

ORDINANCE NO. 6 6 7 2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AMENDING CHAPTER 12.12 OF THE CITY CODE RELATING TO PUBLIC SIDEWALKS

WHEREAS, the current provisions of Chapter 12.12 of the City Code provide for improvement and maintenance responsibilities for sidewalk areas within the City; and

WHEREAS, many of the provisions of this chapter have been unchanged for decades, and may not be as reflective of current practices and options regarding installation and maintenance of sidewalks and other appurtenances within the sidewalk area; and

WHEREAS, it is appropriate to update the provisions of Chapter 12.12 of the City Code to incorporate provisions more consistent with other sections of the City Code and contemporary practices.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, DO ORDAIN as follows:

Section 1. AMENDMENT TO CITY CODE. Chapter 12.12 of the Auburn City Code is amended to read as follows:

Chapter 12.12 PUBLIC SIDEWALKS¹

Sections:

~~I. Improvements and Assessments~~

- 12.12.010 Purposes.
- 12.12.020 Definitions.
- 12.12.030 ~~Improvement—Maintenance responsibility~~Repealed.
- 12.12.040 Improvement – Responsibility.
- 12.12.050 ~~Improvement—Order—Notice~~Repealed.
- 12.12.060 ~~Improvement—Necessity report~~Repealed.
- 12.12.070 ~~Improvement—Order by council~~Repealed.
- 12.12.080 ~~Improvement—Hearing~~Repealed.
- 12.12.090 ~~Sidewalk construction fund~~Repealed.

¹ For statutory provisions on sidewalks applicable to code cities, see RCW 35A.47.020. For provisions related to sidewalks applicable to cities generally, third-class cities, see Chapters- 35.68, 35.69 and 35.70 RCW, as well as RCW Sections 35.22.280, 35.23.440 and 35.27.370, and RCW 58.17.110; for provisions on sidewalks in code cities, see RCW 35A.47.020.

- 12.12.100 ~~Assessment—Roll preparation—Hearing~~Repealed.
12.12.110 ~~Assessment—Payment method determination~~Repealed.
12.12.120 ~~Assessment—Collection~~Repealed.
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~~I. Improvements and Assessments~~

12.12.010 Purposes.

~~A.—ACC 12.12.040 and 12.12.050 are enacted in order to enable the city to exercise the powers and authority granted by Chapter 203, Laws of Washington, 1927 (Chapter 35.69 RCW), and to provide for the application and enforcement of said act in the city.~~

~~B.—The purpose of ACC 12.12.060 through 12.12.120 is to enable the city to exercise the powers and authority granted by Chapter 35.68 RCW and to provide for the application and enforcement of Chapter 35.68 RCW this chapter is to provide for improvements to and the responsibilities for the sidewalk areas within public rights-of-way, as well as penalties for failure to comply. (1957 code §§ 8.10.030, 8.10.040.)~~

12.12.020 Definitions.

~~For the purpose of this article (ACC 12.12.010 through 12.12.120), t~~The following words and phrases shall have the meanings respectively ascribed to them in this section, unless expressly indicated otherwise or where used the context clearly indicates to the contrary an alternate meaning:

A. “Abutting property” includes all property having a frontage on ~~the sidewalk margin of any~~ street or public place.

B. “Sidewalk” includes ~~any and all structures or forms of street improvement included in the space between the street margin any landscaping, driveway, driveway apron, pedestrian pathway, curb ramp, and pedestrian curb between the edge of pavement or back of curb along any public street and the roadway, known as the sidewalk~~

~~area, including sidewalks, gutters and curbs along all driveways across sidewalks abutting property boundary, excluding street tree grates.~~

~~C. "Street" includes boulevard, avenue, street, alley, way, lane, square or place.~~

~~D. "Contractor" means the person, firm or corporation doing or performing work for the property owner, city or other municipal corporation. A "bonded contractor" shall be adequately bonded to the city.~~

~~E. "Permittee" means the person, firm or corporation who is applying for a permit or to whom a permit has been issued for sidewalk area construction pursuant to this article.~~

~~F. "Property owner" means the person, firm or corporation who has legal title to the adjacent property on which the improvements to be constructed fronts or is being made, including his legal agents. ([See prior ACC 12.12.130] 1957 code § 8.10.050.)~~

