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Legal Opinion 2012-17

TO: John Engen, Mayor; City Council; Bruce Bender; Steve King; Kevin Slovarp; Gregg Wood; Micky Rufus; Jessica Miller; Doug Harby; Bob Hayes and Brent Ramharter

CC: Legal Staff

FROM: Jim Nugent, City Attorney

DATE November 2, 2012

RE: Adjacent property owners to remove snow and ice from public sidewalks adjacent to their property.

FACTS:

During recent weeks the city council public works committee has been discussing the topic of responsibility for snow and ice removal from public sidewalks by adjacent property owners.

ISSUE(S):

May a city council require the owners of adjacent premises to keep adjacent public sidewalks free from snow and ice?

CONCLUSION(S):

Montana state law, subsection 7-14-4105(3) MCA specifically empowers a city council with the power to regulate the use of public sidewalks, including requiring the owners of adjacent premises to keep the public sidewalks free from snow or other obstruction. The Missoula City Council has placed a snow and ice removal responsibility from public sidewalks on the adjacent property owner, or person in charge or control of, or occupying tenant of the adjacent premises pursuant to section 12.16.030 Missoula Municipal Code (MMC). The City of Missoula executive branch, through the city administration has adopted and implemented administrative rule 23 entitled “SIDEWALK SNOW REMOVAL POLICY” to establish a city process and procedure for better ensuring that snow and ice are removed from public sidewalks.

LEGAL DISCUSSION:

Pursuant to subsection 7-14-4105(3) MCA the Montana State legislature has expressly empowered a city council to be able to require that the owners of the adjacent premises adjacent to a public sidewalk to keep the public sidewalks free from snow and other obstructions. Section 7-14-4105 MCA states:

7-14-4105. Lighting and cleaning of traffic ways and public grounds. The city or town council has power to:

- (1) provide for lighting and cleaning the streets, alleys, and avenues;
- (2) regulate the disposition and removal of ashes, garbage, or other offensive matter in any street or alley, on public grounds, or on any premises;
- (3) regulate the use of sidewalks and require the owners of the adjoining premises to keep the same free from snow or other obstruction. (emphasis added)

The Missoula City council has enacted section 12.16.030 MMC entitled “snow and ice to be removed from sidewalks” to establish a requirement that the person owning, in charge or control of, or occupying the premises adjacent to a public sidewalk is required to keep the public sidewalk clear of snow, ice and slush. Two other sections, section 12.16.035 MMC entitled “Depositing of snow and ice restricted” and 12.16.040 MMC pertaining to penalties also pertain to snow and ice removal from public sidewalks. These three sections of Missoula Municipal Code provide as follows:

12.16.030 Snow and ice to be removed from sidewalks.

A. Every person owning, in charge or control of, or occupying as tenant any building or lot of land within the city which fronts on, abuts, or contains within a public use easement a sidewalk, shall remove and clear away, or cause to be removed and cleared away, snow, ice, slush, mud, or other impediment to safe and convenient foot travel from so much of said sidewalk as is in front of, abuts on, or is contained within said building or lot of land. It is further such person's duty to prevent accumulation of the same upon such sidewalks. Snow, ice, slush, mud, or other impediment shall be removed from all sidewalks in the City by nine a.m. of the next day following a snowfall.

B. When from freezing of water, snow or slush thereon, or by reason of such compaction resulting from the wear of foot travel or from any cause whatever, sidewalks are rendered dangerous, unsafe or difficult to the free passage of pedestrians, it shall be the duty of the owners or tenants of premises in front of, adjoining or containing within a public use easement such sidewalks to forthwith remedy such conditions by sprinkling sand or de-icing agents on the sidewalks, or chipping or by other safe and efficient means. (Ord. 3040, 1997; Ord. 2043 §2, 1979; prior code §28-3) (emphasis added)

