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ORDINANCE NO. 2018-05**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEMOORE****ADDING CHAPTER 13 AND 14, AND SECTIONS 7.13.01 THROUGH 7.13.07, AND SECTIONS 7.14.01 THROUGH 7.14.04 TO TITLE 7 OF THE CITY OF LEMOORE MUNICIPAL CODE PERTAINING TO SIDEWALK AREA MAINTENANCE AND REPAIR AND COST REIMBURSEMENT**

The City Council of the City of Lemoore does ordain as follows:

SECTION 1. Findings.

- A. Pursuant to section 5610 of the Streets and Highways Code, landowners adjacent to public sidewalk areas are responsible for maintaining such sidewalk areas in a safe condition that does not interfere with the public's convenience.
- B. Pursuant to section 5615 of the Streets and Highways Code, the superintendent of streets and repairs (in Lemoore, the Public Works Director) may repair and maintain a sidewalk area if the adjacent landowner does not, and assess and charge the abutting landowner for the cost of such repairs.
- C. Under the Lemoore Municipal Code, the adjacent landowner currently bears no responsibility to the general public for maintaining safe conditions on adjacent sidewalk areas, other than a duty of ordinary care, and cannot be held liable for personal injuries borne by the general public resulting from unsafe sidewalk area conditions.
- D. This Ordinance is designed to clarify the sidewalk area maintenance responsibilities of adjacent landowners, and to expressly make them liable to members of the general public for personal or property damage that results from the landowner's failure to maintain the adjacent sidewalk area.

SECTION 2. Adoption of Chapter 7.13.

Chapter 7.13, and Sections 7.13.01 through 7.13.07, of Title 7 of the Lemoore Municipal Code, are hereby added to read as follows:

Chapter 7.13

SIDEWALK AREA MAINTENANCE AND REPAIR

Sec. 7.13.01 Purpose and applicability.

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It is the purpose of this chapter to provide sidewalk area maintenance and repair procedures which are alternative and supplementary to the procedures set forth in Streets and Highways Code, Division 7, Part 3, Chapter 22, commencing at Section 5600, as those sections now exist or may hereafter be amended or renumbered. The City, in each instance, may follow the procedures set forth in the Streets and Highways Code or those set forth in this chapter, or some combination thereof. In the event of any conflict between the provisions of the Streets and Highways Code and this chapter, the provisions of this chapter shall control.

Sec. 7.13.02 Definitions.

For purposes of this chapter, the following definitions apply:

(a) “Defective sidewalk” means a sidewalk area where, in the judgment of the director, the vertical or horizontal line or grade is altered or displaced to the extent that a safety hazard exists, or the sidewalk area is in such a condition as to endanger property or persons using the sidewalk area in a reasonable manner, or is in such a condition as to interfere with the public convenience in the use thereof.

(b) “Director” means the public works director, or his/her designee; “director” shall have the same meaning as the terms “superintendent of streets” and “City engineer” as those terms are utilized in the Streets and Highways Code Section 5600 *et seq.*

(c) “Lot,” “lots” or “portions of a lot” means a parcel of real property located within the City adjacent to or fronting on any portion of a sidewalk area, and when used in connection with the phrase, “adjacent to or fronting on the defective sidewalk,” or variation thereof, shall refer to the property in front of or along the side of the defective sidewalk.

(d) “Maintain and repair” shall mean maintenance so that the sidewalk area remains in a condition that is not dangerous to property or persons using the sidewalk area in a reasonable manner and in a condition that will not interfere with the public convenience in use of the sidewalk area, and shall include, but not be limited to: maintenance and repair of sidewalks including grinding, removal and replacement of sidewalks; maintenance and repair of curbs and gutters; removal and filling or replacement of parking strips; removal of weeds and/or debris; supervision and maintenance of permissible signs and removal of impermissible signs; tree root pruning and installing root barriers; trimming of trees, shrubs and/or ground cover including areas within park strips and between the property line of the adjacent property and the street pavement line.

(e) "Owner" means any person owning a lot, lots, or portions of a lot within the City, adjacent to or fronting on any portion of a sidewalk area.

(f) "Person" shall include a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them

(g) "Sidewalk area" means that portion of a street between the street pavement line and the adjacent property line, including curbs and gutters, sidewalks, a park or parking strip, bulkheads, retaining walls, or other works for the protection of any sidewalk area.

Sec. 7.13.03 Owner's duty to maintain and repair sidewalk areas.

The owner of a lot, lots or portions of a lot adjacent to or fronting on any portion of a sidewalk area shall maintain the sidewalk area in a safe and non-dangerous condition, and shall repair such sidewalk area and pay the costs and expenses therefor, including, but not limited to, charges for the City's costs of inspection and administration whenever the City undertakes sidewalk maintenance and repair pursuant to sections 7.13.05 and 7.13.06 of this chapter, and including the costs of collection and placing any assessment lien on the property due to failure of the owner to promptly pay such costs. The procedures set forth in Streets and Highways Code Sections 5600 *et seq.* shall apply to the imposition and collection of costs and assessments.

Sec. 7.13.04 Liability for injuries to public.

The owner required by Section 7.13.03 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area in a safe and non-dangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a safe and non-dangerous condition as required by Section 7.13.03, any person suffers injury to or damage to person or property, the owner shall be liable to such person for the resulting damage or injury.

Sec. 7.13.05 Notice to repair.

