

**CITY OF SILVERTON**  
**ORDINANCE**  
**19-03**

**AN ORDINANCE OF THE SILVERTON CITY COUNCIL AMENDING SILVERTON MUNICIPAL CODE TITLE 12 TO ADD CHAPTER 12.16 ON SIDEWALKS AND DECLARING AN EMERGENCY**

**WHEREAS**, in Ordinance 18-05 the City adopted new provisions for special event permitting; and

**WHEREAS**, in making changes to other parts of the Code that were inconsistent with the new special event permitting provisions, Chapter 12.16 on sidewalks was mistakenly repealed; and

**WHEREAS**, the City desires to put these provisions back into effect immediately to ensure sidewalk issues are clarified in the Municipal Code and declaring an emergency.

**NOW, THEREFORE, THE CITY OF SILVERTON ORDAINS AS FOLLOWS:**


Section 1: The Silverton Municipal Code is amended in substantially the same form as set forth in the attached Exhibit A (Chapter 12.16).

Section 2: The City Council declares an emergency to ensure these provisions are put back in the Code immediately and as such they will go into effect upon adoption.

Ordinance adopted by the City Council of the City of Silverton, this 4<sup>th</sup> day of March 2019.

  
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Mayer, City of Silverton  
Kyle Palmer

ATTEST

  
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City Manager/Recorder, City of Silverton  
Christy S. Wurster

## Chapter 12.16

### SIDEWALKS

#### Sections:

- 12.16.010 Definitions.
- 12.16.020 New sidewalks or repairs – When required.
- 12.16.030 Sidewalks reconstruction or repairs – City work and assessments.
- 12.16.040 Repair and maintenance of sidewalks, curbs, or monolithic curbs and gutters in the public right-of-way.
- 12.16.050 Filling of space between sidewalk and curb.
- 12.16.060 Permit to construct, reconstruct, or repair and fees.
- 12.16.070 Procedure when owner refuses to construct or repair.

#### 12.16.10 Definitions.

As used in this chapter:

A. “City” means the city of Silverton, Marion County, Oregon.

B. “Contractor” means and includes all persons whomsoever constructing or having in charge the construction of any sidewalk.

C. “Council” means the city council of Silverton.

D. “Engineer” means the city engineer, and shall include engineers appointed especially for particular work as well as a regularly appointed city engineer.

E. “Owner” means and shall include all persons, firms and corporations whomsoever owning real property abutting upon any public street in the city, and shall include a purchaser under an executory contract of sale.

F. “Recorder” means the recorder and clerk of the city.

G. “Sidewalk” means that portion of the street set apart by ordinance, resolution, use or otherwise for the use of pedestrians. (Ord. 08-06 § 4, 2008)

#### 12.16.20 New sidewalks or repairs – When required.

A. Property owners shall maintain at all times any sidewalk or curb adjacent to their land in a reasonably safe condition. The owner of property adjacent to a defective sidewalk shall be liable to any person suffering bodily injuries, property damage, or both as a result of any breach of a duty imposed under this chapter.

B. No recourse whatsoever shall be had against the city, its council, mayor, employees or agents for damage or loss to person or property arising out of the negligent or otherwise harmful maintenance of any sidewalk or curb described in subsection (A) of this section.

C. A property owner described in subsection (A) of this section shall indemnify, defend and hold the city, its council, mayor, employees and agents harmless against any claim, suit or action made against the city, its council, mayor, employees and agents as a result of any person’s failure to fulfill the duty imposed by subsection (A) of this section.

D. The public works director or his/her designee shall prescribe standards for the maintenance of sidewalks in usable condition and any other standards the director deems appropriate to maintain the effective use of sidewalk surfaces by pedestrians. Whenever the director learns of any condition in a sidewalk which may not conform to the standards, the director shall cause the sidewalk to be inspected and, if found to be defective under those standards, document the substandard conditions and prioritize them for repairs. Repairs required to be made by the abutting property owner(s) are to be in accordance with the applicable provisions of this chapter.

E. In case the owner fails to keep such sidewalk in repair, the council may proceed to repair or replace the same on the same notice and in the same manner as specified in this chapter for the construction of new walks.

