

Celina Draft 2 after Committee Meeting (drafted: 9-20-2016)

Chapter 903 - SIDEWALK AND DRIVEWAY CONSTRUCTION AND REPAIR

903.01 - Purpose.

The purpose of this code is to protect the health, safety and welfare of all persons by way of preventing and/or abating hazardous sidewalk and driveway approach conditions within the public rights-of-way of the city of Celina by establishing minimum standards relative to:

(A)

The maintenance and construction of sidewalks and driveway approaches within the public right-of-way;

(B)

The control and abatement of hazardous sidewalks and driveway approaches within the public right-of-way.

903.02 - Definitions.

For purposes of this chapter, the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(A)

"Authorized agent" for the abutting property owner shall mean a contractor and/or developer and/or entity (including an investment entity) having financial interest in the abutting property;

(B)

"City" means the City of Celina, Ohio;

(C)

"Director" shall mean the director of the public safety/service department or their designee(s);

(D)

"Owner" means any of the following:

(1)

The owner of record as shown on the current tax list of the county auditor in which the property is located;

(2)

The mortgage holder of record, if any, as shown in the mortgage records of the county recorder in which the property is located;

(3)

Any person who has a freehold or lesser estate in the premises;

(4)

A mortgagee or vendee in possession. "In possession" means someone who evidences charge, care or control of the premises, and includes someone to whom the county sheriff in which the property is located has issued a deed for the premises whether or not the deed has been recorded;

(5)

Any person who has charge, care or control of the premises as agent, executor, administrator, assignee, receiver, trustee, guardian or lessee;

(6)

Any person who holds himself or herself out to be in charge, care or control of the premises as evidenced by negotiating written or oral lease agreements relative to the premises, collecting rents for the premises, performing maintenance or repairs on the premises or authorizing others to perform maintenance or repairs on the premises.

(E)

"Person" means, without limitation, a natural person, his heirs, executors, administrators, or assigns, and also includes a corporation, partnership, an unincorporated society or association, or any other type of business or association, including respective successors or assigns, recognized now or in the future under the laws of the state or the city;

(F)

"Right-of-way" means the surface of and the space above and below the paved or unpaved portions of any public street, public road, public highway, public freeway, public lane, public way, public alley, public court, public sidewalk, public boulevard, public parkway, public drive and any other land dedicated or otherwise designated for the same now or hereafter held by the city.

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903.03 - Right to enforce.

The Director of the Public Safety/Service Department and their designees shall have the authority to enforce Celina Codified Ordinance Chapter 903. They are hereby directed and empowered to do so.

903.04 - Adoption of rules and regulations.

The Director may promulgate rules and regulations, as the Director deems appropriate from time to time, to carry out the express purposes and intent of this chapter. The Director shall promulgate proposed rules and regulations by filing the same with the council clerk for publication related to this chapter.

The Director is hereby authorized to also promulgate Sidewalk and Driveway Construction and Material Specifications (SDCMS) pertaining to the construction, reconstruction, repair, leveling, and the like, of any sidewalk, curb, curb & gutter or driveway entrance in the public right-of-way, or easement either by private or public agreement. The Director is hereby further authorized to modify the SDCMS from time-to-time in order to carry out the purposes and intent of this chapter. Said SDCMS shall be available to all members of the public for purchase or viewing within the department of Engineering office during normal business hours.

All such rules, regulations, and SDCMS shall at all times comply with all applicable Federal, State, and Local laws, rules and regulations, including the Americans with Disabilities Act of 1990 (the "ADA") and the City's Construction Standards and Drawings, as modified from time-to-time.

903.05 - Supervision and control.

No person or business organization shall construct, reconstruct, repair, or level any sidewalk, curb, curb & gutter or driveway entrance in the public right-of-way, or easement either by private or public agreement, until after having obtained a written "sidewalk repair permit" from the Director, in accordance with this chapter, including section 903.08.

All work shall be performed to the satisfaction and approval of the Director, and shall be performed in accordance with the current Sidewalk and Driveway Construction and Material Specifications (SDCMS) as modified from time-to-time.

Construction of, on, or pertaining in any way to any sidewalk, curb, curb & gutter, or driveway entrance within the public right-of-way or easement performed contrary to the provisions of this chapter, or the associated rules and regulations of the Director, shall constitute a violation of this code and may be ordered stopped and or removed by the Director and their designee(s). The Director and their designee(s) may order replacement of a sidewalk, curb, curb & gutter, or driveway entrance subsequent to such ordered removal. Sidewalk, curb, curb & gutter, and or driveway entrance removal and replacement shall be completed pursuant to the provisions herein within thirty (30) calendar days after receipt of such order.

903.06 - Sidewalk and driveway entrance maintenance and repair.