12.12.030 ~~Improvement—Maintenance responsibility~~*Repealed.*

~~Whenever any street, lane, square, place or alley in the city has been improved by the construction of a sidewalk along either side thereof, the duty, burden and expense of the maintenance, cleaning, repair and renewal of such sidewalk, including the erection and maintenance of suitable barriers of wood, iron or masonry along the outer margin of such sidewalk where the same is elevated more than two feet above the abutting property, shall devolve upon the owner of the private property directly abutting on the sidewalk, and the improvement shall be made by the owner in the manner provided by the ordinances of the city and the laws of the state. (1957 code § 8.10.005.)~~

12.12.040 ~~Improvement – Responsibility.~~

~~Whenever a portion, not longer than one block in length, of any street is not improved by the construction of a sidewalk thereon, or the sidewalk thereof has become unfit or unsafe for purposes of public travel, and such street adjacent to both ends of the portion is so improved and in good repair, and the city council by resolution finds that the improvement of such portion by the construction or reconstruction of a sidewalk thereon is necessary for the public safety and convenience, the duty, burden and expense of constructing or reconstructing such sidewalk shall devolve upon the property directly abutting upon such portion; provided, that such abutting property shall not be charged with any costs of construction or reconstruction in excess of 50 percent of the valuation of such abutting property, exclusive of improvements thereon, according to the valuation last placed upon it for purposes of general taxation of the sidewalk is unimproved, at such time as development or redevelopment triggers the requirement for the improvement per ACC 12.64A, it shall be the responsibility of the adjacent property owner to improve the sidewalk per the adopted city codes, including the engineering standards that are incorporated by reference in ACC 12.04.010. (1957 code § 8.10.010.)~~

12.12.050 ~~Improvement—Order—Notice~~*Repealed.*

~~Whenever the city council has adopted such resolution, the city engineer shall cause to be served on the owner of the abutting property a notice instructing the owner to construct or reconstruct a sidewalk on such portion in accordance with plans and specifications which shall be attached to such notice. Such notice shall be served by~~

~~delivering it in person to the owner or leaving it at his home with a person of suitable age and discretion then resident therein, or with an agent of such owner authorized to collect rentals on such property, or, if such owner is a nonresident of the state, by mailing a copy to his last-known address, or, if such owner is unknown or if his address is unknown, then by posting a copy in a conspicuous place on such portion of the street where such improvement is to be made. Such notice shall specify a reasonable time within which such construction or reconstruction shall be made, and shall state that in case the owner fails to make the same within such time, the city will proceed to make the same through the city engineer, and at a subsequent date, to be definitely stated in the notice, the city engineer will report to the city council an assessment roll showing the lot or parcel of land directly abutting on such portion of such street so improved, the cost of such improvement, the name of the owner, if known, and that the city council at the time stated in the notice, or at the time or times to which the same may be adjourned, will hear any and all protests against the proposed assessment. Upon the expiration of the time fixed within which the owner is required to construct or reconstruct such sidewalk, if the owner has failed to perform such work, the city shall proceed to perform such work and shall, within the time fixed in the notice, report to the city council an assessment roll showing the lot or parcel of land directly abutting on such portion of such street so improved, the cost of such work, and the name of the owner, if known. The city council shall, at the time in such notice designated, or at an adjourned time or times, assess the cost of such improvement against the abutting property and shall fix the time and manner for payment thereof, which assessment shall become a lien upon the property and shall be collected in the manner provided by law for special assessments under RCW Title 35. (1957 code § 8.10.020.)~~

12.12.060 Improvement—Necessity report Repealed.

~~If, in the judgment of the city engineer, public convenience or safety requires the construction, reconstruction or repair of any sidewalk within the city limits, he shall report such fact to the city council immediately. (1957 code § 8.10.060.)~~

12.12.070 Improvement—Order by council Repealed.

~~A.——If, upon receiving a report from the city engineer, the city council deems such construction, reconstruction or repair necessary for the public safety or convenience, it shall, by resolution, order the abutting property owner to perform the necessary construction, reconstruction or repair.~~

~~B.——The resolution shall:~~

~~1.——Specify the time within which the work shall be commenced and completed by the abutting property owner;~~

~~2.——State that if the improvement is not completed within the time specified that the city will perform and complete the improvement and assess the cost against the abutting property owner;~~

~~3.——Fix a time from and after its passage, and a place for a public hearing on the resolution;~~

~~4.——Be published for two consecutive weeks in the official newspaper of the city;~~