12.16.035 Depositing of snow and ice restricted. No person shall deposit or cause to be deposited any accumulation of snow or ice on or against a fire hydrant or on any sidewalk, pedestrian roadway crossing, roadway, roadway shoulder or berm, curb or

gutter, any handicap parking space, any loading and unloading area of a public transportation system or any area designated for use by emergency vehicles for access. (Ord. 3040, 1997)

12.16.040 Violations: work done, liability therefore, civil penalty and collection.

- A. In the event of the failure of any person responsible for clearing the sidewalk to clear away or treat with abrasives or suitable de-icing agents and subsequently clear away any snow, ice, slush, mud, or other impediment from any sidewalk as required by this ordinance, or cause this to be done, the director may, as soon as practicable after such failure, cause such work to be done at the expense of the property owner.
- B. The director shall ascertain and keep a record of: the exact date and costs of all work caused to be done in accordance with this section on account of each act or omission of each person; a legal description of the lot or lots fronting, abutting on or containing within a public use easement the sidewalks cleared along with the street address; and the identity of the owner(s) of the premises along with, when possible, any tenant(s), occupant(s) or lessee(s).
- C. Each person whose act or omission makes it necessary that the director cause work to be done in accordance with this section shall be liable to the City for the cost of such work. The costs will be: a minimum of twenty-six dollars (\$26.00) for up to one-half hour of snow removal work plus actual time for snow removal beyond one-half hour prorated at the rate of fifty-two dollars (\$52.00) per hour, plus an administrative fee of thirty-six dollars (\$36.00). Actual fees may exceed the minimum fee in instances in which actual costs are documented to exceed the minimum fee.
- D. The director shall give each person written notice of the amount owed to the City as soon as practicable. The payment of such amount may be enforced through suit for collection or by levying an assessment on the premises or both.
- E. In the event of assessment, the City Council shall annually pass and adopt a resolution levying an assessment and tax against each lot or parcel of land fronting, abutting on, or containing within a public use easement the sidewalks cleared under the order of the director and according to his/her report. Any such assessment or tax against the lot or parcel of real estate to which this sidewalk clearing service is furnished and for which payment is delinquent, shall become a lien on the real estate receiving the benefit. (Ord. 3462 §5, 2011; Ord. 3040, 1997).

The executive branch of city government has adopted City of Missoula administrative rule 23 entitled “SIDEWALK SNOW REMOVAL POLICY” to establish a process and procedure for ensuring that snow and ice are removed from public sidewalks by adjacent property owners. A copy of administrative rule 23 is attached hereto.

CONCLUSION(S):

Montana state law, subsection 7-14-4105(3) MCA specifically empowers a city council with the power to regulate the use of public sidewalks, including requiring the owners of adjacent premises to keep the public sidewalks free from snow or other obstruction. The Missoula City Council has placed a snow and ice removal responsibility from public sidewalks on the adjacent property owner, or person in charge or control of, or occupying tenant of the adjacent premises pursuant to section 12.16.030 Missoula Municipal Code (MMC). The City of Missoula executive branch, through the city administration has adopted and implemented administrative rule 23 entitled “SIDEWALK SNOW REMOVAL POLICY” to establish a city process and procedure for better ensuring that snow and ice are removed from public sidewalks.

OFFICE OF THE CITY ATTORNEY

/s/

Jim Nugent, City Attorney

JN:tfa

Administrative Rule #23
SIDEWALK SNOW REMOVAL POLICY

Adopted as Administrative Rule #23 pursuant to ordinance number 2232 which authorizes the Mayor to develop and approve administrative rules and 12.16.030 – 12.16.045 MMC.

Dated this 28th day of October, 2010.

Approved:

/s/ John Engen
Mayor John Engen

Administrative Rule #23
SIDEWALK SNOW REMOVAL POLICY

I. Department Responsibility

The Public Works Department is charged with the responsibility of enforcing the requirements of Ordinance 3040 (Removal of Snow and Ice from Sidewalks), also found at 12.16.020 – 12.16.045 MMC. The procedures for enforcement of this ordinance are detailed below.