The abutting private property owner of record shall be responsible for the proper maintenance and repair of all sidewalks and driveway entrances within the abutting right-of-way or easement for any improved or unimproved street, alley, or other public way within the city, which provides access around, in, or to said private property. For driveway entrances, this includes any curb, to the nearest tool joint, constructed as a part of, or to accommodate the driveway entrance. This shall include dropped curb, mountable curb, combination curb and gutter or other curb condition at the street entrance to the approach, as well as any flairs and radii of the driveway approach.

All sidewalks, walk paths, curb ramps, and driveway entrances shall be constructed, reconstructed, and or repaired in accordance with the City's current Sidewalk and Driveway Construction and Material Specifications (SDCMS) as modified from time-to-time, or as otherwise authorized by the Director. Where existing sidewalks are composed of alternate City-approved materials, they shall be replaced in kind unless otherwise authorized by the Director or their designee(s).

903.07 - Sidewalk specifications—Grade.

Sidewalks shall be constructed so as to conform with the specified locations, lines, grades, and widths as set forth in the City's current Sidewalk and Driveway Construction and Material Specifications (SDCMS), as amended from time-to-time, and shall generally slope toward the street centerline where practical. Public sidewalks associated with this chapter shall be constructed within the existing public right-of-way, so as not to encroach upon private property, unless previously approved by the Director. Where the Director has approved the construction of a public sidewalk outside of existing right-of-way, said approval shall be contingent upon the property owner's granting of additional right-of-way or pedestrian access easement to the City under said sidewalk area. The form of acceptable property rights transfer shall be at the Director's discretion.

The line, grade, and cross-slope of sidewalks and walk paths, and all regulations and amendments promulgated thereto, and the City's standard construction drawings shall comply with all requirements of the Americans with Disabilities Act of 1990 (the "ADA"). No depression or lowering of the level or grade of such sidewalks or walk paths shall be recognized or permitted for the purpose of making or constructing a driveway or entrance to private or public property or premises bounding or abutting on such street from the roadway thereof except as permitted by an approved driveway entrance.

All sidewalks paths constructed, reconstructed, or repaired at an intersection shall include the construction of an Americans with Disabilities Act of 1990 (the "ADA") compliant curb ramp in accordance with the City's current Sidewalk and Driveway Construction and Material Specifications (SDCMS) as modified from time-to-time, the City's Construction Standards and Drawings as modified from time-to-time, and the rules and regulations associated with this chapter.

903.08 - Permits and fees.

Pursuant to section 903.05, no person or business organization shall construct, reconstruct, repair, or level any sidewalk, curb, curb & gutter or driveway entrance in the public right-of-way, or easement either by private or public agreement, until after having obtained a written "sidewalk repair permit" from the Director, in accordance with this chapter.

The fee for such permits shall be established by the Director. Such fees shall include the cost to issue, perform necessary inspections and plan review as needed and required. Such fee shall be charged and collected by the Director and deposited with the City Treasurer to the credit of _____???

All permits herein provided for shall become null and void ninety (90) calendar days from the date of issuance, if not used, and any money paid therefore shall in no case be refunded. No permit shall be issued except to the owner of the abutting property or their authorized agent. The Director may refuse to issue any permit when design is not in compliance with the City's current Sidewalk and Driveway Construction and Material Specifications (SDCMS) as modified from time-to-time, the City's Construction Standards and Drawings as modified from time-to-time, and the rules and regulations associated with this chapter, and shall refuse any permit where the Director has not approved the plans for construction of the requested sidewalk and/or driveway entrance.

903.09 - Driveway widths—Compliance.

No single driveway entrance shall exceed **thirty-five (35) feet** in width at the curb line or edge of pavement without the consent of the Director. Only where traffic conditions, type of vehicle and/or volume of traffic using the proposed driveway entrance warrant, may this maximum width may be exceeded, with the Director's consent. Where such driveway entrance is built, it must be built as a street intersection in accordance with the City's current Sidewalk and Driveway Construction and Material Specifications (SDCMS) as modified from time-to-time on file in the department of public service office. Upon proper application and payment of the required fee by the owner of the premises, or the owner's authorized agent, and approval by the director, a driveway entrance permit in excess of **thirty-five (35) feet** may be issued. All new driveway entrances shall be constructed so as to maintain a minimum of **six-foot of clearance from** existing water fire hydrants.

903.10 - Code maintenance violation criteria.

No abutting property owner shall allow the condition of the sidewalk and/or driveway approach within the public right-of-way or easement to deteriorate beyond the criteria herein established. Criteria for ordering the replacement or repair of sidewalks, hared-use paths, or driveway approaches shall be any or all of the conditions described as follows:

Offset of one-half ($\frac{1}{2}$) inch or greater;

Crack which has a gap of greater than one-half ($\frac{1}{2}$) inch;

An area where there exists a difference in elevation of material of one-half ($\frac{1}{2}$) inch or greater;

Excessive deterioration, spalling or exposed gravel of one-half ($\frac{1}{2}$) inch or greater in depth;

Excessive slope caused by a shifting of the sidewalk or driveway approach.

