

ORDINANCE NO. 1151

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANGER AMENDING SECTION 58-2 OF ARTICLE 1 OF CHAPTER 58 OF THE SANGER CITY CODE PERTAINING TO SIDEWALK MAINTENANCE AND REPAIR, AND ADDING SECTION 58-4 TO ARTICLE 1 OF CHAPTER 58 OF THE SANGER CITY CODE ESTABLISHING A CURB, GUTTER, AND SIDEWALK REVOLVING FUND.

The City Council of the City of Sanger does ordain as follows.

Section 1. Section 58-2 of Article 1 of Chapter 58 of the Sanger City Code is hereby amended to read as follows:

Sec. 58-2. Duty to remove grass, weeds and debris from sidewalks and alleys.

(a) Duty to remove weeds. The property owners of all properties in the city shall keep the sidewalks and alleys adjoining such properties clean and clear of grass, weeds and debris.

(b) Duty to maintain sidewalks. The property owners of all properties located adjacent to or fronting on any portion of the sidewalk area between the property line and the street line shall maintain and repair such sidewalk areas, pursuant to Section 5610 of California Streets and Highways Code.

(c) Maintenance and repair. For purposes of this article, maintenance and repair of sidewalk areas shall include, but not be limited to, maintenance and repair of surfaces including grinding, curb and gutters, removal of weeds and/or debris, tree root pruning and installing root barriers, trimming of trees, shrubs and/or ground cover and trimming of trees and shrubs within the area between the property line and the street pavement line, including parking strips and curbs, so that the sidewalk area remains in a condition that is not dangerous to property or to persons using the sidewalk in a reasonable manner and does not interfere with, obstruct or impair the visibility of persons using the sidewalk or the adjacent streets.

(d) Liability for injuries. The property owner required to maintain and repair the sidewalk area shall owe a duty to all persons using the sidewalk and adjacent streets to keep and maintain the sidewalk area in a safe and nondangerous condition. If, as a result of the failure of any property owner to maintain the sidewalk area in a nondangerous condition as required by this section, a person suffers injury or damage to person or property, the property owner shall be liable to such person for the resulting damages or injury.

(e) Notice to repair. Where the City has actual notice of the existence of a defective sidewalk, the Public Works Director, or their designee, may give written notice to repair the defective sidewalk to the property owner or to the person in possession of the property or any portions thereof adjacent to or fronting on the defective sidewalk. Service of the notice to repair may be by personal service, or regular U.S. mail to the owner or the person in possession of such

property or portions thereof. If the notice is sent to the person in possession of the property, notice to the owner of the property will also be given. The notice to repair shall particularly specify the following:

- (1) What work is required to be done, how the same is to be done, and what materials shall be used in the repair;
- (2) That if the property owner or person in possession of the property proceeds to undertake the repair by private contract, his/her activities will be governed by the provisions of this chapter;
- (3) The time period within which the repair must be commenced by the property owner or person in possession; and
- (4) That if the repair is not commenced within such time period and commenced diligently without interruption to completion, the City may proceed with the repair, and the cost thereof shall be a lien on the property, if the property owner fails to timely reimburse the City for such cost, as further described in Section 58-2(h).

(f) Encroachment permit required for repairs. Prior to commencing repairs, the property owner or person in possession of the property shall apply for and obtain an encroachment permit from the Public Works Department. For the purposes of this Section, the property owner or person in possession of the property is deemed to have timely commenced the repair of the defective sidewalk by filing an application for an encroachment permit provided such filing is within the time period specified in the notice to repair. The materials and construction work shall be in strict conformance with the applicable portions of the City's standard specifications as they now exist, or as they may hereafter be amended.

