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A BILL

ORDINANCE NO.

2019- 808

FOR

AN ORDINANCE

**REGULATING THE MAINTENANCE, RECONSTRUCTION,  
ALTERATION AND REPAIR OF SIDEWALKS; REPEALING  
ORDINANCE NO. 2016-758**

WHEREAS, the City Council has reviewed the general condition of sidewalks in

the City of Keizer;

WHEREAS, the City Council has reviewed the City's financial resources;

WHEREAS, the responsibility for maintenance and repair of sidewalks prior to

November 1982 was by statute placed on property owners;

WHEREAS, the courts have upheld the right of cities to place the responsibility

for maintenance and repair of sidewalks upon the property owners;

WHEREAS, the City Council adopted Ordinance No. 86-074 regulating the

reconstruction, alteration and repair of sidewalks on December 15, 1986;

WHEREAS, the City Council has determined that it is in the best interest of the

public health, safety, and welfare that responsibility for maintenance and repair of

sidewalks continue to be placed upon the abutting property owners in the City;

WHEREAS, it is appropriate that abutting property owners be liable for injuries

caused by defective sidewalks;

1 The City of Keizer ordains as follows:

2 Section 1. FINDINGS. The City Council of the City of Keizer makes the  
3 following findings:

4 (A) The general condition of sidewalks overall in Keizer is adequate and not a  
5 danger to the public.

6 (B) Keizer is without sufficient staff resources for the continual inspection and  
7 repair of sidewalks or the removal of trees, shrubs or roots obstructing or damaging  
8 sidewalks.

9 (C) Keizer is without sufficient funds to hire additional staff to continually  
10 inspect or repair sidewalks within the City.

11 (D) Keizer is without sufficient funds to undertake the ongoing inspection,  
12 repair and maintenance of sidewalks within the City.

13 Section 2. SIDEWALK MAINTENANCE STANDARDS; INSPECTIONS.

14 (A) The standards for the maintenance of sidewalks in usable condition are  
15 attached hereto as Exhibit "1" and by this reference incorporated herein. The City  
16 Manager may prescribe additional standards for the maintenance of sidewalks in usable  
17 condition if the City Manager deems it appropriate to maintain the effective use of  
18 sidewalk surfaces by pedestrians.

19 (B) Whenever the City Manager or designee learns of any condition in a  
20 sidewalk which may not conform to the standards specified in subsection (A) of this

1 section, the City Manager or designee shall cause the sidewalk to be inspected and, if not  
2 in compliance with the standards herein, shall proceed as provided in Section 4.

3 (C) As used herein, “sidewalk” means all paved surface lying between the  
4 curb-lines or the lateral lines of the public roadway and the adjacent property lines, or  
5 lying within a public easement adjacent to a public roadway, that is intended for the use  
6 by pedestrians.

7 (1) “Sidewalk” does not include “Bicycle Lane” or “Bicycle Path” as those  
8 terms are defined by Oregon statutes.

9 Section 3. DUTIES OF ABUTTING OWNER.

10 (A) It shall be the affirmative duty of every owner of property abutting a  
11 sidewalk to maintain the sidewalk in accordance with the standards adopted pursuant to  
12 Section 2.

13 (B) It shall be the duty of such owner, either upon notice given pursuant to  
14 Section 4, or upon acquiring actual knowledge that the sidewalk abutting such owner’s  
15 property does not comply with the standards adopted pursuant to Section 2 do all of the  
16 following:

17 (1) Immediately post barricades or warning devices reasonably calculated to  
18 provide notice of the defect to pedestrians using the sidewalk;

19 (2) Cause repair or reconstruction of the sidewalk to the then current  
20 specifications after obtaining a permit if required by Section 7;

1 (3) Insure that the barricades or warning devices remain in place until the  
2 reconstruction or repairs are completed.

3 Section 4. NOTICE TO REPAIR; ACTION UPON REFUSAL; APPEAL.

4 (A) If, upon inspection as provided in Section 2, the City Manager or designee  
5 determines that a sidewalk or portion thereof does not meet the standards provided in  
6 Section 2, the City Manager or designee shall cause written notice of the defect to be  
7 mailed to the owner or owners of the property abutting the sidewalk. Such notice shall  
8 describe the defect, require compliance as provided in Section 3, and this section, and  
9 give notice of the applicable provisions of this section. The notice shall be mailed to the  
10 subject property AND to the address listed in the Marion County Tax Assessor's record.

11 (B) The notice shall give notice of the property owner's liability pursuant to  
12 Section 5.

