

ORDINANCE NO. 538
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LINDSAY, ADDING CHAPTER 12.30, SECTIONS 12.30.010 THRU 12.30.080, RELATING TO LANDOWNER RESPONSIBILITY AND LIABILITY FOR SIDEWALK SAFETY AND MAINTENANCE.

SECTION 1. FINDINGS.

A. Pursuant to section 5610 of the Streets and Highways Code, landowners adjacent to public sidewalks are responsible for maintaining such sidewalks in such condition that the sidewalk will not endanger persons or property or interfere with the public convenience in its use.

B. Pursuant to section 5615 of the Streets and Highways Code, the Superintendent of Streets (Director of City Services) may repair and maintain a sidewalk, if the adjacent landowner does not, and assess and charge the abutting land owner for the cost of such repairs.

C. Accordingly, this Ordinance clarifies the sidewalk maintenance responsibilities of adjacent landowners, and makes 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.

SECTION 2. ADOPTION.

THE CITY COUNCIL OF THE CITY OF LINDSAY DOES ORDAIN AS FOLLOWS:

ARTICLE 1: Municipal Code of the City of Lindsay is hereby amended by adding Chapter 12.30 as follows:

Proposed Chapter and Sections

Title 12 STREETS, SIDEWALKS AND PUBLIC PLACES

Chapter 12.30 MAINTENANCE AND REPAIR OF SIDEWALKS

A. Pursuant to section 5610 of the Streets and Highways Code, landowners adjacent to public sidewalks are responsible for maintaining such sidewalks in such condition that the sidewalk will not endanger persons or property or interfere with the public convenience in its use.

B. Pursuant to section 5615 of the Streets and Highways Code, the Superintendent of Streets (Director of City Services) may repair and maintain a sidewalk, if the adjacent landowner does not, and assess and charge the abutting land owner for the cost of such repairs.

C. Accordingly, this Ordinance clarifies the sidewalk maintenance responsibilities of adjacent landowners, and makes 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.

Sections:

12.30.010 General Provisions.

12.30.020 Replacement – Abutting Landowners Duty.

12.30.030 Liability for Injuries to Public.

12.30.040 Violations.

12.30.050 Repair by City.

12.30.060 Assessment of Costs.

12.30.070 Collection of Costs.

12.30.080 City Sidewalk Abutting Property in County.

12.30.010 General Provisions.

For the purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

- (A) "Sidewalk" includes a park, parkway or parkway 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, parkway or parkway strip;
- (B) "Maintenance" includes but is not limited to the removal of seasonal leaves, weeds, and debris along with any other obstructions from the property frontage, sidewalk, and curb/gutter, which could interfere with convenient public use of a sidewalk;
- (C) "Repair" includes but is not limited to grinding, leveling, removal, and/or replacement of the sidewalk, curb and/or gutter in order to provide convenient public use. Any repairs implemented must comply with the approved City of Lindsay Development Standards and/or the California Standards for Sidewalk Construction;
- (D) For purposes of this chapter, the Director of City Services is designated the Superintendent of Streets.

12.30.020 Replacement - Abutting Landowner's Duty.

(A) Anything in this Chapter to the contrary notwithstanding, the maintenance and repair of sidewalk areas and the making, confirming and collecting of assessments for the cost and expenses of the maintenance and repair, may be done and the proceedings therefore may be had and taken in accordance with this section and the procedure therefore provided in California Streets and Highways Code Chapter 22 of Division 7, Part 3. In the event of any conflict between the provisions of California Streets and Highways Code Chapter 22 of Division 7, Part 3, and this Section 12.10.020, the provisions of this section shall control.

(B) The owners of lots or portions of lots adjacent to or fronting on any portion of a sidewalk area or driveway approach between the park, parkway or parkway strip, sidewalks, curbs and gutters, and persons in possession of the lots by virtue of any permit or right shall repair and maintain the sidewalk areas and pay the costs and expenses therefore, including a charge for the City of Lindsay's costs of inspection and administration whenever the city awards a contract for the maintenance and repair and including the costs of collection of assessments for the costs of maintenance and repair under this section or handling of any lien placed on the property due to failure of the property owner to promptly pay the assessments:

(C) For the purposes of this part, maintenance and repair of sidewalk area or driveway approach shall include, but not be limited to maintenance and repair of surfaces including grinding, removal and replacement of sidewalks, repair and maintenance of curb and gutters, removal and filling or replacement of park, parkway or parkway strip, removal of weeds, leaves and/or debris (debris/leaves shall not be blown or moved onto paved or right of way areas), tree root pruning and installing root barriers, trimming of shrubs and/or ground cover and trimming shrubs within the area between the property line of the adjacent property and the street pavement line, including parking strips and curbs, so that the sidewalk area will remain in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and will be in a condition which will not interfere with the public convenience in the use of the sidewalk area:

(D) Notwithstanding the provisions of California Streets and Highways Code, § 5614, the Director of City Services may in his or her discretion, and for sufficient causes, extend the period within which required maintenance and repair of sidewalk areas must commence by a period of not to exceed 60 days from the time the notice referred to in § 5614 is given.