~~5. Provide that a notice of the date of such public hearing shall be given each owner or reputed owner of property abutting the proposed improvement, as shown on the tax rolls of the county treasurer, by mailing to the owner or reputed owner of the property, at the address shown thereon, a notice of the date of hearing. Such mailing shall be made at least 10 days before the date fixed for such hearing.~~

~~C. Proof of the publication of the resolution and the mailing of the notices to abutting property owners shall be filed with the city clerk prior to the hearing on the proposed improvement. (1957 code § 8.10.070.)~~

12.12.080 Improvement—Hearing Repealed.

~~At the time of hearing, the council shall hear persons appearing for or against the improvement, and shall determine whether it will or will not proceed with the improvement, whether it will make any changes in the original plan, and what the changes will be. This action may be taken by motion adopted in the usual manner; provided, however, that the hearing may be postponed from time to time to a definite date until the hearing is held. (1957 code § 8.10.080.)~~

12.12.090 Sidewalk construction fund Repealed.

~~The city council may create a sidewalk construction fund designated as "sidewalk construction fund No. ____" to be numbered differently for each improvement, and with warrants drawn on this fund the costs of the respective improvements may be paid. The city may advance as a loan to the sidewalk construction fund, from any available funds, the amounts necessary to pay any cost of the improvement. When any assessment is made for the improvement, payments therefor shall be paid into the particular sidewalk improvement fund; and whenever any funds are available over the amounts necessary to pay outstanding warrants, any advances or loans made to the fund shall be repaid. Whenever warrants are drawn on any fund which are not paid for want of sufficient funds, they shall be so stamped and shall bear interest until called and paid at a rate established by the city council by resolution. (1957 code § 8.10.090.)~~

12.12.100 Assessment—Roll preparation—Hearing Repealed.

~~Where all or any portion of the costs are to be assessed against the abutting property, an assessment roll shall be prepared by the city engineer which shall, to the extent necessary, be based on benefits, and which shall describe the property assessed, the name of the owner, if known (otherwise stating that the name of the owner is unknown), and fixing the amount of the assessment. The assessment roll shall be filed with the city clerk, and when so filed the council shall, by resolution, fix a date of hearing thereon and direct the clerk to give notice of such hearing and the time and place thereof. The notice of hearing shall be mailed to the person whose name appears on the county treasurer's tax roll as the owner or reputed owner of the property, at the address shown thereon, and shall be published before the date fixed for the hearing for two consecutive weeks in the official newspaper of the city. The notice shall be mailed and first publication made at least 10 days before the hearing date. Proof of mailing and publication shall be made by affidavit and shall be filed with the city clerk before the date fixed for the hearing. Following the hearing, the city council shall, by ordinance, affirm, modify or reject or order~~

~~recasting of the assessment roll. An appeal may be taken to the superior court from the ordinance confirming the assessment roll in the same manner as is provided for appeals from the assessment roll by Chapters 35.43 to 35.54 RCW. (1957 code § 8.10.100.)~~

~~12.12.110 Assessment—Payment method determinationRepealed.~~

~~The city council shall, by resolution, provide whether the full amount of the assessments shall be paid in one payment or whether it may be paid in installments and shall prescribe the time and amount of such payments; and if more than one payment is provided for, the city council may, by resolution, provide for interest on unpaid installments and fix the rate thereof. (1957 code § 8.10.110.)~~

~~12.12.120 Assessment—CollectionRepealed.~~

~~The assessment roll as affirmed or modified by the city council shall be filed with the finance director for collection, and the amount thereof, including interest, if any, shall become a lien against the property described therein from the date of such filing. Whenever any payment on any assessment or installment is delinquent and unpaid for a period of 30 days or more, the lien may be foreclosed in the same manner and with the same effect as is provided by Chapters 35.43 to 35.54 RCW. Whenever the deed is issued after the sale therein provided, the regularity, validity and correctness of the proceedings relating to such improvement and the assessment therefor shall be final and conclusive and no action shall thereafter be brought by or on behalf of any person to set aside the deed. (1957 code § 8.10.120.)~~

~~II. Construction~~

~~12.12.130 DefinitionsRepealed.~~

~~Except where specifically defined in this section, all words used in this article shall carry their customary meaning.~~

~~A.——“Contractor” means the person, firm or corporation doing or performing work for the property owner, city or other municipal corporation. A “bonded contractor” shall be adequately bonded to the city.~~

