

CITY OF YUBA CITY
STAFF REPORT

Date: November 16, 2021
To: Honorable Mayor & Members of the City Council
From: Public Works Department
Presentation by: Diana Langley, Public Works Director

Summary

Subject: Sidewalk Maintenance and Repairs Ordinance

Recommendation: Introduce an Ordinance of the City Council of the City of Yuba City establishing sidewalk maintenance and repair responsibilities by adding Chapter 11 (Sidewalk Maintenance and Repairs) to Title 6 of the Yuba City Municipal Code, and waive the first reading.

Fiscal Impact: Staff time to administer and enforce the Ordinance as appropriate.

Purpose:

To assure that sidewalks throughout the City are maintained in a state of good repair.

Background:

The California Streets and Highways Code (SHC) Sections 5600-5630 govern the maintenance of sidewalks. The SHC requires property owners to maintain sidewalks in such condition that the sidewalk will not endanger persons or property and such that it will not interfere with the public convenience in the use of the sidewalk, except for those conditions created by anyone other than the property owner.

Although the SHC requires private property owners to be responsible for private sidewalk repairs and liable for any injuries resulting from sidewalk defects, California courts have held that the City is and can be held liable for injuries as a result of private sidewalk damage if the City has not adopted a sidewalk liability ordinance.

Title 9, Chapter 3 Street Trees of the Yuba City Municipal Code provides that the City has no liability and the property owner is not relieved from the duty to keep private property, sidewalks, and the planting strips abutting such private property in a safe condition so as not to be hazardous to public use. However, the City does not currently have an Ordinance specifically related to sidewalk liability for maintenance and repairs.

Sidewalk repair needs represent potential accessibility challenges for users, as well as potential tripping hazards that can lead to injuries. Both of these concerns have the potential to result in claims and lawsuits against the City. These claims and lawsuits can be cheaper to settle than defend against, even when the City is not at fault.

Analysis:

The proposed Ordinance affirms the property owner's responsibilities outlined in the SHC and Section 9-3.12 of the Yuba City Municipal Code. The Ordinance defines a "hazard" as any vertical displacement of ½-inch or greater, any horizontal separation of ¾-inch or greater, any slope of 8.33 percent or greater, or any condition deemed hazardous to users as determined by the Public Works Director.

The proposed Ordinance does allow the City, at its discretion, to make repairs or provide tree mitigation in order to ease the burden of maintenance efforts caused by Street Trees. However, the liability in these situations remains with the property owner.

The proposed Ordinance codifies current property owner notification procedures, a path for property owners to request time extensions, and allowances for the City to perform repairs when property owners fail to do so in a timely manner. In instances where the City must complete the work, the City's Administrative Citation process would be implemented, including a lien process. While an encroachment permit is required to perform work within the City right-of-way, the fee would be waived for sidewalk maintenance and repairs to help encourage compliance.

Property owners are often in the best position to quickly identify and address potentially dangerous sidewalk conditions. The effect of the proposed ordinance on adjacent property owners is to affirm the measure of legal responsibility for the maintenance of safe sidewalks already codified in State law and Yuba City Municipal Code Section 9-3.12. Without the ordinance, abutting property owners have little incentive to maintain sidewalks or to report or eliminate tripping hazards, even though they are currently responsible for repairs pursuant to state law. The Ordinance also serves as an effective risk management tool, enabling the City to more fully defend against sidewalk trip and fall cases by providing the legal means to tender sidewalk related injury claims to the responsible property owner's insurance carriers. For these reasons, sidewalk liability ordinances are strongly recommended by the City's insurance provider and have been adopted by numerous jurisdictions throughout the State.

Fiscal Impact:

Staff time to administer and enforce the Ordinance as appropriate.

Alternatives:

Direct staff to modify the terms of the proposed Ordinance.