13 (C) Unless exempt under Section 7, the notice shall require that a permit to  
14 undertake repair or reconstruction as required by Section 7 be obtained within ten (10)  
15 calendar days of the date of the notice, and that the work be completed within the time  
16 period determined by the City Manager or designee considering limitations of weather  
17 and season, not to exceed sixty (60) days. Such period may be extended in the City  
18 Manager's or designee's discretion upon written application showing good cause  
19 therefor. The notice shall also state that warning devices or barricades must be placed  
20 and maintained by the owner until repair/replacement is complete.

1 (D) If, in the opinion of the City Manager or designee, the defect in the  
2 sidewalk represents an immediate and extreme hazard, the City Manager or designee  
3 may cause barricades or warning devices to be immediately placed to give warning of the  
4 hazard; and shall, if the abutting property is occupied, give written notice to the occupant  
5 that such barricades or warning devices have been erected, from which time it shall be  
6 the responsibility of both the owner and occupant to maintain adequate barricades or  
7 warning devices continually in place. Within ten (10) days of notice under this section,  
8 both the owner and occupant shall be responsible for placing substitute barricades or  
9 warnings in which event the City Manager or designee shall cause the City's equipment  
10 to be removed.

11 (E) Any person to whom the notice prescribed in subsection (A) of this section  
12 is directed may appeal therefrom to the Council by giving written notice of appeal to the  
13 City Recorder within ten (10) days of the date the notice was mailed or delivered  
14 whichever is the earlier date. The notice of appeal shall state one or more of the  
15 following grounds:

16 (1) That the alleged defect is not in violation of the standards adopted  
17 under Section 2.

18 (2) That the alleged defect is not hazardous in fact because of special  
19 conditions in the particular case.

20 (3) That the compliance period is unreasonable.

1           (4) That a requested extension of the compliance period was  
2 unreasonably denied.

3           (5) That the person to whom notice has been given is not the owner of  
4 the property adjacent to the allegedly defective sidewalk.

5           (F) Upon receiving a notice of appeal, the City Recorder shall set the matter  
6 for public hearing before the Council and give notice thereof to the appellant. Following  
7 the hearing, the Council may affirm, reverse, or modify the City Manager's or designee's  
8 action.

9           (G) If no appeal is filed within the time provided in subsection (E) of this  
10 section and if required, no required permit has been obtained or the repairs are not  
11 completed as required by the notice, or if the direction of the Council following an  
12 appeal is not complied with, the City Manager or designee may proceed as provided in  
13 Section 6.

14           Section 5. LIABILITY FOR DAMAGES.

15           (A) The owner of property abutting to a sidewalk that fails to comply with  
16 applicable standards shall be liable to any person suffering bodily injuries, property  
17 damage, or both, as a result of any breach of the duty imposed upon the owner under  
18 Section 3.

19           (B) In the event any action naming the City or any of its officers, employees, or  
20 agents is brought as a result of any alleged defective condition in a sidewalk, the owner

1 of property abutting the defective sidewalk shall indemnify and defend the City, its  
2 officers, employees and agents, if the defective condition was the result of the duty  
3 imposed upon the owner under Section 3.

4 (C) Neither the City nor its officers, employees, or agents acting in the course  
5 and scope of their duties shall be liable to any person who asserts a claim based upon  
6 bodily injuries or property damage as a result of any breach of the duty imposed upon the  
7 owner under Section 3.

8 Section 6. PROCEDURE FOR INITIATING SIDEWALK REPAIR AFTER  
9 NOTICE.

10 (A) If a property owner fails to take action in accordance with Section 4 and  
11 the notice sent to the property owner, then the City Manager or designee may, but is not  
12 required to, proceed to construct, reconstruct, clean, repair, or take such action as is  
13 necessary to bring a sidewalk or the space below or around the sidewalk into  
14 conformance with this Ordinance. The decision to take any action under this subsection  
15 is in the sole discretion of the City Manager or designee taking into account such factors  
16 that include, but are not limited to, available funding and the severity of the existing  
17 sidewalk defect.

18 (B) Where the City Manager or designee takes action under subsection 6(A) of  
19 this Ordinance, the City Manager or designee shall keep an accurate account of the cost  
20 of labor, including inspection services, and material required for the construction,

1 reconstruction, cleaning, repair, or other action necessary to bring the sidewalk into  
2 compliance with this Ordinance. Such cost, plus an amount equal to ten percent of the  
3 cost of labor and materials to defray administrative costs, including, but not limited to  
4 preparing and serving the notice, engineering, and advertising, shall be a lien upon the  
5 owner's property.