F. No walk shall be repaired where, in the judgment of the council, a new walk should be installed, and the decision of the council as to whether an existing walk should be repaired or a new walk constructed in the place thereof shall be final and binding upon all property owners.

G. Requirements for New Construction Abutting Improved Streets. Except as otherwise provided in the Silverton development code, it is the duty and shall be required of every property owner whose property abuts any street that has been improved with hard surface pavement and curbs to construct a sidewalk conforming to the provisions of this chapter within 100 days from the completion of construction of any building located upon the property of such owner. For the purposes of this section, sidewalks shall be required along the entire length of said property composing the building site abutting any improved street. This section shall not apply to accessory buildings as defined in

Article 1 of the Silverton Development Code, provided such accessory buildings are located in a residential district.

H. Requirements for Undeveloped Lots Abutting Improved Streets.

1. Every property owner whose property abuts upon any street that has been improved with hard surface pavement and curbs shall construct a sidewalk conforming to the provisions of this chapter, under the following circumstances:

- a. At least 70 percent of the property frontage is developed along that side of the block;
- b. At least 70 percent of the required sidewalks on that side of the block are already constructed; and
- c. It has been at least three years since the abutting street was improved to hard surface pavement and curbs, beginning with streets constructed on or after January 1, 2004.

2. For the purposes of subsection (H)(1)(b) of this section, a property having a sidewalk construction deferral pursuant to the Silverton development code shall be counted as if a sidewalk were constructed, and shall be subject to having its deferral terminated and sidewalk construction required. All property owners affected by the requirements of this section must be in compliance within 12 months of notification by the public works director.

3. Property owners failing to comply with this section shall be subject to actions taken by the public works director pursuant to SMC 12.16.070. (Ord. 08-06 § 4, 2008)

### **12.16.30 Sidewalks reconstruction or repairs – City work and assessments.**

A. Whenever, in the judgment of the public works director or his/her designee, it is necessary that any existing sidewalk be repaired or any new sidewalk be constructed, the public works director or his/her designee shall cause written notice of the damaged sidewalk to be mailed to the owner or owners, by certified mail, of the property abutting the sidewalk.

1. The notice shall specify therein the name of the owner, if known, and a description of the property adjacent to which such walk is to be constructed, sufficient for identification, and for that purpose the notice shall be sufficient if it shall specify the street and number of such property.

2. The notice shall direct that 30 days' notice shall be given to the owner to obtain a permit to begin the construction of a sidewalk, and shall specify generally, according to the district in which

such walk is to be constructed, whether the same shall be constructed of concrete or other material.

3. The notice shall state that if the owner of the property affected fails to make such reconstruction or repair within the time limited by the notice, then the public works director shall proceed to reconstruct or repair such sidewalk. The cost of labor and material required for the reconstruction or repair, including inspection services plus 10 percent to cover overhead, shall be charged to the owner of the property abutting the reconstructed or repaired sidewalk.

4. The notice shall state that the owner shall obtain a permit to undertake repair or reconstruction within 30 days of the date of notice and that the repair or reconstruction must be completed within a reasonable period of time.

5. The notice may also specify the nature and location of lighted barricades to be placed and maintained by the owner.

6. The notice shall inform the property owner directed to reconstruct or repair a sidewalk that they may appeal therefrom to the city council by giving written notice of appeal to the city manager within 14 days of the date the notice was mailed. The notice of the appeal shall state one or more of the following grounds for the appeal:

- a. That the alleged defect is not in violation of the standards adopted under this chapter;
- b. That the alleged defect is not hazardous in fact because of special conditions in the particular case;
- c. That the compliance period is unreasonable;
- d. That an extension of the compliance period was unreasonably denied;
- e. That warning devices or barricades specified in the notice are unreasonable; or
- f. That the person to whom notice has been given is not the owner of the property adjacent to the allegedly defective sidewalk.

B. If, in the opinion of the public works director or his/her designee, the defect in the sidewalk represents an immediate and extreme hazard to the public, he/she may cause lighted barricades or warning devices to be immediately placed to give warning of the hazard; and shall, if the abutting property is occupied, give written notice to the occupant, as well as the owner, that such lighted barricades have been erected, from which time it shall be the responsibility of the owner to maintain adequate lighted barricades or warning devices continually in place. The owner may place substitute lighted barricades, in which event the director

or his/her designee shall cause the city's equipment to be removed; but in any event the abutting owner shall pay to the city a fee as prescribed by resolution of the city council.