II. Public Notice

Prior to beginning snow removal enforcement activities at the onset of winter weather, a display ad will be published in the Missoulian which gives notification that enforcement of the Ordinance has begun. The ad will be typically published beginning in late fall and will be run once or twice a week for three weeks. Additional notices may be published later in the season at the discretion of the Public Works Department. Notice and explanation of the policy will be sent to Property Management Associations, Landlord Associations, Realtor Associations, City licensed snow removal contractors, and other property owner groups.

Additionally, press releases will be posted on the City website news center and sent to all news media detailing the requirements of the ordinance and encouraging citizens to comply. Further, information will be disseminated to residential and business addresses explaining the new level of compliance requirements and penalties for non-compliance, and will include weekend and holiday contact phone numbers for reports of non-compliance.

III. City crews to remove sidewalk snow

Subsequent to the procedures below, if an inspector determines the sidewalks at a particular address have not been cleared per the requirements of the ordinance, the inspector may order City crews from the Traffic Services Section to remove snow and ice from those sidewalks and assess the costs to the adjacent property owner.

IV. Standards for Snow Removal

All snow and ice is to be removed from sidewalks by nine (9:00) a.m. following each snowfall, except that on weekends and holidays snow must be removed by twelve (12:00) noon. This requirement shall be complied with regardless of whether the snowfall has ceased.

City maintained sidewalks surrounding City Hall are to be used as a reference point for inspectors enforcing the ordinance. Citizens will be informed that these sidewalks are the standard that inspectors will use in determining whether a sidewalk is adequately cleared of snow and ice.

In the event that snow and ice on a sidewalk has become so hard that it cannot be reasonably removed, the inspectors must require that the person responsible for maintaining the sidewalk cause

sand or other suitable material to be put on the snow or ice covering the sidewalk to make pedestrian travel reasonably safe. As soon as weather permits, the responsible party is required to cause the sidewalk to be thoroughly cleared of snow and ice. If the responsible party neglects to place sand or other suitable material on the sidewalk within the specified time, City crews will be told to thoroughly remove the snow or ice, for which the costs will be assessed to the adjacent property owner.

V. Sidewalk Inspections

Enforcement of the ordinance will be based on complaints by citizens, and by City staff inspections on priority routes – sidewalks in business areas, high traffic streets, walk-to-school routes, and access to other public and community facilities. Any citizen may report to the City that a sidewalk at a specific address has not had snow or ice removed. Inspectors from the Public Works Department will inspect such sidewalks for compliance with the ordinance. Inspectors may examine adjacent properties up to 500 feet in either direction, or as far as the end of the block, whichever is closer, when responding to a complaint at a specific address. Under most normal circumstances, inspectors will not be available on weekends. Complaints left at the Public Works message desk over the weekend will be responded to as soon as possible on Monday.

Sidewalks found to be in non-compliance will be noted. The occupant and/or owner will be given a courtesy notice in person that explains the requirements of the ordinance, including specific mention that if the owner fails to clear the sidewalks, City crews will clear them, for which the costs will be charged to the owner. If there is no person at the address, the inspector will leave the notice at the location. If the sidewalk is adjacent to a vacant lot, notice will be given by telephone or mail. In every enforcement action, the inspector shall presume that the property owner is aware of the requirements of the ordinance, and that leaving a courtesy notice is sufficient notice that the ordinance requirements have not been satisfied, without the necessity of evidence that the property owner actually received and understood the courtesy notice. If the volume of complaints exceeds the City's ability to respond immediately, first attention will be to complaints in priority areas.

The following day or as soon as practical, a compliance check will be completed on the sidewalks which were given a courtesy notice. A list of all sidewalks still in non-compliance with the ordinance will be given to City crews, who are to begin work clearing the sidewalks within twenty-four hours after being given notice by the inspector, or if not possible, as soon as practical.

The procedures to be followed before ordering snow removed by City crews are in the following flow chart.