6 (C) When the City shall have done, or shall have caused to be done, any work,  
7 as described above, and when the cost thereof shall have been determined, the City shall,  
8 by first-class and certified mail, notify the owner or owners of the premises abutting or  
9 adjoin the sidewalk or property between the same and the adjacent land that the work has  
10 been done and that the cost thereof is being charged to the owner and shall become a lien  
11 against and upon the premises, which notice shall be in writing, giving the description of  
12 the premises affected, the cost of work done and a brief description of the type of work  
13 done, and shall notify the owner that unless said costs are paid within thirty (30) days  
14 from the date of giving notice that the costs shall be entered in the lien records of the  
15 City.

16 (D) If the cost is not paid within thirty (30) days from the giving of the notice  
17 described in Section 6(C) above, the Council shall, by Ordinance, direct the City  
18 Recorder to enter in the docket of City liens the amount assessed upon the particular tract  
19 or parcel of land with the names of the record owners thereof. Upon such entry in the  
20 lien docket the amount so entered shall be immediately due and payable and shall be a

1 lien and charge upon the respective lots, tracts or parcels of land against which the same  
2 are placed. Such lien shall be first and prior to all other liens, except as otherwise  
3 provided by law. Interest shall be charged at the rate of nine percent (9%) per annum  
4 until paid on all amounts not paid within thirty (30) days from the date of such entry.  
5 The collection or foreclosure of such lien shall be done or performed substantially in the  
6 same manner as assessments for local improvements. Minor irregularities and  
7 informalities shall be disregarded.

8 Section 7. PERMIT TO RECONSTRUCT OR REPAIR REQUIRED. No  
9 person shall alter, reconstruct or repair any sidewalk without first obtaining a permit to  
10 do so from the City. If the total area of reconstruction or repair is less than fifteen (15)  
11 lineal feet and not located in a driveway or Americans with Disabilities Act ramp area,  
12 then such person is exempt from this permit requirement. Regardless of whether a  
13 permit is required, all work on the sidewalk area shall meet applicable requirements,  
14 including, but not limited to, the requirements of the Americans with Disabilities Act.

15 Section 8. APPLICATION. Application for the permit required by Section 7  
16 shall be made to the Public Works Department and shall describe the location, width,  
17 length, and material proposed to be used, and shall contain such other information as the  
18 City Manager or designee may deem necessary to secure compliance with the provisions  
19 of this Ordinance. The applicant shall be accompanied with a permit fee in the amount  
20 as prescribed by Resolution of the City Council.

1           Section 9.    DUTY OF PROPERTY OWNERS TO KEEP SIDEWALKS SAFE,  
2    CLEAN, ETC.

3           (A)    To allow safe use by the public, it shall be the duty of the owners, lessees,  
4    and occupants of all property abutting upon or adjacent to any sidewalk to keep such  
5    sidewalk free from obstructions unless allowed by this or other Ordinance, and as  
6    reasonably free from excess accumulation of ice, snow, dirt, vegetation, or debris as  
7    circumstances shall allow.

8           (B)    Recreational vehicles lawfully parked shall be allowed to be served with an  
9    electrical cord or hose provided the crossing of any sidewalk shall be no greater than ¾”  
10   in height and is protected with an adequate strip protector, cones or other devices.

11          (C)    The owners, lessees, and occupants shall be liable to any person suffering  
12   bodily injuries or property damage as a result of any breach of a duty imposed under  
13   subsection (A) of this section.

14          (D)    In the event any action naming the City or any of its officers, employees, or  
15   agents is brought as a result of any failure to comply with the duty imposed under  
16   subsection (A) of this section, the owner of the property abutting the defective sidewalk  
17   shall indemnify and defend the City, its officers, employees, and agents, in the event it is  
18   established in such action that the occurrence or condition giving rise to the action could  
19   have been prevented had such owner not breached a duty imposed under subsection (A)  
20   of this section.

1 (E) Neither the City nor its officers, employees, or agents acting in the scope of  
2 their duties shall be liable to any person having a remedy under subsection (C) of this  
3 section.

4 (F) Whenever any owner, lessee, or occupant of any property neglects to  
5 perform the duty imposed under subsection (A) of this Section, the City Manager or  
6 designee shall post and mail a notice and order the owner, lessee, or occupant to remedy  
7 such neglect. Such notice shall describe the neglect, require compliance as provided in  
8 this section, and give notice of the property owner's liability pursuant to this section.  
9 The notice shall be effective upon posting upon the owner's property. In case the person  
10 then fails to make such sidewalk safe or to clean the same or to clear the same of ice,  
11 snow, dirt, vegetation, or debris within such time as the City Manager or designee may  
12 have specified in the notice and order, then the City Manager or designee shall proceed  
13 as provided in Section 11(B) or 11(C).