~~B.——“Permittee” means the person, firm or corporation who is applying for a permit or to whom a permit has been issued for sidewalk construction pursuant to this article.~~

~~C.——“Property owner” means the person, firm or corporation who has legal title to the property on which the sidewalk to be constructed fronts or is being made, including his legal agents.~~

~~D.——A “sidewalk” means and will be considered as any thoroughfare, the primary function of which is to serve pedestrian traffic. (Ord. 3926 § 1, 1983.)~~

~~12.12.140 SpecificationsRepealed.~~

~~Any and all sidewalks required to be constructed pursuant to the terms in this article shall be constructed in accordance with the specifications that are incorporated by reference in ACC 12.04.010. (Ord. 3926 § 2, 1983.)~~

12.12.150 Requirement generally.

Whenever an improvement of a sidewalk ~~and/or driveway~~ is installed, it shall be installed in accordance with the specifications that are incorporated by reference in ACC 12.04.010 and in conformance with a valid permit issued pursuant to this article, except as otherwise required under Chapter 12.64 ACC. (Ord. 3926 § 3, 1983.)

12.12.160 Permit – Procedure generally.

The ~~building official~~city engineer shall grant such permits only upon compliance with the following terms and conditions:

A. The party requesting the permit shall make application therefor in writing, and will file with the city engineer drawings showing the location and plan of the sidewalk, as defined in this chapter, to be constructed, together with a full description of the nature of such work.

B. The city engineer or his/her designee shall ~~thereupon examine review~~ and approve such application, ~~and drawings and plans and shall recommend issuance of the permit to the building official prior to permit issuance.~~

C. Such permit shall specify the place where such sidewalk is to be constructed, together with a description of the proposed construction to be done under such permit, and the length of time allowed for the completion thereof. (Ord. 3926 § 4, 1983.)

12.12.170 Permit – Fees.

A. Permit fees to cover permit processing and inspection shall be applicable for all sidewalks ~~s and associated curb and gutter improvements.~~

B. The fees shall be as shown in the city of Auburn fee schedule as adopted by ~~Ordinance 5707~~city council, and any amendments thereto. (Ord. 5817 § 1, 2004; Ord. 3945 § 1, 1984; Ord. 3926 § 5, 1983.)

12.12.180 ~~Barricades~~Repealed.

~~The person, firm or corporation constructing a sidewalk pursuant to the terms of this article shall erect and, so long as conditions exist and any danger may continue, maintain along the property upon which the sidewalk is to be constructed a good and substantial barrier. This barrier is to be in compliance with Chapter 12.28 ACC. The above persons shall cause to be maintained during every night from sunset to sunrise around the obstruction sufficient warning lights or flares, including any requested by the city engineer. In the event the permittee is not immediately available, the city engineer may install, at permittee's expense, additional barricades, lights and/or safety devices to protect the public.~~ (Ord. 3926 § 6, 1983.)

12.12.190 Guarantee by contractor.

Any sidewalk constructed under a permit authorized by this ~~article~~chapter shall be ~~backfilled, tamped and settled in such manner that the new sidewalk and constructed so that the sidewalk or~~ any abutting sidewalks, whether public or private, shall not become undermined, and should the sidewalk settle or crack within a period of one year, it shall be repaired at the expense of the ~~original contractor~~permittee. (Ord. 3926 § 7, 1983.)

12.12.200 Monument disturbance during construction.

The permittee shall not disturb any survey monuments or hubs found within the boundaries of the sidewalk to be constructed unless authorized to do so by the city engineer. In the event that such monuments or hubs are to be removed because of the sidewalk construction, they must be replaced under the supervision of the city engineer at the permittee's ~~or his agent's~~ expense. (Ord. 3926 § 8, 1983.)

12.12.210 Confinement with right-of-way lines and easements.

It shall be the permittee's responsibility to confine his ~~or her~~ construction activities within the street right-of-way lines and limits of easements described on the permit. Any damage resulting from trespassing beyond these limits shall be the sole responsibility of the permittee. (Ord. 3926 § 9, 1983.)

12.12.220 Acceptance prerequisites.

No sidewalk improvement constructed pursuant to the terms of this ~~article~~ chapter will be accepted until the city engineer is satisfied that the work has been performed according to the requirements of this ~~article and to the lines and grades as established and staked~~ chapter. (Ord. 3926 § 10, 1983.)

