined by the City.**

3. **Owner.** The person owning the fee title or the contract purchaser, **if there is one of record, otherwise the record holder of legal title**, for purposes of notification required herein. For all other purposes, "owner" shall include the lessee, or person in possession.

5-2-3 CLEANING SNOW, ICE, AND ACCUMULATIONS. It shall be the duty of the owner to keep sidewalks abutting the owner's property clear of accumulations of snow or ice. If the owner fails to do so within **a reasonable amount of time** after accumulation, **the owner may be liable for damages caused by the failure to use reasonable care in the removal of snow or ice.** The Mayor may have snow or ice removed without notice to the property owner. The Mayor shall give the Council an itemized and verified statement of the removal costs and a legal description of the property at the next regular Council meeting. The costs shall be reviewed by the Council, and if found correct, shall be assessed against the property as taxes. The City Clerk shall be directed to certify the costs to the County Treasurer for collection as provided in Section 364.12 of the Code of Iowa.

(Code of Iowa, Sec. 364.12(2b) and (2e))

5-2-4 MAINTENANCE RESPONSIBILITY. The abutting property owner or owners shall be responsible for the repair, replacement, reconstruction or removal of all broken or defective sidewalks to a safe condition and to maintain all sidewalks in the abutting street right-of-way. **The City may serve verbal notice on the abutting property owner by a council member; continued failure to comply, the owner shall receive a letter to abate; second notice shall be by certified letter by mail. Upon notification by the City Council, the owner has 30 days to repair, replace, construct, reconstruct or remove the sidewalk. Owner may request a hearing before the council within 10 days of notice. Failure to abate in 30 days or to request hearing, the City will perform the required action. The owner will be billed for labor and supplies. The City, upon owner's failure to comply or to reimburse the City for any**

billings, may assess the costs against the abutting property for collection in the same manner as a property tax.

(Code of Iowa, Sec. 364.12(2c))

5-2-5 LIABILITY OF ABUTTING OWNER. As provided in Section 364.14, Code of Iowa, **this chapter is to enhance safe passage by citizens on sidewalks and places the responsibility for the maintenance, repair, replacement, reconstruction or removal on property owner or lessee. If an issue exists that is a safety concern to the public, the area of concern needs to be marked to not allow usage by public. The owner will be notified via council member to abate, failure to comply will follow with a letter from the council. Second notice will be by certified letter. Property owner shall have 30 days to remedy the problem or contact the Council within 10 days of notice to request a hearing before the Council. If a property owner or lessee fails to comply, the City will complete the restoration, and assess the costs against the property owner for labor and supplies. Collection for non-payment will be assessed in the same manner as a property tax.**

(Code of Iowa, Sec. 364.12(2d &e))

In the event the owner, **or lessee**, of property abutting any public sidewalk fails or refuses to perform any act required of them by this Ordinance and in the event an action is brought against the City for personal injuries alleged to have been caused by a defect in or the condition of said sidewalk, the City may notify the said abutting owner in writing that which claims the injury was caused by their negligence and/or their failure to repair the defect or eliminate the condition of complaint. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the City believes that the person notified is liable to it for any judgment rendered against the City, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in any action by the City against any person so notified, as to the existence of the defect or condition or other cause of the injury or damage, as to the liability of the City to the plaintiff in the first named action, and as to the amount of the damage or injury. The City may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the City in the suit.

(Code of Iowa, Sec. 364.14)

5-2-6 NOTICE OF ASSESSMENT FOR CLEANING COSTS. When the Mayor submits a bill for removal of accumulations as provided in this chapter, the City Clerk shall send a notice to the owner of the abutting property to the last known address of the owner. The notice shall contain a statement of work performed, the cost of work that is being assessed, a description of property affected, and the fact that the person may pay the amount assessed within thirty (30) days without interest or penalty. The notice also shall indicate that the person may object to such assessment and given the place and time at which Council will hear such objections. The time set for hearing shall be at least fifteen (15) days after the service or mailing of the notice.

(Code of Iowa, Sec. 384.50)

5-2-7 **HEARING AND ASSESSMENT.** At the time and place designed in the Notice, the Council shall consider all objections to the assessment, correct all errors or omissions, and adopt a corrected list as the amounts to be assessed against the property.

(Code of Iowa, Sec. 384.51)

5-2-8 **BILLING AND CERTIFYING TO COUNTY.** Thirty (30) days after the Council's decision, the City Clerk shall certify any unpaid amounts to the County Treasurer. The unpaid assessments shall constitute a lien against the property and shall be collected by the County Treasurer in the same manner as other taxes. Any assessment that exceeds \$100 may be paid in installments as set by Council, not exceeding ten, in the same manner and at the same interest rates as for special assessments under Chapter 384, division IV, Code of Iowa. No interest shall be charged for assessments, or parts thereof, paid within thirty (30) days of the time the Council determined the final amounts.

(Code of Iowa, Sec. 384.60)