

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HERCULES
ADDING CHAPTER 5, TITLE 7 OF THE HERCULES MUNICIPAL CODE
REGARDING SIDEWALK MAINTENANCE AND LIABILITY**

WHEREAS, Sections 5600 *et seq.* of the California Streets and Highways Code requires the owners of property adjacent to public streets and rights-of-way to maintain the sidewalks adjacent to their property in a condition safe for members of the public; and

WHEREAS, failure to maintain sidewalks in a safe condition creates a safety hazard that can cause serious injury to persons and property; and

WHEREAS, property owners are in the best position to know when an adjacent sidewalk is in need of repair; and

WHEREAS, the network of sidewalks within Hercules is extensive, and the City does not have the ability to timely fix every sidewalk in need of repair; and

WHEREAS, Hercules is one of only two cities in Contra Costa County that does not have an ordinance requiring property owners be responsible for sidewalk maintenance; and

WHEREAS, the City Council desires to amend the Hercules Municipal Code to ensure that public sidewalks are maintained in a condition that is safe for use by the general public.

NOW, THEREFORE, the City Council of the City of Hercules does ordain as follows:

Section 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

Section 2. Municipal Code Amendment.

Title 7, Chapter 5, "Sidewalk Maintenance" is hereby added to the Municipal Code to read as follows

CHAPTER 7.5 SIDEWALK MAINTENANCE

7-5.010 Definitions

7-5.020 Maintenance and Repair of Sidewalks

7-5.030 Duty to Public

7-5.040 Repair by City

7-5.050 Exceptions

7-5.060 Enforcement

7-5.010 DEFINITIONS

“City” means the City of Hercules.

“Director” means the Public Works Director of the City of Hercules or his or her designee.

“Sidewalk” shall have the same meaning as in Streets and Highways Code Section 5600, as that section is amended or renumbered from time to time, with the exception of Parking Strips.

“Parking Strip” shall be defined as the area between the sidewalk and the street line sometimes referred to as the “planting strip” or “landscape strip.”

Commented [PT1]: Decision Point: Should adjacent property owners also be required to maintain Parking Strips?

7-5.020 MAINTENANCE AND REPAIR OF SIDEWALKS

The owner of a parcel of real property adjacent to any sidewalk in the City shall repair and replace such sidewalk as necessary to maintain the sidewalk in a safe and non-dangerous condition. Any encroachment permit fee imposed on a sidewalk repair initiated by the property owner pursuant to this chapter will be waived for one year following adoption of this ordinance.

Commented [PT2]: Decision Point: Provide a period of time waiving encroachment fees for sidewalk repairs to encourage proactive repair of damaged sidewalks by adjacent property owners? If so, for what period of time?

7-5.030 DUTY TO PUBLIC

The owner of a parcel of real property in the City is under a duty to members of the public to keep the portion of any sidewalk area described in Chapter in a safe and non-dangerous condition. An owner who fails to fulfill the duties imposed by this Section is liable to members of the public injured as a result of that negligence. The City shall not be liable for an injury caused by the negligence of a property owner.

7-5.040 REPAIR BY CITY

If the City becomes aware that a portion of the sidewalk needs repair or endangers the public’s use of such sidewalk, the Public Works Director, or his or her designee, may notify the owner of the adjacent property that such sidewalk needs repair in the manner provided for in Streets and Highways Code Sections 5600 *et seq.* If the owner does not repair the sidewalk within 30 days, or within such other period of time provided by the Director in writing, the City may repair the sidewalk and recover the costs of such repair from the property owner in the same manner as provided for by the abatement and lien procedures in Title 4, Chapter 10 of this code.

7-5.050 EXCEPTIONS

An adjacent property owner is not responsible for sidewalk damage and repair if the damage is caused by the action of the City, or its officials and employees, and the property owner has notified the Director in writing of the damage or defects in the sidewalk.

Commented [PT3]: Decision Point: State law allows a city to make the adjacent property owner responsible for sidewalk repair even when the damage is a result of the City, for instance if the roots of a city maintained tree is the cause of the sidewalk damage. This is a policy question: some cities impose the sidewalk repair obligation on the adjacent property owner even when it is a city tree responsible for the sidewalk damage, reasoning that the property owner receives the benefit of the tree (beautification, shade, increased property value, etc.) and should thus also shoulder the responsibility of tree maintenance. Some cities split the cost with the property owner when a city tree causes the sidewalk damage, while other cities cover all of the cost of repair when it can be determined that the city tree caused the sidewalk damage.

7-5.060 ENFORCEMENT

A. Any violation of this Chapter shall be subject to administrative enforcement pursuant to Title 1, Chapter 4 and/or nuisance abatement pursuant to Title 4, Chapter 10.

B. The City may seek legal, injunctive, or any other relief to enforce the provisions of this Chapter.

Section 3. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Hercules hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. California Environmental Quality Act (“CEQA”).

Pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines, this Ordinance is exempt from CEQA based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. This Ordinance incorporates an existing obligation of property owners under California law to maintain and repair adjacent sidewalks; thus, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

Section 5. Effective Date.

In accordance with California Government Code Section 36937, this Ordinance shall take effect and be in force on the thirty-first day after adoption.

Section 6. Publication.

Within fifteen days after the passage of this Ordinance the City Clerk shall cause this Ordinance or a summary thereof to be published or to be posted in at least three public places in the City of Hercules in accordance with the requirements of California Government Code Section 36933.