

CITY OF KIRKLAND

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CITY ATTORNEY'S OFFICE

MEMORANDUM

To: David Ramsay, City Manager
From: Oskar Rey, Assistant City Attorney
Date: November 29, 2007
Subject: Sidewalk Maintenance and Construction

RECOMMENDATION:

Staff recommends that Council adopt the attached Ordinance revising Chapter 19.20 of the Kirkland Municipal Code ("KMC") relating to sidewalk construction and maintenance.

BACKGROUND DISCUSSION:

At the August 7, 2007 Council Meeting Study Session, the City Council requested more information about the extent to which an abutting property owner can be required to maintain and sidewalks in the right of way. In particular, concern was expressed about KMC 19.20.030, which provides that an abutting property owner is liable to the City for any injury or damage to any person caused by a defective condition of the sidewalk.

The City Attorney's Office has reviewed the applicable case law with respect to construction, maintenance and repair of sidewalks. In general, cities are responsible for the physical condition of sidewalks in public rights of way. Abutting property owners are also responsible for sidewalks if they cause or contribute to a defective condition in the sidewalk. In addition, abutting property owners are responsible for removal of obstructions, ice and snow from the sidewalks in front of their property.

Ordinances that purport to require abutting property owners to indemnify a city from injuries sustained from sidewalk defects have been struck down. Washington courts have ruled that such provisions are unconstitutional because they are unduly burdensome on property owners. Rivett v. City of Tacoma, 123 Wn.2d 573, 870 P.2d 299 (1994).

KMC Chapter 19.20 was adopted in 1982 and contains an indemnification provision similar to the one struck down in Rivett. As a matter of practice, the City has not attempted to utilize this indemnification provision, and the attached Ordinance removes it from the Chapter.

The attached Ordinance also provides that sidewalk construction may occur pursuant to RCW Chapters 35.68, 35.69 and 35.70. These provisions allow for sidewalk construction in a manner similar to a local improvement district. The attached Ordinance removes references to Chapter 21.48 of the KMC because that chapter no longer exists. Apparently, that chapter used to govern installation of sidewalks in connection with development permits and construction activity. Those provisions are now contained in Chapter 92 of the Kirkland Zoning Code.

Finally, the attached Ordinance revises KMC 19.20.030 to clarify that abutting property owners are responsible for maintaining and repairing sidewalks but not construction (outside the context of development activity or RCW Chapters 35.68, 35.69 and 35.70). This revision brings KMC Chapter 19.20 into line with the City's actual practices with respect to sidewalk construction. With respect to maintenance and repair, the City Attorney's Office recommends retaining the provision that provides it is the abutting owner's responsibility. While there is concurrent responsibility for sidewalks as between the abutting owner and the City, Washington courts have recognized that abutting owners are in the best position to perform routine maintenance and repair. They are also in the best position to call larger problems to the attention of the City.

ORDINANCE 4123

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO SIDEWALK CONSTRUCTION AND MAINTENANCE AND AMENDING PORTIONS OF CHAPTER 19.20 OF THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Section 19.20.030 of the Kirkland Municipal Code is hereby amended to read as follows:

19.20.030 Expense of maintenance and repair to be borne by abutting property and owner thereof.

The burden and expense of ~~constructing,~~ maintaining and repairing sidewalks along the side of any street or other public place shall devolve upon and be borne by the property directly abutting thereon. ~~In case any injury or damage to any person shall be caused by the defective condition of any sidewalk, or ice or snow thereon, or by the lack of proper guards or railings on or along the property abutting on any public way, the abutting property where the injury or damage occurs and the owner or owners thereof shall be liable to the city for all damage, injuries, costs and disbursements which it may be required to pay to the person injured or damaged.~~

Section 2. Section 19.20.040 of the Kirkland Municipal Code is hereby amended to read as follows:

19.20.040 Procedure to order construction or repair.

A. If the judgment of the city engineer or the department of public ~~services~~ works, public convenience or safety requires that a sidewalk be constructed or repaired along either side of any street, such fact shall be reported to the city council.

B. If upon receiving a report from the proper officer, the city council deems the construction of the proposed sidewalk or repair of such sidewalk necessary or convenient for the public health, safety or welfare, the city council may then order such work to be done pursuant to the procedures established ~~therefor~~ in RCW Chapters 35.68, 35.69 or 35.70 ~~relating to local improvement districts for sidewalks, curbs and gutters; or in the alternative, where the council deems the method appropriate, the council may require such work to be done pursuant to Chapter 21.48 of this code relating to public improvements required to be done in connection with certain land use and construction permits. In either case, t~~he cost of such proposed sidewalk construction or sidewalk repair shall be borne by the abutting property ~~or the owners thereof, to the extent deemed reasonable and appropriate by the city council in accordance with the procedure then to be followed pursuant to either RCW Chapters 35.68, 35.69 or 35.70 or Chapter 21.48 of this code.~~

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2007.

Signed in authentication thereof this ____ day of _____, 2007.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney