

## ORDINANCE NO. 31-2011

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING ELK GROVE MUNICIPAL CODE CHAPTER 12.05 TO TITLE 12 DEFINING RESPONSIBILITIES FOR SIDEWALK MAINTENANCE AND REPLACEMENT

**WHEREAS**, the California Streets and Highways Code, Section 5610 et. seq., assigns the responsibility of maintaining sidewalks in such a condition that will not endanger persons or property and provide safe and clear paths of travel for all individuals to the adjacent or fronting property owner; and

**WHEREAS**, the City of Elk Grove Municipal Code standards are intended to maintain public health, safety, and quality of life for the City's residents; and

**WHEREAS**, the City of Elk Grove, with this ordinance, will establish shared responsibilities for maintenance and replacement of sidewalks between the fronting property owner and the City of Elk Grove; and

**WHEREAS**, Chapter 12.05 will clearly establish roles and responsibilities for the maintenance and replacement of sidewalks in the City of Elk Grove.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does hereby ordain as follows:

#### Section 1: Purpose.

The purpose of this Ordinance is to add Chapter 12.05 to Title 12 of the Elk Grove Municipal Code. This Chapter clearly defines shared responsibilities between property owners and the City of Elk Grove related to the maintenance and replacement of sidewalks in the City.

#### Section 2: Amendment to Title 12 – Streets and Sidewalks, adding Chapter 12.05 Sidewalk Maintenance.

### **12.05 Sidewalk Maintenance**

#### **Sections:**

- 12.05.010 Intent.
- 12.05.020 Liability for Unsafe Conditions and Injury to Public.
- 12.05.030 Definitions.
- 12.05.040 Inspection Program.
- 12.05.050 Property Owner(s) Responsibilities.
- 12.05.060 City Repairs.
- 12.05.070 Notice to Property Owner.
- 12.05.080 Content of Notice.
- 12.05.090 Property Owner Elects to Make Repair.
- 12.05.100 Removal or Planting of Street or Landmark Tree.

12.05.110	Sidewalk Improvement - Permit Required.
12.05.120	Sidewalk Improvement Unlawful Without Permit.
12.05.130	City to Replace if Owner Fails to do so.
12.05.140	Notice of Cost and Hearing.
12.05.150	Assessment.
12.05.160	Recording of Lien.
12.05.170	Release of Lien.
12.05.180	Revolving Fund.

**12.05.010 Intent.**

To maintain the sidewalk in such condition that it will not endanger persons or property or *interfere* with the public convenience in the use of those sidewalks and to provide for fronting and adjacent Property Owners to bear the costs of such repair as allowed by the California Streets and Highways Code sections 5600 et. seq.

**12.05.020 Liability for Unsafe Conditions and Injury to Public.**

Pursuant to this Chapter of the Elk Grove Municipal Code (EGMC) and State Law, Property Owners are required to maintain, repair, and/or replace the sidewalk and as such owe a duty to members of the public to keep and maintain the sidewalk in a safe and non-dangerous condition. If, as a result of the failure of any Property Owner to maintain the sidewalk in a non-dangerous condition as required by this Chapter, any person who suffers injury or damage to person or property, the Property Owner may be liable to such person for the resulting damages or injury.

**12.05.030 Definitions.**

For the purpose of this Chapter, the following words and phrases shall have the meanings set forth below. Unless in direct conflict with terms defined herein, other words and phrases shall be interpreted as defined in the Streets and Highways Code:

- A. Director of Public Works. Director of Public Works or his or her designee.
- B. Driveway Approach. The concrete structure located in the public right-of-way between the public street and a driveway or parking area on private property.
- C. Landmark Tree. A tree as defined in EGMC Chapter 19.12 as being a Landmark tree subject to the provisions of that Chapter.
- D. Planting strip. The area of the street lying between the curb line and the street line or edge of right-of-way along any street; including the sidewalk.
- E. Property Owner. The fee owner of real property.
- F. Sidewalk. Any area provided for the use of pedestrians, including planting areas, driveway approaches or parking strips, between the public vehicular roadway and the edge of right-of-way bordering fronting or adjacent private property.

- G. Sidewalk Repair. Any effort to eliminate sidewalk discontinuities such as patching cracks or gaps, grinding or planing displaced or lifted sidewalk panels, ramping of elevated sidewalk panels, and filling in areas of settled or sunken sidewalk.
- H. Sidewalk Replacement. The complete removal and replacement of failed portions of sidewalk.
- I. Street Tree. Any woody perennial plant having a single main axis or stem achieving ten (10' 00") feet or more in height, growing within a street right-of-way; planted within a street right-of-way and/or designated planting easement.

**12.05.040 Inspection Program.**

The City of Elk Grove will implement an inspection program to identify damaged sidewalks and assess repair and replacement needs.

**12.05.050 Property Owner(s) Responsibilities.**

It shall be the duty of the Property Owner(s) of lots or portions of lots fronting or adjacent to any portion of a public street, avenue, alley, lane, court or place to maintain the sidewalks including any planting strip or driveway approach, in a safe condition. For sidewalks that will not support or sustain repairs, the adjacent Property Owner has the duty to fund or perform permanent sidewalk replacement of failed portions of sidewalk, whether or not the City has notified the Property Owner of the need for such work and regardless of the City performing such work in the past.

