

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, REPEALING IN ITS ENTIRETY ORDINANCE NO. 2103 AND THE ERLANGER CODE OF ORDINANCES SECTIONS 97.065 THROUGH SECTION 97.069, ALL RELATED TO A PROPERTY OWNER'S OBLIGATION TO REPAIR SIDEWALKS

WHEREAS, Erlanger Ordinance 2103, as codified in Sections 97.065 through 97.069, governs the maintenance of sidewalks within the City of Erlanger; and

WHEREAS, the City is desirous of repealing Ordinance 2103 and the Erlanger Code of Ordinances, in Sections 97.065 through 97.069 placing the burden of maintaining sidewalks on the property owner; and

WHEREAS, the City has implemented a comprehensive sidewalk study and maintenance plan and will be repairing sidewalks within the City of Erlanger; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ERLANGER, IN KENTON COUNTY, KENTUCKY, AS FOLLOWS:

(Strikethrough portions are to be deleted, underlined portions are to be added as required by KRS 83A.060(3))

Section 1.0

That the Erlanger City Council repeals in the entirety, Ordinance 2103 and Sections 97.065 through 97.069 of the Erlanger Code of Ordinances.

~~§ 97.065 DEFINITIONS.~~

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

~~ABUTTING REAL ESTATE.~~ That real estate which abuts upon that side of a public right-of-way along which there is a sidewalk therein.

~~ADMINISTRATIVE OFFICER.~~ That officer of the city known and identified as the City Administrative Officer.

~~ENFORCEMENT OFFICER.~~ That officer of the city known and identified as the Zoning Administrator and Director of Public Works.

~~OWNERS OF ABUTTING REAL ESTATE.~~ Any owner of any legal interest in abutting real estate.

~~PUBLIC RIGHT-OF-WAY.~~ Any right-of-way open to public use, by dedication or otherwise.

~~SIDEWALK.~~ Any area within a public right-of-way, which is designed and intended for pedestrian use, and paved with concrete composed of cement and sand, gravel or some other mineral aggregate.

~~§ 97.066 OWNER'S RESPONSIBILITY TO MAINTAIN SIDEWALK.~~

(A) Each and every sidewalk in the city shall be maintained, repaired and reconstructed by the owners of abutting real estate, at their sole cost and expense to a condition which is reasonably safe for pedestrian use and free from

holes, cracks, upheavals and other defects therein; and any future sidewalk reconstruction therefore, shall conform to the specifications of the subdivision regulations of the Kenton County and Municipal Planning and Zoning Commission for sidewalk construction.

(B) No owner of abutting real estate shall allow any sidewalk abutting thereon to exist in, or deteriorate to, a condition which isn't reasonably safe for pedestrian use, and free from holes, cracks, upheavals and other defects therein.

~~§ 97.067 NOTICE OF VIOLATION; COST ASSESSMENT; LIEN.~~

In the event that the Enforcement Officer determines that any sidewalk or portion thereof in the city is in violation of this subchapter, the Enforcement Officer shall cause a written notice to be mailed by both first class mail and certified mail, return receipt requested, to every owner of abutting real estate in regard thereto along with a copy of this subchapter a written description and photograph of the sidewalk and the conditions in violation of § 97.066. The notice shall state that unless the violations are eliminated and the condition of the sidewalk conforms to the requirements of this subchapter within 60 consecutive calendar days after the notice was mailed, the city shall cause the condition of the sidewalk to conform to the requirements of this subchapter. Unless it is finally determined in an administrative hearing that there was no violation of the terms and provisions of this subchapter and the determination of the Enforcement Officer was erroneous, each owner of the abutting property shall be jointly and severally liable to the city for all costs and expenses incurred by the city in causing the sidewalk to conform to the requirements of this subchapter and the cost of the collection thereof, including reasonable court costs and attorney fees. In order to secure payment, the city shall have a lien upon the abutting real estate, which shall be superior to all other liens thereon, except liens for ad valorem taxes and public improvement assessments.

~~§ 97.068 RIGHT TO HEARING; ADMINISTRATIVE PROCEDURES.~~

Within 30 consecutive calendar days after any determination by the Enforcement Officer that any sidewalk or portion thereof in the city is in violation of the terms and provisions of this subchapter and the mailing of the notice to the owners of abutting property any owner of abutting property may request an appeal by the Administrative Officer in regard to any violation of the terms and provisions of this subchapter and any determinations of the Enforcement Officer according to the following procedure:

(A) The appeal shall be in writing and shall include a description of the sidewalk and the conditions determined to be in violation of this subchapter and the name, address and telephone number of the owner of the abutting real estate appealing the decision. It shall be filed with the City Clerk during regular business hours;

(B) Immediately upon receipt of a hearing request conforming to the requirements described, the City Clerk shall schedule the hearing with the Administrative Officer no later than 14 days after receipt of the written request, and shall mail a written notice of the time, date and place to the applicant by certified mail, return receipt requested, at least ten days prior thereto;

(C) At the time, date and place scheduled for the hearing, the Administrative Officer shall conduct a due process hearing to determine from the evidence presented whether or not any of the terms or provisions of this subchapter have been violated; and

(D) Within seven days thereafter, cause a written decision to be mailed to the appellant, by first class mail, and deliver a copy thereof to the Enforcement

Officer. The written decision of the Administrative Officer shall include factual determinations and a conclusion that the provisions of this subchapter were either violated or not violated by the sidewalk involved in this appeal, or otherwise.

§ 97.069 REPAIR AUTHORIZED; LIABILITY OF COSTS TO PROPERTY OWNER.

In the event that within 60 days after the date that the aforescribed violation notice was mailed to the owners of abutting property:

(A) The sidewalk defects described therein haven't been repaired or otherwise eliminated, so that the condition of the sidewalk described therein conforms to the requirements of this chapter; and

(B) There has been no decision by the Administrative Officer, in an appeal from the violation notice, that the sidewalk involved in the appeal wasn't in violation of this chapter; then the Enforcement Officer shall cause the sidewalk defects described in the aforescribed violation notice to be eliminated, by the repair or reconstruction thereof, through material and equipment of the city, and the time and labor of employees thereof, or independent contractors therefore, so that the condition of the sidewalk conforms to the requirement of this subchapter.

Section 2.0

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provision thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

Section 3.0

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4.0

This ordinance shall be effective as soon as possible according to law.

Section 5.0 - Publication

This ordinance shall be published in summary pursuant to K.R.S. 83A.060 (9).

Adopted this _____ day of _____, 2017.

First Reading- _____, 2017

Second Reading- _____, 2017 Votes Cast _____ Yes _____ No

TYSON HERMES, Mayor