It is expected that the inspector will exercise appropriate judgment in ordering snow to be removed by City crews, taking into account these factors: whether the complaint is the first or a subsequent one for the address, snowfall conditions, whether the snow on the sidewalk is due to snowfall or city plowing, and ability of the responsible party to remove the snow promptly, as noted in Section IX.

Addresses about which complaints have been received and inspected will be logged; they may be routinely checked following subsequent snowfalls. If such a sidewalk is clear in two such checks, the address will be removed from the list. If such a sidewalk is chronically not kept clear, the inspector may enforce the "Criminal Penalties" section of the ordinance.

VI. City Plowing

The City will make renewed efforts to assure that snowplow operators do not plow snow onto the sidewalk. Whenever the inspector determines that the snow on a complained-about sidewalk is due to City plowing, the inspector will immediately phone City crews who will remove it with all possible dispatch. Berms created by City plowing which block intersection crosswalks will be removed by City crews when plowing berms on side streets.

VII. Enforcement Cancellation

If snow begins accumulating between the courtesy notice and the compliance check, the Public Works Director or their designate may suspend enforcement activities until the weather reasonably permits

occupants to clear their sidewalks. However, nothing in this paragraph shall relieve property owners of the duty to "prevent accumulation of the same" ("snow, ice, slush, mud, or other impediment to safe and convenient foot travel....") per section 12.16.030 of the Missoula Municipal Codes. A property owner is obligated to remove snow, ice, and other impediments following each snowfall.

VIII. Billing Procedures

In accord with 12.16.040 B MMC, City crews shall keep accurate records of the work they performed at each address, including the date and time the snow etc. was removed from each sidewalk and the general condition of the snow and/or ice on the sidewalk which they removed. The inspectors will maintain this information in a spreadsheet. Per 12.16.040 C and D MMC, at least once during and again at the end of the snow season (no later than May 1 of each year), the Public Works Department will invoice the property owners for the costs incurred by the City in removing snow from sidewalks. [BB1]

The director may waive the first violation snow removal charge and administrative fee if the property owner or tenant replies to our first written notice of the amount owed with acknowledgement of their responsibility. If the agreement is not returned with 10 days from the date of mailing, the City will send the property owner an invoice for the cost of the snow removal. The goal is to have safe sidewalks and to have property owners understand their responsibility to clear the sidewalk, not to bill property owners for City service to clear sidewalks. That is why returning the agreement is necessary to void their first bill. No further exceptions to sidewalk clearing assessments will be made for these properties. In the future, if the sidewalks are not maintained, and the City must clear the sidewalk again within the same winter season, then the first invoice amount will be reinstated. The property owner will be responsible for both the first costs, and the second or subsequent costs to clear the sidewalk.

In the event the bill is not paid to the City by July 31 of each year following the billing, the City will levy an assessment against the property for the amount due. Following the requirements of 12.16.040 E MMC, this assessment will be included with the Special Assessment billings for the property. A list of all such special assessments for City ordered snow removal, not previously paid by invoice, shall be provided to the City Finance Office not later than August 15 of each year, or on a date to be determined by the City Finance Department. The City Finance Department shall assess and collect a special assessment on those properties with snow removal charges which have not been paid by invoice.