**12.05.060 City Repairs.**

The City may, at its own discretion, make safe any reported or discovered hazardous sidewalk conditions by performing temporary repairs (patching, grinding or ramping) or closure of the sidewalk if necessary.

**12.05.070 Notice to Property Owner.**

When any portion of a sidewalk or driveway approach is not in good repair, in a condition to endanger persons or property or interfere with public convenience, or in a condition that will not sustain or support sidewalk repairs and the Director of Public Works has knowledge thereof, he or she will send two notices to the fronting or adjacent Property Owner to replace the sidewalk. Notice shall be written and given by mailing to the Property Owner's last known address, as it appears on the last equalized assessment rolls of the City.

**12.05.080 Content of Notice.**

The notice shall direct the Property Owner to replace the sidewalk and specify what work is required to be done, how the work is to be done, and what materials shall be used in such sidewalk replacement. Upon receipt of the notices, Property Owners will be given the option of authorizing the City to work on the Property Owner's behalf in completing the sidewalk replacement. Should Property Owner fail to pay for sidewalk replacements, EGMC Sections 12.05.090 through 12.05.180 below shall apply.

**12.05.090 Property Owner Elects To Make Repair.**

If the Property Owner chooses not to have the City complete the sidewalk replacement the Property Owner shall initiate work within two (2) weeks of the first notice. If work is not completed, the City may elect to replace sidewalk and place a lien on the property for costs as allowed by the California Streets and Highways Code section 5614.

**12.05.100 Removal or Planting of Street or Landmark Tree.**

If the Property Owner wants to remove or plant a street or landmark tree in relation to the sidewalk replacement, he or she must apply for a permit as prescribed under EGMC Chapter 19.12 relating to Tree Preservation and Protection.

**12.05.110 Sidewalk Improvement – Permit Required.**

Before constructing, or replacing the sidewalk in front of a lot or lots adjacent to a public street, avenue, alley, lane, court, or place, the Property Owner of the lot or lots shall obtain an encroachment permit from the Department of Public Works. The encroachment permit fee and any inspection charges shall be waived. However, bonds and certificate of insurance shall be required.

**12.05.120 Sidewalk Improvement Unlawful Without Permit.**

It shall be unlawful for any person, firm, or corporation to construct, repair, or replace any sidewalk without a valid permit issued by the City.

**12.05.130 City to Replace if Owner Fails to do so.**

If the repair is not commenced and prosecuted to completion as required by the notice, the City may replace the sidewalk.

**12.05.140 Notice of Cost and Hearing.**

Upon completion of the sidewalk replacement, the Director of Public Works will ascertain the replacement cost and apportion it if the sidewalk replacement is adjacent to more than one lot of land. The Director of Public Works shall notify the Property Owner by mail of the sidewalk replacement cost and a hearing date shall be provided in which the City Council shall hear and approve a report by the Director of Public Works including costs for sidewalk replacement. Any protests by Property Owners shall also be heard at that time. The City Council may take any action on the Director's report and Property Owners protest's at that time and all such actions are final.

**12.05.150 Assessment.**

If the cost or repair is assessed by the Council against the Property Owner fronting or adjacent to the sidewalk such assessment shall be paid within five (5) days after the Council confirms the assessment.

**12.05.160 Recording of Lien.**

After the five (5) day period, if the assessment is not paid the City shall consider the assessment a special assessment against the property and place a lien on the fronting or adjacent property for all costs and interest in accordance with California Streets and Highways Code section 5625.

**12.05.170 Release of Lien.**

Upon payment of the amount owed, the City shall request that the County Recorder remove the lien.

**12.05.180 Revolving Fund.**

A fund shall be provided to cover initially the cost of making sidewalk replacements as provided for under this Chapter. The revolving fund will be replenished by appropriation and by all money paid or collected from sidewalk repairs.

Section 3: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 4: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.


Section 5: Savings Clause.

The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and affect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 6: Effective Date and Publication.

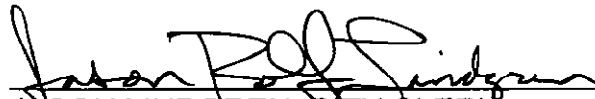
This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**ORDINANCE:** 31-2011  
**INTRODUCED:** November 9, 2011  
**ADOPTED:** December 14, 2011  
**EFFECTIVE:** January 13, 2012

  
\_\_\_\_\_  
JAMES COOPER, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JASON LINDGREN, CITY CLERK

  
\_\_\_\_\_  
JONATHAN HOBBS,  
INTERIM CITY ATTORNEY

Date signed: January 3, 2012

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 31-2011**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

*I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on November 9, 2011 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on December 14, 2011 by the following vote:*

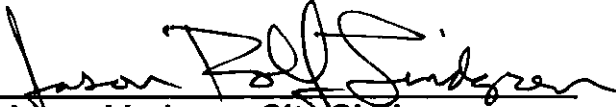
**AYES :**        **COUNCILMEMBERS:**     *Cooper, Hume, Davis, Detrick, Scherman*

**NOES:**        **COUNCILMEMBERS:**     *None*

**ABSTAIN:**   **COUNCILMEMBERS:**     *None*

**ABSENT:**    **COUNCILMEMBERS:**     *None*

***A summary of the ordinance was published pursuant to GC 36933(c) (1).***

  
**Jason Lindgren, City Clerk  
City of Elk Grove, California**