12.30.030 Liability for Injuries to Public.

The property owner required by Section 12.30.020 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 non-dangerous condition as required, any person suffers injury, or any damage to person or property occurs, the property owner shall be liable to the person for the resulting damages or injury and shall be required to indemnify and hold harmless the City of Lindsay, its officers, agents and employees.

12.30.040 Violations.

The Superintendent of Streets (Director of City Services) may repair and maintain a sidewalk, if the adjacent landowner does not, and assess and charge the abutting land owner for the cost of such repairs.

The owners of lots or portions of lots fronting on any portion of a public street or place when that street or place is improved or if and when the area between the property line of the adjacent property and the street line is maintained as a park or parking strip, 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 works or areas save and except as to those conditions created or maintained in, upon, along, or in connection with such sidewalk by any person other than the owner, under and by virtue of any permit or right granted to him by law or by the city authorities in charge thereof, and such persons shall be under a like duty in relation thereto.

- (A) When any portion of the sidewalk is out of repair or pending reconstruction and in condition to endanger persons or property or in condition to interfere with the public convenience in the use of such sidewalk, the superintendent of streets shall notify the owner or person in possession of the property fronting on that portion of such sidewalk so out of repair, to repair the sidewalk.
- (B) Notice to repair may be given by delivering a written notice personally to the owner or to the person in possession of the property facing upon the sidewalk so out of repair, or by mailing a postal card, postage prepaid, to the person in possession of such property, or to the owner thereof at his last known address as the same appears on the last equalized assessment rolls of such city or to the name and address of the person owning such property as shown in the records of the office of the clerk.
- (C) The postal card shall contain a notice to repair the sidewalk so out of repair, and the superintendent of streets shall, immediately upon the mailing of the notice, cause a copy thereof printed on a card of not less than 8 inches by 10 inches in size, to be posted in a conspicuous place on the property. In lieu of posting a copy of the mailed notice on the property as provided in this section, the superintendent of streets may, not less than seven days nor more than 10 days after the mailing of the first postal card notice, mail an additional postal card, postage prepaid, marked "Second Notice," to the person to whom the first postal card notice was addressed. The second notice shall otherwise contain the material required by this article, but shall not extend the time for commencing repairs specified in Section 12.30.050.
- (D) The notice shall particularly specify what work is required to be done, and how it is to be done, and what materials shall be used in the repair and shall further specify that if the repair is not commenced within two weeks after notice is given and diligently and without interruption prosecuted to completion, the superintendent of streets shall make such repair, and the cost of the same shall be a lien on the property.

12.30.050 Repair by City.

If the repair is not commenced and prosecuted to completion with due diligence, as required by the notice to repair, the superintendent of streets may forthwith repair the sidewalk.

12.30.060 Assessment of Costs.

- (A) Upon the completion of the repair, the superintendent of streets shall cause notice of the cost of the repair to be given in the manner specified in this article for the giving of notice to repair, which notice shall specify the day, hour and place when the City Council will hear and pass upon a report by the superintendent of streets of the cost of the repair together with any objections or protests, if any, which may be raised by any property owner liable to be assessed for the cost of such repair and any other interested persons.
- (B) Upon the completion of the repair, the superintendent of streets shall prepare and file with the City Council a report specifying the repairs which have been made, the cost of the repairs, a description of the real property in front of which the repairs have been made and the assessment against each lot or parcel of land proposed to be levied to pay the cost thereof. Any such report may include repairs to any number of parcels of property, whether contiguous to each other or not.

- (C) Upon the day and hour fixed for the hearing the City Council shall hear and pass upon the report of the superintendent of streets, together with any objections or protests which may be raised by any of the property owners liable to be assessed for the work of making such repair and any other interested persons. Thereupon the City Council may make such revision, correction or modifications in the report as it may deem just, after which, by motion or resolution, the report as submitted, or as revised, corrected or modified, shall be confirmed. The City Council may adjourn the hearings from time to time. The decisions of the City Council on all protests and objections which may be made shall be final and conclusive.
- (D) The cost of the repair may be assessed by the City Council against the parcel of property fronting upon the sidewalk upon which such repair was made, and such cost so assessed, if not paid within five days after its confirmation by the City Council, shall constitute a special assessment against that parcel of property, and shall be a lien on the property for the amount thereof which lien shall continue until the assessment and all interest thereon is paid, or until it is discharged of record.

12.30.070 Collection of Costs.

- (A) The superintendent of streets may file in the office of the county recorder of the county in which the parcel of property is located, a certificate substantially in the following form:

NOTICE OF LIEN

Pursuant to the authority vested in me by the Improvement Act of 1911 and Chapter 12.30 of the Lindsay Municipal Code, I did, on the ___ day of _____, 20___, cause the sidewalk, curb, or park, parkway or parkway strip, bulkheads, retaining walls, or other works (as the case may be) in front of the real property hereinafter described, to be repaired and improved, and the City Council of the City of Lindsay did, on the ___ day of _____, 20___, by Resolution No. _____ assess the cost of such repair upon the real property hereinafter described, and the same has not been paid nor any part thereof, and the said city, does hereby claim a lien on said real property in the sum of _____ dollars (\$_____), and the same shall be a lien upon said real property until the said sum, with interest at the rate of ___ percent per annum, from the said ___ day of _____, 20___, (insert date of confirmation of assessment), has been paid in full and discharged of record.