Recommendation:

Introduce an Ordinance of the City Council of the City of Yuba City establishing sidewalk maintenance and repair responsibilities by adding Chapter 11 (Sidewalk Maintenance and Repairs) to Title 6 of the Yuba City Municipal Code, and waive the first reading.

Attachments:

1. Proposed Ordinance

Prepared by:

/s/ Kevin Bradford

Kevin Bradford
Deputy Public Works Director – Engineering

Reviewed by:

Finance

City Attorney

Submitted by:

/s/ Dave Vaughn

Dave Vaughn
City Manager

SM

SLC by email

ATTACHMENT 1

ORDINANCE NO. _____

**ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
ESTABLISHING SIDEWALK MAINTENANCE AND REPAIRS RESPONSIBILITIES
BY ADDING CHAPTER 11 TO TITLE 6 OF THE YUBA CITY MUNICIPAL CODE**

WHEREAS, the California Streets and Highways Code (SHC) Sections 5600-5630 govern the maintenance of sidewalks; and

WHEREAS, the SHC requires property owners to maintain sidewalks in such condition that the sidewalk will not endanger persons or property and such that it will not interfere with the public convenience in the use of the sidewalk, except for those conditions created by anyone other than the property owner; and

WHEREAS, Title 9, Chapter 3 Street Trees of the Yuba City Municipal Code provides that the City has no liability and the property owner is not relieved from the duty to keep private property, sidewalks, and the planting strips abutting such private property in a safe condition so as not to be hazardous to public use; and

WHEREAS, the City Council now desires to adopt an Ordinance specifically outlining the maintenance and repair responsibilities within the City.

THE CITY COUNCIL OF THE CITY OF YUBA CITY DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The adoption of the Ordinance is in the public interest and promotes the public health, safety, and welfare.

Section 2. Chapter 11 (Sidewalk Maintenance and Repairs) of Title 6 (Public Works) of the Yuba City Municipal Code is hereby added to read as follows:

Sec. 6-11.01. – Definitions.

- (a) *Sidewalk.* For the purposes of this chapter, “sidewalk” shall be defined as stated in Section 5600 of the California Streets and Highways Code, which includes a park or parking strip maintained in the area between the property line and the street line and also includes curbing, bulkheads, retaining walls, or other works for the protection of any sidewalk or of any such park or parking strip, and shall also include sidewalk and driveways in the public right-of-way primarily devoted to pedestrian use.
- (b) *Right-of-way.* For the purposes of this chapter, the public right-of-way shall include any public easement, which may include or be improved to include a sidewalk or other facility for public use.
- (c) *Hazard.* A sidewalk condition such as a crack, fracture, hole, gap, displacement, or other condition which results in the following:
 - (1) Vertical step separation greater than or equal to 0.5 inches;

- (2) Horizontal joint gap greater than or equal to 0.75 inches;
- (3) Hole or settlement deeper than or equal to 0.5 inches;
- (4) Displacement resulting in a slope greater than or equal to 8.33%;
- (5) Standing water deeper than or equal to 0.5 inches; and/or
- (6) Any other condition that is hazardous to pedestrians, hampers the mobility of pedestrians, interferes with the use of the sidewalk in a reasonable manner, or as determined by the Public Works Director.

Sec. 6-11.02. – Sidewalk responsibility.

- (a) *Property owner responsibility.* The owners of lots or portions of lots fronting on or containing any portion of the public right-of-way, when that right-of-way is improved or if and when the area within the public right-of-way is improved, shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience in the use of those facilities or areas. Property owner responsibility for corner lots shall include both the front and side of the lot adjacent to or containing sidewalks.

- (1) Maintenance of the sidewalk and the repair of any hazard shall include both the repair and restoration of the sidewalk itself as well as the mitigation or abatement of any adverse conditions which are or have caused damage to the sidewalk, such as the overgrowth of roots from a tree on the adjacent property.