C. The owner whose property is so charged with such construction shall, within 30 days from date of such service, obtain a permit to undertake repair or reconstruction as required by subsection (A) of this section. The construction or repair of the sidewalk described in the notice shall be completed within a reasonable period of time considering limitation of weather and season, not to exceed 120 days from the date of the notice of noncompliance. If the owner shall fail so to do, he or she shall be deemed to have waived his or her right to himself or herself construct such sidewalk, and the city shall proceed to construct the same in the manner hereinafter provided; provided, however, that the city manager or his/her designee may, on application of such owner and for good cause shown, extend, for such reasonable time as it shall deem proper, the time limit within which the owner shall proceed with the work.

D. Any person who, by the notice prescribed in subsection (A) of this section, is directed to reconstruct or repair a sidewalk may appeal to the city council by giving written notice of appeal to the city manager within 14 days of the date the notice was mailed. The notice of the appeal shall state one or more of the following grounds for the appeal:

1. That the alleged defect is not in violation of the standards adopted under this chapter;
2. That the alleged defect is not hazardous in fact because of special conditions in the particular case;
3. That the compliance period is unreasonable;
4. That an extension of the compliance period was unreasonably denied;
5. That warning devices or barricades specified in the notice are unreasonable; or
6. That the person to whom notice has been given is not the owner of the property adjacent to the allegedly defective sidewalk.

E. Upon receiving a notice of appeal, the city manager shall set the matter for public hearing before the city council and give notice thereof to the appellant. Following the hearing, the city council may affirm, reverse, or modify the public works director's action.

F. If no appeal is filed within the time provided in subsection (D) of this section and no permit has been obtained or the repairs or reconstruction are not completed as required by the notice, or if the

direction of the city council following an appeal is not complied with, the public works director shall make full report to the city council and the council may proceed as provided hereinafter. (Ord. 08-06 § 4, 2008)

#### **12.16.40 Repair and maintenance of sidewalks, curbs, or monolithic curbs and gutters in the public right-of-way.**

A. It is declared to be the duty of the owners, lessees, and occupants abutting upon or adjacent to any sidewalk to keep such sidewalk clean and clear of ice, snow, dirt, vegetation, debris, or obstructions for the safe use of the public at all times.

B. No person owning real property shall cause or allow the sidewalk, curb or monolithic curb and gutter in the abutting public right-of-way to present an unreasonable risk of harm to persons or property.

C. For purposes of this section, a sidewalk, curb or monolithic curb and gutter shall be deemed to present an unreasonable risk of danger to person or property if, among other things:

1. Panels or pieces of same are gap-separated more than one-half inch from adjacent panels or pieces; or
2. Panels or pieces of same are vertically displaced from each other more than one-quarter inch; or
3. Entire pieces or panels are absent, or there exist pieces or panels broken into parts smaller than one square foot; or
4. The grade from one piece or panel to the adjacent piece changes by more than one-half inch per foot in any direction; or
5. Handicap access ramps or driveways deviate from the slopes and dimensions included in the standards and specifications set by the city engineer; or
6. Curb pieces exist less than two feet in length; or
7. Monolithic curb and gutter sections are cracked or broken longitudinally, or displaced one-half inch or more from the adjacent paving; or
8. The surface irregularities are generally more than one-half inch from the original surface.
9. This list is not intended to be exclusive.

D. The existence of sidewalks, curbs or monolithic curbs and gutters in such condition as to present an unreasonable risk of danger to persons or property hereby is declared to be a public nuisance and may be abated by any of the procedures set forth in SMC 8.04.050 et seq.

E. A person who owns property that abuts a sidewalk, curb or monolithic curb and gutter in such condition as to present an unreasonable risk of danger to persons or property is civilly liable for all claims arising from that condition. (Ord. 08-06 § 4, 2008)

**12.16.050 Filling of space between sidewalk and curb.**

It shall be the duty of all property owners to fill in the space between the curb and sidewalks in front of or abutting their property, and to the curb line of the street at the intersections, with earth or other material approved by the public works director or his/her designee to a level and grade with the curb and sidewalk. If such space is filled with earth, at least 75 percent of the surface area shall be covered with perennial living plant material which conforms to all other requirements of this code, and which is kept free of noxious vegetation. (Ord. 08-06 § 4, 2008)

**12.16.60 Permit to construct, reconstruct, or repair and fees.**

A. No person shall construct a sidewalk in the public right-of-way, except in accordance with current standards and specifications established by the public works director or in accordance with this section and the Silverton development code.