Where the director has actual notice of the existence of a defective sidewalk, the director may give written notice to repair the defective sidewalk to the owner of the lot, lots or portions thereof adjacent to or fronting on the defective sidewalk. Service of the notice to repair shall be by either regular U.S. mail or by personal service. The notice to repair shall particularly specify what work is required to be done and how the same is to be done and what materials shall be used in the repair; that if the owner proceeds to undertake the repair by private contract, his/her activities will be governed by the provisions of this chapter; the time period within which the repair must be commenced by the owner; and that if the repair is not commenced within such time period and prosecuted diligently without interruption to completion, the director may proceed with the repair, and the cost shall be a lien on the property upon the owner's failure to timely reimburse the City for such cost pursuant to section 7.13.06. The materials and construction work shall be in strict conformance with the applicable portions of the City's standard specifications as they now exist, or as they may hereafter be amended.

For the purposes of this section, the owner is deemed to timely commence the repair of the defective sidewalk by the filing of an application for an encroachment permit with the Planning and Development Services Department within the time period specified in the notice to repair.

Sec. 7.13.06 Failure to make required repairs.

If the person(s) provided with a notice to repair fails to commence the repairs within the time period specified in said notice, or timely commences the repair but fails to diligently prosecute the same without interruption to completion, the director may thereafter cause the City to make the required repairs and bill the person(s) for the cost thereof. If such person(s) fails to pay the cost within the time period specified in the payment invoice, the unpaid sum shall be a lien on the lot, lots or portions thereof adjacent to or fronting on the defective sidewalk.

Sec. 7.13.07 Exception for City installed and maintained trees.

Notwithstanding the provisions of sections 7.13.03 and 7.13.04, the owner of a lot, lots or portions of a lot adjacent to or fronting on any portion of a sidewalk area shall not be required to repair any defective sidewalk if its condition was caused by a City planted and maintained tree in any street, right of way, park or other public place.

Chapter 7.14, and Sections 7.14.01 through 7.13.04, of Title 7 of the Lemoore Municipal Code, are hereby added to read as follows:

SECTION 3. Adoption of Chapter 7.14.

Chapter 7.14

COST SHARING SIDEWALK REPAIR PROGRAM

Sec. 7.14.01: PURPOSE

In order to incentivize and assist the community in repairing and maintaining sidewalks for the overall benefit of the public, the cost sharing sidewalk repair program is hereby adopted to outline a process for reimbursing funds to the property owner for the cost of repairing sidewalks adjacent to their property.

Sec. 7.14.02: DEFINITIONS:

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

- (a) "Sidewalk" shall mean a paved, surfaced or leveled area, usually separated from the street, used as a pedestrian walkway.
- (b) "Curb" shall mean a stone or concrete edging to a street, sidewalk, or path.
- (c) "Eligible Area" shall mean a sidewalk, curb, gutter or drive approach located within City limits.
- (c) "Gutter" shall mean a groove or channel for flowing liquid, adjacent to the street, sidewalk, path, or curb.
- (d) "Drive Approach" shall mean a drive way or the area between the street and a defined area of private property intended for the ingress and egress of vehicles.

Sec. 7.14.03: ELIGIBILITY

In order to be eligible for the program, applicants must adhere to all the following conditions:

- A. The proposed work or construction must be to an Eligible Area only.
- B. An application must be submitted and approved prior to work or construction on the eligible area. If a person has multiple properties, an individual application must be received for each property.
- C. A licensed concrete contractor is required for any and all curb, gutter or drive approach work.
- D. After approval of an application has been granted and the work on the eligible area completed, receipts/invoices for the work must be received within 60 days of approval.
- E. All proper permits must be on file with the City of Lemoore Public Works.
- F. A city inspection must be completed prior to reimbursement being issued to ensure the new sidewalk meets all city standards and regulations.

Sec. 7.14.04: REIMBURSEMENT

The City of Lemoore will share the cost of repairing sidewalks adjacent to the applicant's property in the form of a reimbursement after the work is complete. Program funds will be limited to the current year's budget, and will be issued on a

A. The maximum total amount to be reimbursed per application will be \$2,500 in one or more of the following reimbursement categories:

- 1) For repairs being completed by the property owner, the applicant may be reimbursed a flat amount of \$10 per square foot. Receipts for materials must be submitted.
- 2) For repairs being completed by a hired licensed concrete contractor or hired handyman, the applicant may be reimbursed 50% of the invoice. Invoice must include square footage of repaired section.
- 3) The cost of permits or inspections may be submitted for 50% reimbursement.
- 4) If in the event that a tree must be removed and replaced to repair the sidewalk, the cost of removal and replacement may be submitted for 50% reimbursement if all the following conditions are met:
 - i. A permit to remove the tree is on file. This permit is issued at no cost.
 - ii. The replacement tree is on the City approved tree list.

SECTION 4. Severance Clause.

The City Council declares that each provision of this ordinance is severable and independent of every other provision. If any portion of this ordinance is held invalid, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of the portion held in valid, and further declares its express intent that the remaining provisions of this ordinance should remain in effect after the invalid portion has been eliminated.

SECTION 5. This Ordinance shall take effect 30 days after its adoption.

SECTION 6. The City Clerk is hereby directed to cause a summary of this Ordinance to be published by one insertion in a newspaper of general circulation in the community at least five (5) days prior to adoption and again (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which the ordinance is adopted, and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

The foregoing Ordinance was introduced at a Regular Meeting of the City Council of the City of Lemoore held on the 19th day of June 2018, and was passed and adopted at a regular meeting of the City Council held on the 17th day of July 2018, by the following vote:

AYES: Chedester, Neal, Brown, Madrigal

NOES: Blair

ABSTAINING: None

ABSENT: None

ATTEST:

APPROVED:

//s//

Mary J. Venegas

City Clerk

//s//

Ray Madrigal

Mayor