- (2) As established in Section 9-3.12 (Street Trees – Liability), property owner liability and responsibility shall include any hazards or damage caused by the street trees located within the planting easement. However, the City may, at its discretion, make sidewalk repairs or tree mitigation efforts without cost to the property owner in order to ease the burden of maintaining sidewalks potentially affected by City street trees. This work shall not relieve the burden of liability from the property owner.

- (b) *Responsibility by permit.* If any persons or contractors by virtue of any permit or contract, such as an encroachment permit, are authorized work removing, altering, damaging, or otherwise impacting the sidewalk and its use, said persons shall be temporarily responsible for the maintenance and repair of the sidewalk as determined by the Public Works Director or designee.

Sec. 6-11.03. – Procedure.

- (a) *Adoption of the Streets and Highways Code.* The provisions of Division 7, Part 3, Chapter 22 of the California Streets and Highways Code, as is now in effect or may hereafter be amended, are hereby adopted as the procedure and processes governing the responsibilities, maintenance, and repair of sidewalks in the City.

In the event of any conflict between the Streets and Highways Code and this chapter, this chapter shall prevail.

- (b) *Notices.* As per the Streets and Highways Code, there are a series of two notices which must be sent by the City. All notices shall be delivered to both the property owner and the tenant in cases where the resident is not the property owner.
 - (1) The first notice shall be delivered via doorhanger to the resident regarding the sidewalk hazard, any work that the City has done to remediate the situation, and any further steps which must be completed by the property owner. In cases where the resident is not the property owner, a letter shall be mailed to the property owner as soon as feasible after the doorhanger has been delivered to the tenant.
 - (2) The second notice shall be mailed to the property owner and any tenant 7 to 10 days following the date of the first notice. This notice shall include all information from the first notice, as well as the required dates for commencement and completion of repairs and the description of the City repair and lien process should the property owner fail to make the repairs.
- (c) *Extension of time to repair.* Notwithstanding the provisions of the California Streets and Highways Code as adopted in Section 6-11.03(a), the Public Works Director may in his or her discretion, and for sufficient cause, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not to exceed 90 days from the time the first notice referred to in said Code is given.
- (d) *Failure to repair sidewalk.* Should the property owner fail to meet the required timeline to make necessary repairs, the Public Works Director may, at his or her discretion, recommend that a City enforcement officer issue an administrative citation or direct City staff to coordinate the repair of the sidewalk and begin the lien process.
- (e) *Administrative citations.* Failure to maintain sidewalks in a non-hazardous condition has been deemed a nuisance, per Municipal Code Title 4 Chapter 8 (Nuisance Abatement Code). As such, an administrative citation may be issued to the property owner for failure to meet the requirements of this chapter to the satisfaction of the City. The Public Works Director may recommend this course of action following a property owner's failure to correct the hazardous sidewalk as noticed, unless an immediate health and safety risk is created by the failure to maintain the sidewalk in a non-hazardous condition.
- (f) *City repairs and invoices.* If the property owner does not repair the sidewalk within the required timeline provided by the City in the notices, the Public Works Director may determine that the City will make the necessary repairs by its own forces or a contractor and invoice the property owner for the cost of said repairs. The property owner shall have 90 days from the date of the invoice to pay the invoice before the lien process is initiated. The Public Works Director may

recommend this course of action following a property owner's failure to correct the hazardous sidewalk as noticed.