The real property hereinbefore mentioned and upon which a lien is claimed, is that certain piece or parcel of land lying and being in the City of Lindsay the County of Tulare, State of California, and particularly described as follows:

(Description of property)

Dated this ___ day of _____, 20___

Superintendent of Streets

- (B) From and after the date of the recording of the notice of lien, all persons shall be deemed to have had notice of the contents thereof. The notice of lien may include claims against one or more separate parcels of property, whether contiguous or not, together with the amount due, respectively, from each such parcel. The statute of limitation shall not run against the right of the city to enforce the payment of the lien. If any such lien is not paid the city may file and maintain an action to foreclose such lien in the same manner and under the same procedure, so far as applicable, as that under which delinquent bonds are foreclosed under this division.
- (C) As an alternative method of collection of the amount of the lien, the City Council, after confirmation of the report of the superintendent of streets, may order the notice of lien to be turned over to the assessor and the tax collector of the city, whereupon it shall be the duty of

those officers to add the amount of the assessment to the next regular bill for taxes levied against the lot or parcel of land. If city taxes are collected by the county officials, the notice of lien shall be delivered to the county auditor, who shall enter the amount thereof on the county assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the county auditor before the date fixed by law for the delivery of the assessment book to the county board of equalization.

- (D) The City Council shall have the power, in its discretion, to determine that the payment of assessments of one hundred dollars (\$100) or more may be made in annual installments, not to exceed five, and that the payment of assessments so deferred shall bear interest on the unpaid balance at a rate to be determined by the City Council, not to exceed the rate permitted for bonds by Section 53531 of the Government Code. Interest shall begin to run on the 31st day after the confirmation of the assessments by the City Council. Determinations of the City Council shall be expressed by resolution at any time prior to the confirmation of the assessments.
- (E) Thereafter the amount of the lien shall be collected at the same time and in the same manner as ordinary city taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary city taxes. All laws applicable to the levy, collection and enforcement of city taxes and county taxes are hereby made applicable to such special assessment taxes.

12.30.080 City Sidewalk Abutting Property in County.

Whenever the property fronting on a sidewalk required to be maintained and repaired pursuant to the provisions of this chapter lies within the County of Tulare, and the sidewalk required to be so maintained and repaired lies within the City of Lindsay, the superintendent of streets of the city having jurisdiction over the sidewalk shall have full authority to serve notices to repair and do all work contemplated by this chapter, notwithstanding the fact that the property fronting on the sidewalk lies within the County of Tulare. The City Council of the City of Lindsay which the sidewalk has been repaired pursuant to the provisions of this chapter shall have jurisdiction to levy an assessment to pay the cost of any such sidewalk repairs against the parcel of property fronting on said sidewalk, notwithstanding the fact that said property lies within the County of Tulare and said assessment shall be a lien on said property for the amount thereof until the assessment and all interest thereon is paid or until it is discharged of record.

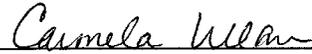
ARTICLE 2: This ordinance shall be in full force and effect on or after the 30th day after its adoption by the City Council. Within 15 days after its adoption by the City Council, this Ordinance shall be published in full text or in summary in a newspaper of general circulation in the City of Lindsay.

ARTICLE 3: The City Council declares that this ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) per Section 15301 (c) of the CEQA Guidelines.

The foregoing ordinance, read by title only with waiving of the reading in full was introduced at a regularly scheduled meeting on the 23rd day of July 2013.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 27th day of August 2013.

ATTEST:


Carmela Wilson, City Clerk

CITY COUNCIL OF THE CITY OF LINDSAY


Ramona Villarreal-Padilla, Mayor

CITY OF LINDSAY)
COUNTY OF TULARE) CITY CLERK CERTIFICATION
STATE OF CALIFORNIA)

I, Carmela Wilson, City Clerk of the City of Lindsay, do hereby certify that the foregoing is a full, true and correct copy of the original ordinance introduced at a regular meeting of the City Council of the City of Lindsay held the 23rd day of July, 2013, and adopted by the City Council of the City of Lindsay on August 27th, 2013, upon motion by KIMBALL, second of SALINAS, by the following vote, as the same appears of record and on file in my office:

AYES: KIMBALL, SALINAS, SANCHEZ, PADILLA.

NOES: MECUM.

ABSENT: None.

ABSTAIN: None.

WITNESS my hand and Corporate City Seal of the City of Lindsay on this 27th day of August 2013.

OFFICE OF THE CITY CLERK OF LINDSAY



Carmela Wilson, City Clerk