

**CITY OF KIRKLAND**

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**CITY ATTORNEY'S OFFICE**  
**MEMORANDUM**

**To:** David Ramsay, City Manager  
**From:** Oskar Rey, Assistant City Attorney  
**Date:** December 17, 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.

Staff provided a proposed ordinance for the December 11, 2007 Council Meeting that removed this provision. At the December 11, 2007 Meeting, the Council requested that the Ordinance be revised with respect to the sidewalk repair obligations of an abutting property owner. The attached Ordinance revises KMC 19.20.030 through the addition of the following language: "The abutting property owner shall also be responsible for performing and paying for sidewalk repairs to the extent the need for repairs is caused by the actions or omissions of the abutting property owner."

It should be noted that KMC 19.20.030 sets forth the general obligations of an abutting property owner with respect to sidewalks. KMC 19.20.040 also contains language about paying for sidewalk construction and repair in connection with sidewalk projects undertaken pursuant to RCW Chapters 35.68, 35.69 and 35.70. These Chapters set forth processes that are similar to local improvement districts (LID) for sidewalk projects in which the projects are funded by assessments on the abutting property owners. The language of KMC 19.20.040 refers to abutting owners being responsible for paying for sidewalk construction or repair projects undertaken pursuant to RCW Chapters 35.68, 35.69 and 35.70. This language is simply an acknowledgment of the fact that these RCW Chapters are similar to LIDs in terms of how the sidewalk construction and repairs are funded.

To the best of my knowledge, the City has not utilized the provisions of RCW Chapters 35.68, 35.69 and 35.70 to fund sidewalk projects. However, KMC 19.20.040 would allow for this in the event the City wants to do so in the future.

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 owner of the property directly abutting thereon. The abutting property owner shall also be responsible for performing and paying for sidewalk repairs to the extent the need for repairs is caused by the actions or omissions of the abutting property owner. ~~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 \_\_\_\_\_, 2008.

Signed in authentication thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney