**CITY OF WEST DES MOINES**
**CITY COUNCIL MEETING COMMUNICATION**

**ITEM:** **DATE: February 23, 2015**

First reading of proposed Ordinance to amend Title 7, Chapter 1, Section 6 of the Municipal Code to align the sidewalk repair notice with the City's annual sidewalk program policy.

**FINANCIAL IMPACT:**

This proposed Ordinance amendment should result in a cost savings to the City for mailing notices.

**BACKGROUND:**

This proposed Ordinance would be consistent with the City's proposed annual sidewalk program policy and state law in terms of providing notice to the abutting property owner to repair, replace, or reconstruct defective sidewalks. The City should also experience savings in mailing costs. Previously, the City would send the notices via certified mail with return receipt and regular mail to the registered, abutting property owner at the same time. The City will continue to send the original notice via certified mail, but without return receipt. For those certified mailings that are returned to the City as unclaimed, the City will then follow up with a regular mail notice. The mailings should occur well enough in advance of the seventy-five (75) day time period the City will allow the abutting property owners to fix the defective sidewalks on their own, if the owners choose to do so. If the defective sidewalks in question have not been fixed by August 1, then the City will have its contractor perform the repairs and bill the costs to the respective, abutting property owners.

The Public Works City Council subcommittee approved of this proposed new Ordinance at its meeting held on February 17, 2015.

**OUTSTANDING ISSUES** (if any): None

**RECOMMENDATION:**

It is recommended that the City Council approve the first reading of this proposed Ordinance.

**Lead Staff Member:** Jason B. Wittgraf, Assistant City Attorney JBW

**STAFF REVIEWS**

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|---|---|
| Department Director | Richard J. Scieszinski, City Attorney |
| Appropriations/Finance | |
| Legal | |
| Agenda Acceptance | |

**PUBLICATION(S)** (if applicable)

| | |
|---|---|
| Published In | |
| Dates(s) Published | |

**SUBCOMMITTEE REVIEW** (if applicable)

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|---|---|---|---|
| Committee | Public Works | | |
| Date Reviewed | February 17, 2015 | | |
| Recommendation | Yes | ~~No~~ | ~~Split~~ |

# ORDINANCE NO._____

**AN ORDINANCE AMENDING THE CITY CODE OF THE CITY OF WEST DES MOINES, IOWA, 2014, BY AMENDING TITLE 7, "PUBLIC WAYS AND PROPERTY", CHAPTER 1, "STREETS, SIDEWALKS AND ALLEYS", SECTION 6, "MAINTENANCE OF PARKING TERRACE AND SIDEWALKS"**

**BE IT THEREFORE ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST DES MOINES, IOWA:**

**SECTION 1:** Title 7, Chapter 1, Section 6, is hereby amended by deleting ~~strike through~~ text and adding <u>underline</u> text.

**7-1-6: MAINTENANCE OF PARKING TERRACE AND SIDEWALKS:**

A. Responsibility of Property Owner: It shall be the responsibility of the abutting property owner to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the abutting property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right of way.

B. Failure to Maintain Parking on Terrace: If the abutting property owner does not perform an action required under the above section within a reasonable time, the city may perform the required action and assess the cost against the abutting property for collection in the same manner as a property tax.

C. Responsibility for Sidewalk Maintenance: It shall be the responsibility of the abutting property owners to maintain in a safe and hazard free condition any sidewalk outside the lot and property lines and inside the curb lines or travelled portion of the public street.

D. Failure to Maintain Sidewalks; Personal Injuries: If the abutting property owner does not maintain sidewalks as required and action is brought against the city for personal injuries alleged to have been caused by its negligence, the city may notify in writing any person by whose negligence it claims the injury was caused. The notice shall state the pendency of the action, the name of the plaintiff, the name and location of the court where the action is pending, a brief statement of the alleged facts from which the cause arose, that the city believes the person notified is liable to it for any judgment rendered against the city, and asking the person to appear and defend. A judgment obtained in the suit is conclusive in any action by the city against any person so notified, as to the existence of the defect or other cause of the injury or damage, as to the liability of the city to the plaintiff in the first named action, and as to the amount of the damage or injury. The city may maintain an action against the person notified to recover the amount of the judgment together with all the expenses incurred by the city in the suit.

E. City May Order Repairs: If the abutting property owner does not maintain sidewalks as required, the ~~council~~ <u>City</u> may serve notice on such owner, by certified mail <u>to the abutting</u>

property owner as shown by the records maintained by the County, requiring ~~him~~ the abutting property owner to repair, replace or reconstruct the affected sidewalks within a reasonable time. If the certified mailing has been unclaimed or returned to the City, the City may also attempt to serve the notice by regular mail to the abutting property owner. Unclaimed or returned mail shall not constitute improper notification if the City has mailed the notice(s) to the address of record for the abutting property owner. ~~and~~ ~~i~~If such action is not completed by the abutting property owner within the time stated in the certified mail notice, the ~~council~~ City may perform the required action ~~require the work to be done~~ and assess the costs against the abutting property for collection in the same manner as a property tax, following the assessment procedures detailed in Code section 7-1-5.

**SECTION 2. REPEALER.** All Ordinances or parts of Ordinances in conflict with the provision of this Ordinance are hereby repealed.

**SECTION 3. SAVINGS CLAUSE.** If any section, provision, sentence, clause, phrase, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any provision, section, subsection, sentence, clause, phrase, or part hereof not adjudged invalid or unconstitutional.

**SECTION 4. EFFECTIVE DATE.** This Ordinance shall be in full force and effect from and after its passage, adoption, and publication as required by law.

**PASSED AND APPROVED** this _____ day of _____, 2015.

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Steven K. Gaer, Mayor

ATTEST:

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Ryan T. Jacobson,
City Clerk