- (g) *Lien process and appeals.* All invoices which remain delinquent for at least 90 days from the date of the invoice may be collected in the same manner as the general taxes for the City for the forthcoming fiscal year, as follows:
- (1) The City's Public Works Department shall prepare a written report, which shall be filed with the City Clerk. The report shall describe each parcel of real property for which there are any sidewalk repair invoice delinquencies and the amount of the delinquency. The report of delinquent sidewalk repair charges may be combined with the report of any other delinquent charges, as long as the report identified the delinquent charges for each invoice for each parcel.
 - (2) The City Clerk shall publish notice of the report's filing and of the time and place of the hearing on the report, prior to the date set for the hearing. The notice shall be published once a week for two successive weeks prior to the hearing. The Public Works Department shall also mail written notice of the report's filing to each property owner whose property or parcel is identified as being subject to delinquent charges, setting forth individually each property and each of the repair invoices and charges due for that property. This notice shall also establish a date for a prehearing during which a property owner may appeal the delinquent charges to the Public Works Director.
 - (3) At the time stated in the notice for the prehearing, the Public Works Director and/or designee shall hear and consider all objections or protests, if any, to the report concerning the delinquencies in a "prehearing." Thereafter, the City Public Works Director may revise, change, reduce, or modify any delinquency, or overrule any or all objections thereto. The Public Works Director shall then make his or her determination on each delinquency identified in the report, and present the list to the City Council for final determination at the public hearing stated in the report notice.
 - (4) At the time stated in the notice, following the prehearing and prior to submission to the County of Sutter, the City Council shall hear and consider all objections or protests, if any, to the report concerning the delinquencies. Thereafter, the City Council may adopt, revise, change, reduce, or modify any delinquency or overrule any or all objections thereto. The City Council shall then make its determination on each delinquency identified in the report; the City Council's determination shall be final.
 - (5) Following the hearing, the City Clerk shall file with the City's Public Works Director a copy of the signed report to submit to the County. The Public Works Director will submit a request to the County of Sutter to include the amount of delinquencies on the bills for taxes levied against the properties identified in the report.

Sec. 6-11.04. – Permitting.

- (a) *Encroachment permit required.* Prior to any maintenance or repair of the sidewalk, it is the responsibility of the property owner or designee to obtain an encroachment permit from the Public Works Department for said work. Encroachment permits shall be in accordance with Title 6 Chapter 1 of the City's Municipal Code.
 - (1) Notwithstanding the license and insurance regulations in Title 6 Chapter 1, the property owner may make any necessary maintenance or repairs his or herself, as long as the property owner has acquired an encroachment permit and repairs are made in accordance with City standards.
- (b) *City standards.* All maintenance or repair of the sidewalk must be done in accordance with City standards. Repairs or maintenance shall be completed to the satisfaction of the Public Works Director or designee.
 - (1) All work affecting the City street trees must be in accordance with Title 9 Section 3 (Street Trees) of the Municipal Code.
- (c) *No encroachment permit fees for property owner repairs.* There shall be no fee charged for obtaining an encroachment permit by the property owner or the property owner's designated contractor for the repair or maintenance of sidewalks associated with correcting a hazard as defined in Section 6-11.01(c).

Sec. 6-11.05. – Liability.

- (a) *Property owner liability.* Property owners required by this chapter to maintain and repair the sidewalk area shall owe a duty to members of the public using public streets and sidewalks to keep and maintain the sidewalk area in a safe and non-hazardous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a non-hazardous condition as required by this chapter, any person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury.
- (b) *City liability.* The City may, in order to protect the health and safety of pedestrians, intervene to make safe or repair a hazard which has occurred in the sidewalk or adjacent facilities. Said actions in no way absolve, alter, or transfer the property owner's responsibility and liability for the maintenance and repair of the sidewalk, as stated above in Section 6-11.02(a) and Section 6-11.05(a).

Section 3. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections,

sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

Section 4. The City Clerk shall certify to the passage of this Ordinance and shall cause the same to be published as required by law.

Section 5. This Ordinance shall take effect and be in full force and effect from and after 30 days after its final passage and adoption.

Introduced at a regular meeting of the City Council of the City of Yuba City on the 16th day of November, 2021, and passed and adopted at a regular meeting held on the ____th day of _____, 2021.

AYES:

NOES:

ABSENT:

Marc Boomgaarden, Mayor

ATTEST

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

Shannon L. Chaffin, City Attorney
Aleshire & Wynder, LLP