IX. The Help Program

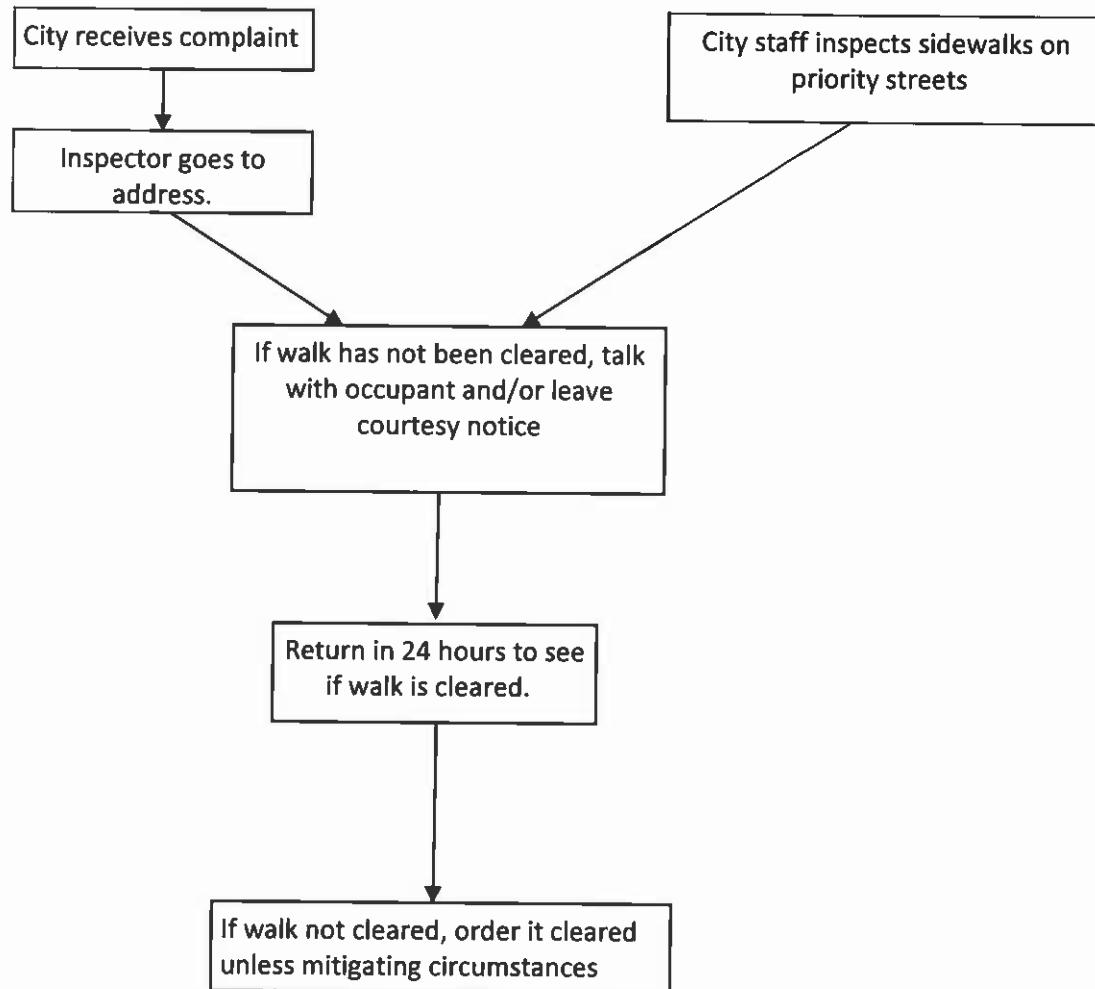
The Public Works Department's role in providing help is limited to encouraging appropriate individuals, agencies and organizations to offer assistance to individuals who need help maintaining their walks in winter. The City, through the department, will annually send to the following a letter detailing the requirements of the ordinance and the kinds of assistance which can be anticipated to be needed:

- First Call for Help
- District XI Human Resources Council
- Missoula Urban Demonstration
- RSVP/SEC (Senior Environment Corps)
- Opportunity Resources
- Missoula Youth Court
- Groups listed in the OPG directory of neighborhood associations
- All radio, print, and TV media

- Community Churches
- Other appropriate entities

The letter will further offer to convene a meeting in which these agencies and organizations might be able to organize a formal assistance program. At a minimum, the department will want to know what information we can publicly disseminate about helping resources and procedures.

In addition, the inspector may, in his/her judgment, defer ordering a sidewalk cleared by City crews for up to four days when the occupant demonstrates that he/she lacks the resources and ability to clear the sidewalk. This time will enable the occupant to contact one or more helping resources. Finally, in such a situation, the inspector may inform the complainant that, although the snow removal may not be immediate, the City is responding to the complaint.

Flow chart of procedures to be followed regarding sidewalk snow removal.

Revised 1-19-10