B. The public works department shall issue a permit upon approval of a permit application for construction and repairs to all sidewalks on city rights-of-way. No persons shall construct, reconstruct, or repair any sidewalk without first obtaining said permit.

1. Permit and Service Fees. Application for the permits required shall be made to the public works department and shall describe the location, width, length, and material proposed to be used, and shall include a plan view drawing with such other information as the public works director or his/her designee may deem necessary to demonstrate compliance with the provisions of this chapter. The application shall be accompanied with an inspection fee in the amount prescribed by resolution of the city council.

2. Compliance. It shall be unlawful for any person to willfully construct, reconstruct, or repair any sidewalk upon a grade or alignment contrary to the specifications or directions of any permits granted by the public works department.

3. Inspection of Sidewalks Constructed Under Permit. The owner or his/her contractor shall notify the public works department in accor-

dance with the prescribed schedule that forms are ready for inspection and prior to placing concrete. After a permit to construct, reconstruct, or repair a sidewalk is issued and notification is given by the owner or contractor, it shall be the duty of the public works director or his/her designee to make inspection of the sidewalk forms as, in his judgment, is necessary to have full compliance with the provisions of this chapter and other ordinances that may be applicable. If the forms are not placed in accordance with the specifications, the owner or his/her contractor shall make the required corrections before placing concrete. After forms are approved by the director or his/her designee, concrete shall be placed and finished in accordance with the specifications. If the finished sidewalk is not constructed in accordance with the specifications and other terms of this chapter, it shall be the duty of the director or his/her designee to proceed in accordance with this section against the owner of the property affected, being the owners of the property abutting upon that part of the street where the sidewalk is being constructed.

4. Failure to Obtain a Permit. In the event the owner or his contractor fails to obtain a permit as required by this section or fails to call for a form inspection as required by this section, the director or his/her designee shall collect a fee double the normal fee currently prescribed by resolution of the city council. In addition it shall be unlawful for the owner, lessee, or occupant of any property, or for any person or agent of such, or for any contractor, or any agent or employee of any contractor, to construct any sidewalk or area between the sidewalk and curb in any manner contrary to the terms and provisions of this chapter. Any sidewalk or area between the sidewalk and curb constructed contrary to the provisions of this chapter shall be removed and corrected or caused to be removed and corrected by the property owner affected, within 10 days after he or she receives notice from the director or his/her designee, and each day the offending situation remains in place after 10 days of the owner receiving notice from the director or his/her designee shall constitute a separate violation of this chapter. Violation of this chapter is an infraction.

5. Deposit or Bond. A deposit or bond in the amount established by council resolution shall be collected from all applicants for new sidewalk construction prior to issuance of a permit. The deposit shall be returned to the applicant upon inspection and approval by the city engineer's designee of the constructed or repaired sidewalk. The deposit or

bond shall be waived in the case of repairs to an existing sidewalk. The permit for each construction or repair shall declare the applicant's responsibility for repair or replacement of any defective or damaged sidewalk affected by this work. (Ord. 08-06 § 4, 2008)

**12.16.070 Procedure when owner refuses to construct or repair.**

Whenever the public works director or his/her designee determines that the construction, reconstruction or repair of any sidewalk is necessary, per the requirements found in this chapter, and the owner of the property affected fails to make such construction, reconstruction, or repair within the time limits specified in this chapter, then the public works director shall proceed to construct, reconstruct, or repair such walk, and shall keep an accurate account of the cost of labor and material required for such construction or repair, including inspection services. Such cost, plus 10 percent additional to defray the cost of preparing and serving the notice, engineering, and advertising, shall constitute the cost of construction, reconstruction, or repair of such sidewalk and shall constitute a lien upon the benefitted property, which lien shall be entered by the recorder in the appropriate lien docket of the city and shall be collected and foreclosed as a lien. (Ord. 08-06 § 4, 2008)