14 Section 10. COMPLIANCE WITH ORDINANCE. It shall be unlawful for the  
15 owner, lessee, or occupant of any property, or for any contractor, agent or employee of  
16 such persons, to construct, reconstruct, or repair any sidewalk in any manner contrary to  
17 the provisions of this Ordinance, or any permit or order issued under this Ordinance. It  
18 shall be unlawful for the owner, lessee, or occupant of any property to fail to maintain  
19 any sidewalk in accordance with the provisions of this Ordinance.

20

1           Section 11. PERMIT REVOCATION; INFRACTION; REMEDIES.

2           (A) Permit Revocation.

3                   (1) The City Manager or designee may revoke a permit required by this  
4 Ordinance upon a finding that:

5                           (a) Inaccurate information was used to obtain the permit;

6                           (b) The applicant is not complying with the terms of the permit  
7 or the provisions of this Ordinance;

8                           (c) The work is, or threatens to become a hazard to property or  
9 public safety; is adversely affecting or about to adversely affect adjacent property or  
10 rights-of-way; or is otherwise adversely affecting the public health, safety, or welfare.

11                   (2) The City Manager or designee shall issue a written notice specifying  
12 the nature of the violation or problem which must be remedied prior to resuming other  
13 work on the project.

14           (B) Compliance. Any owner who fails to comply with the requirements of this  
15 Ordinance, including any notice hereunder, or does not comply with the terms of a  
16 required permit; or who undertakes an activity regulated by this Ordinance without first  
17 obtaining a required permit; or who fails to stop work if a permit has been revoked, shall  
18 be subject to a city infraction not to exceed \$500 per violation. Each day that a violation  
19 continues shall constitute a separate violation.

20

1 (C) With regard to violations under Section 9, a violation of this Ordinance is  
2 declared to be a public nuisance and may be abated pursuant to the Uniform Nuisance  
3 Abatement Procedure Ordinance (Ordinance No. 94-282).

4 (D) The remedies provided in this Ordinance are cumulative and not mutually  
5 exclusive and are in addition to any other rights, remedies and penalties available to the  
6 City under any other provision of law.

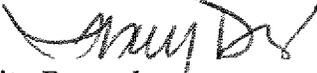
7 Section 12. REPEAL OF ORDINANCE NO. 2016-758. Ordinance No. 2016-  
8 758 (An Ordinance Regulating the Maintenance, Reconstruction, Alteration and Repair  
9 of Sidewalks) is hereby repealed in its entirety, but such Ordinance shall remain in force  
10 for the purpose of enforcing any violation under such Ordinance that existed prior to the  
11 date of this Ordinance.

12 Section 13. EFFECTIVE DATE. This Ordinance shall take effect thirty (30)  
13 days after its passage.

14 PASSED this 16th day of September, 2019.

15  
16 SIGNED this 16th day of September, 2019.

17  
18  
19   
20 Mayor

21  
22   
23 City Recorder

## EXHIBIT "1"

### SIDEWALK REPAIR CRITERIA

Sidewalk defects that, in the judgment of the City Manager or the City Manager's designee, would cause a pedestrian or jogger to trip or slip, or that would deflect or abruptly stop a wheeled vehicle, such as a wheelchair or skateboard, etc., shall be repaired. The following criteria are a guide to the City Manager or the City Manager's designee in evaluating if a sidewalk presents a public hazard warranting its repair. In all cases, the judgment of the City Manager or the City Manager's designee will be the controlling factor in the determination of whether or not a sidewalk creates a hazard requiring correction.

1. Adjoining sections or portions thereof whose edges differ vertically by more than  $\frac{3}{4}$  inch.
2. Any section having a crack(s) or hole(s) greater than two inches wide by two inches deep.
3. Sections that have a sudden dip or rise in grade (tangents with slope difference more than 2 inches per foot with no radius at the intersection point).
4. Sections having depressions, reverse cross-slope (draining water away from street) or below curb grade so as to impound mud or water.
5. Sections that have raveled or spalled resulting in aggregate protruding more than  $\frac{3}{4}$  inch above the surface.
6. Paved or landscaped areas between the curb and sidewalk that protrude above the sidewalk and cause water to pond, drain, or flow along the sidewalk. This condition shall be corrected by lowering the area to a grade line between curb and sidewalk.
7. Repairs of utility vaults, valves or boxes that are not to proper grade shall be the responsibility of the appropriate utility company or City, together with any adjacent sidewalk defects in connection with such appurtenances.
8. The City Manager may refer to the City Council the decision in its discretion to determine reconstruction responsibility for sidewalk defects that occur as a result of major flooding or any other similar occurrence.