(g) Request for City to perform repairs. The property owner may request that the City perform the repair work. If so requested, the City shall inspect the area to be repaired and provide the property owner with an estimate for the repair costs. The City may, at its sole discretion, agree to perform the repair work with City forces, or contract with a vendor of the City's choosing to perform the work. In either case, the City shall be responsible for 50% of the repair costs, provided that the City's 50% share of any single repair shall not exceed \$1,000.00 for any parcel frontage, and the property owner shall be responsible for the balance of the repair costs. If the property owner is Income-Qualified, the City shall be responsible for 70% of the repair costs, provided that the City's 70% share of any single repair shall not exceed \$1,000.00 for any parcel frontage, and the property owner shall be responsible for the balance of the repair costs. Notwithstanding anything to the contrary in this Section, the City shall not be responsible for any portion of the repair costs if the Public Works Director determines that the sidewalk damage in need of repair was caused by the willful or intentional act(s) of the property owner or any occupant of the property. Under such circumstances, the property owner shall remain responsible for all repair costs, and shall not be eligible to receive either the 50% or 70% City contribution described above, but shall be eligible for a loan from the City as authorized in Chapter 58-4. As provided in Section 58-4 of this code, the property owner or person in

possession of the property in conjunction with the property owner may request financing of the repairs costs if the City performs the repair work with either City forces or a City vendor, not to exceed two thousand five hundred and no/100ths dollars (\$2,500.00), from the City's Curb, Gutter, and Sidewalk Revolving Fund. The property owner or person in possession of the property in conjunction with the property owner is deemed to have timely commenced repair of the defective sidewalk upon approval by the City Manager, or their designee, of the property owner or person in possession of the property in conjunction with the property owner's request for financing. Bills for required repairs that were not commenced within the time frame as specified by the notice may not be financed through the City's Curb, Gutter, and Sidewalk Revolving Fund.

(h) Failure to make required repairs. If the property owner or person(s) in possession of the property provided with a notice to repair fails to commence the repairs within the time period specified in said notice, or timely commences the repair but fails to diligently pursue the same without interruption to completion, the Public Works Director, or their designee, may thereafter cause the City to make the required repairs and bill the property owner or person(s) in possession of the property for the cost thereof, pursuant to Section 5615 of California Streets and Highways Code. If such property owner or person(s) in possession of the property fails to pay the cost within the time period specified in the payment invoice, the unpaid sum shall be a lien on the property or portions thereof adjacent to or fronting on the defective sidewalk.

(i) Applicability of California Streets and Highways Code. It is the purpose of this Chapter to provide sidewalk area maintenance and repair procedures which are supplementary to and to incorporate by reference those procedures set forth in California Streets and Highways Code, Division 7, Part 3, Chapter 22, commencing at Section 5600, as those sections now exist or may hereafter be amended or renumbered. The City, in each instance, may follow the procedures set forth in the Streets and Highways Code or those set forth in the Sanger Municipal Code, or some combination thereof. In the event of any conflict between the provisions of the Streets and Highways Code and the Sanger Municipal Code, the provisions of the Sanger Municipal Code shall control.

(j) Definitions. For purposes of this section, the following definitions apply:

- (1) "Public Works Director", or his/her designee, shall have the same meaning as the term "superintendent of streets" as utilized in the Streets and Highways Code Section 5600 et seq.
- (2) "Maintain and repair" shall mean maintenance so that the sidewalk area remains in a condition that is not dangerous to property or persons using the sidewalk area in a reasonable manner and in a condition that will not interfere with the public convenience in use of the sidewalk area, and shall include, but not be limited to: maintenance and repair of sidewalks including grinding, removal and replacement of sidewalks; maintenance and repair of curbs and gutters; removal and filling or

replacement of parking strips; removal of weeds and/or debris; tree root pruning and installing root barriers; trimming of trees, shrubs and/or ground cover including areas within park strips and between the property line of the adjacent property and the street pavement line.

- (3) "Sidewalk area" means that portion of a street between the street pavement line and the adjacent property line, including curbs and gutters, sidewalks, a park or parking strip, bulkheads, retaining walls, or other works for the protection of any sidewalk area, including any sidewalk, curb and gutter located on side yard frontage.
- (4) "Income-Qualified" means any property owner not exceeding the low income household income limit (80% of median family income) for Fresno County as published annually by the State Department of Housing and Community Development

(k) Exception for City installed and maintained trees.

Notwithstanding the provisions of this Section, the owner of a lot, lots or portions of a lot adjacent to or fronting on any portion of a sidewalk area shall not be required to repair any defective sidewalk if its defective condition was caused by a City planted and maintained tree in any street, right of way, park or other public place.