12.12.230 Administration.

The mayor is authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation. (Ord. 3926 § 12, 1983.)

12.12.232 Maintenance responsibility.

The maintenance of the area of the sidewalk along either side of any street shall be the duty, burden and expense of the abutting property owner. Maintenance shall include removal of debris, moss, snow and ice, cleaning of sidewalks, maintenance of vegetation, including but not limited to maintenance of vegetation consistent with sight distance and vegetation clearances in accordance with any other city code, and maintaining barriers or fences along the sidewalk where the sidewalk is elevated more than two feet above the abutting property.

12.12.234 Repair and Replacement responsibility.

The repair and/or replacement of sidewalk, as defined by this section, shall be the responsibility of the abutting property owner unless determined otherwise by the city engineer. If a property owner believes the damaged sidewalk and/or sidewalk needing replacement is/are the cities or someone else's responsibility, the property owner must notify the city engineer in writing with sufficient documentation of the cause of the damage and justification of why the repair and/or replacement should not be considered the responsibility of the abutting property owner.

Damage caused to the sidewalk by vegetation located on private property, lack of regular maintenance by the abutting property owner, or damage that is any way caused by the abutting property owner shall be the responsibility of the private property owner to repair subject to ACC 12.66.

12.12.236 Private Irrigation Systems.

Construction of private irrigation systems within the public right-of-way is required to be completed by construction permit per ACC 12.66 or included in a facility extension permit per ACC 13.40. The Owner shall apply for and obtain a Permit from the City prior to doing any work for installation, repairs, abandonment or removal performed on the irrigation facilities in the City's right-of-way.

A. All future maintenance, repairs, abandonment or removal performed on the irrigation facilities located in the City's rights-of-way shall be performed by a licensed and bonded contractor in the State of Washington.

B. The applicant shall be responsible for all permits, maintenance, repairs, cost and water usage of the irrigation facilities.

C. The Owner shall provide the City with information specifying the location of the facilities placed under the permit, including as-built drawings showing general location.

Owner shall relocate their facilities at their cost if the City determines they are in conflict with public improvements being constructed in association with future projects. Such relocation work shall be completed within 45 days of written notification by the City in accordance with this section. The City may allow the owner additional time to relocate the facilities depending upon the project's scheduling needs.

Owner of the private irrigation system shall register with Washington 811 for locate services for underground facilities. The Owner is responsible for meeting the requirements of RCW 19.122 for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities. All elements of the irrigation system shall be detectable for locate purposes.

Owner shall be responsible for any maintenance, repairs or damage to public facilities within the right-of-way that is caused by the private irrigation system, including the maintenance of or repairs to the irrigation system. Such public facilities shall include but are not limited to pavement, sidewalks, curbs, gutters, underground utilities such as water, sewer and storm, electrical, street lighting, fiber, conduit, landscaping and subgrades.

12.12.240 Violation – Penalty.

A. Violation of the provisions of this chapter is an infraction, subject to penalties in accordance with ACC 1.25.050, and each day in violation shall be considered a separate offense.

B. In addition to the penalties provided in subsection A of this section, if the owner, ~~abutting owner~~, or permittee fails to construct a sidewalk in the time and manner specified in the permit issued pursuant to ~~this article~~the city code, ~~the city council~~, ~~pursuant to Chapter 35.70 RCW~~, ~~shall order the sidewalk to be constructed under the supervision of the city engineer, and the costs shall be assessed against and become a lien upon the land of the property owner abutting the sidewalk to be constructed~~ it shall constitute a public nuisance as defined in ACC 8.12.020. The city shall utilize the provisions of ACC 8.12.080 to abate the violation by ordering the sidewalk to be constructed under the supervision of the city engineer or his/her designee. The

abatement order, and all requirements and provisions of ACC 8.12.080, shall be directed to the owner, abutting owner, or permittee. (Ord. 5683 § 33, 2002; Ord. 3926 § 11, 1983.)

Section 2. ADMINISTRATIVE PROCEDURES. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. SEVERABILITY. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

Section 4. EFFECTIVE DATE. This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

INTRODUCED: _____

PASSED: _____

APPROVED: _____

CITY OF AUBURN

ATTEST:

NANCY BACKUS, MAYOR

Danielle E. Daskam, City Clerk

APPROVED AS TO FORM:

Daniel B. Heid, City Attorney

Published: _____