Section 2. Section 58-4 is hereby added to Article 1 of Chapter 58 of the Sanger City Code, establishing a Curb, Gutter, and Sidewalk Revolving Fund, to read in its entirety as follows:

Sec. 58-4. Curb, Gutter, and Sidewalk Revolving Fund

(a) Established. A Curb, Gutter, and Sidewalk Revolving Fund in the sum of twenty-five thousand and no/100ths dollars (\$25,000.00) for financing and paying for the curbs, gutters, and sidewalks in the City is hereby established, and the Finance Director is directed to transfer from the General Fund, or other appropriate fund, the sum of twenty-five thousand and no/100ths dollars (\$25,000.00) into the Curb, Gutter, and Sidewalk Revolving Fund.

(b) Purpose. The Curb, Gutter, and Sidewalk Revolving Fund shall be used and expended only to provide funds to replace, reconstruct, or repair curbs, gutters, and sidewalks in public street rights-of-way in the City adjacent to the real property of such of the owners thereof as may elect to cause curbs, gutters, and sidewalks to be repaired replaced, or reconstructed as authorized by City through issuance of an encroachment permit. Payments from the Curb, Gutter, and Sidewalk Revolving Fund shall be made in accordance with the provisions of this Chapter.

(c) Construction standards. All curbs, gutters, and sidewalks repaired, replaced, or reconstructed as provided in this Chapter shall be constructed in conformity with the standard plans and specifications of the City and to the satisfaction of the City Engineer.

(d) Advances: Applications and agreements. Any property owner, or person in possession of the property in conjunction with the owner of the real property, desiring to finance the repair, replacement, or reconstruction of curbs, gutters, and sidewalks from the Curb, Gutter, and

Sidewalk Revolving Fund shall make a written application and pay an application processing fee as designated by the City's Master Fee Schedule to the Finance Director. The maximum amount that may be requested and borrowed is two thousand five hundred and no/100ths dollars (\$2,500.00). If such application is accepted and approved, the City and the property owner or person in possession of the property and the owner of the real property shall enter into a written agreement, including a promissory note secured by a deed of trust, and a deed of trust which shall be recorded against the property, for the repayment of funds borrowed from the Revolving Fund. The agreement shall state at least the following:

- (1) Said property owner or person in possession of the property and the owner of the real property shall by such agreement obligate himself to repay to the City all sums paid from said fund for such construction;
- (2) The entire amount thereof shall be fully repaid to the City within a time period not to exceed five (5) years from the date of such agreement, or such additional time as the City Manager or his designee may authorize, which additional time may not exceed five (5) years (so that the total repayment terms may not exceed ten (10) years);
- (3) The terms and conditions under which the amount must be repaid;
- (4) The entire balance due under such agreement shall constitute a special assessment against the parcel of real property thus benefitted, and shall be a lien on the property for the amount thereof including a prorated share of the administration cost not to exceed one hundred and no/100ths dollars (\$100.00) per year, and shall continue to be a lien thereon until the full amount is paid and discharged in full.

(e) Advances: Assessments as taxes. The Finance Director, on or before the first Monday in March of each year, shall cause to be filed with the County Auditor a description of the property, together with the name of the owner or reputed owner thereof, against which such special assessment shall be made, and the installments then due and unpaid, with administrative fees, together with all other sums of money due and unpaid under such agreement, may be assessed as taxes against the owner or reputed owner of the real property, and the amount of money so assessed shall bear the same penalties and interest as taxes regularly assessed on default of payment thereof.

(f) Deposits. All money received by the City under such written agreements or assessed or collected by the City shall be deposited in the Curb, Gutter, and Sidewalk Revolving Fund.

Section 3. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Sanger, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with Government Code § 36933. Any summary of this Ordinance must be approved by the City Attorney before its publication.

Section 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions, or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. The City Council

hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 5. Effective Date. This Ordinance shall take effect on the thirty-first (31st) day after its adoption.

I hereby certify that the foregoing Ordinance No. 1151 was introduced and given first reading at a regular meeting of the Sanger City Council held on November 20, 2014, and was thereafter duly adopted at a regular meeting of said City Council held on December 4, 2014, by the following vote:

AYES: MITCHELL, CANTU, ONTIVEROS, PACHECO, GARZA
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE

Joshua Mitchell, Mayor

ATTEST:

Rebeca Hernandez, City Clerk

APPROVED AS TO LEGAL FORM:

Scott Cross, City Attorney