Patching shall not be permitted as a means of eliminating criteria for replacement. The complete removal or leveling of existing concrete shall be required of a concrete panel from joint to joint. If a construction tool joint is not present, then the entire area shall be corrected unless authorized otherwise by the director. Where offsets, elevation differences, deterioration, and/or spalling exceeds one and one-half (1.5) inches in depth within a sidewalk, or driveway approach, and/or where excessive sidewalk or cross slope is equal to or greater than ten (10) percent, these conditions shall be considered just cause for emergency barricade and/or repair by the Director, as outlined within Section 903.12, Emergency Orders.

903.11 - Notice of violation.

(A)

Issuance of Notice of Violation. Whenever the Director or their designee(s) determines, or has reasonable grounds to believe, that there exists a condition that violates any provisions or requirements set forth within this chapter, they may issue a notice setting forth the alleged violations and advising the abutting property owner or person having charge that such violations must be corrected.

(B)

Content of Notice of Violation.

(1)

All notices of violation, except emergency orders, shall be in writing and shall be served on the abutting owner from whom action, forbearance or compliance is required;

(2)

All notices of violation shall identify the sections of this chapter to which the order applies;

(3)

All notices of violation shall provide a description of the premises where the violations are alleged to exist or to have been committed;

(4)

All notices of violation shall specify a thirty (30) calendar day time frame for compliance with the order, except in the case of an emergency order, as described in Section 903.12;

(5)

All notices of violation shall advise the abutting property owner or person having charge of the right to appeal, within fifteen (15) calendar days of receipt of notice;

(6)

All notices of violation shall advise the owner or person having charge that if the order is not complied with by the time specified for compliance, the Director may initiate a civil and/or criminal complaint against the owner or person having charge; and/or the Director may, by City personnel or private contractor, cause the violations to be corrected with three-fourths (3/4) of the cost of such correction to be charged as a lien upon the real estate if not paid in-full to the City within thirty (30) calendar days after correction of the violation, In the event such amount is not paid in-full within thirty (30) calendar days after correction of the violation, three-fourths (3/4) of the cost of such correction shall be charged as a lien upon the real estate together with both an "administration service charge" in the amount of \$ _____, as well as interest which

shall be set at the Prime Rate, as reported by The Wall Street Journal's bank survey from time-to-time, which must be paid in-full by no later than three (3) years after being placed as a lien upon the property tax duplicate;

(C)

Service of Notice of Violation. A notice of violation shall be served upon the abutting owner or any person from whom action, forbearance or compliance is required. Such notice shall be served by any one (1) of the following methods:

(1)

Personal service; or

(2)

Certified mail; or

(3)

Publication in a newspaper of general circulation in the county; or

(4)

Regular mail service to an address that is reasonably believed to be:

(a)

A place of residence of the owner, or

(b)

A location at which the owner regularly receives mail

(5)

Posting the notice of violation on the abutting property, except that if the structure or abutting property is vacant, then the notice shall be posted on the structure or premise and one (1) of the above methods of service shall also be used.

(D)

When the notice of violation has been properly serviced, the order shall be effective as to anyone having any interest in the premises whether recorded or not at the time the order was issued, and shall be effective against any subsequent owner of the premises as long as the violation exists and there remains a City record of the order in a public file maintained by the Director;

(E)

Written or oral acknowledgment by the owner of receipt of a notice of violation shall be evidence that the owner received the notice of violation. An appeal of the notice of violation by the abutting owner pursuant to Section 903.13 shall constitute evidence of written acknowledgment by the owner of service of notice of violation.

903.12 - Emergency order.

Whenever the Director or their designee(s) finds that an emergency exists, as described in Section 903.10, which requires immediate action to protect the health and safety of any person, they may issue an oral or written emergency order reciting the existence of such an emergency and requiring that such action as they deem necessary shall be taken to eliminate the emergency. Notwithstanding the other provisions of this code, such emergency order shall be effective immediately and complied with immediately.

In cases where it reasonably appears that there is imminent danger to the health and safety of any person unless the emergency condition is immediately corrected and if after reasonable attempts to notify the abutting property owner it appears that the abutting property owner will not or cannot immediately correct the condition, the Director may initiate whatever reasonable action necessary to eliminate such hazard. These actions may include the temporary barricade of the area, re-routing of pedestrian, bicycle and/or vehicular traffic, or whatever action deemed necessary to eliminate the hazard on an interim or permanent basis.

The Director shall further cause with three-fourths (3/4) of the cost of such temporary and/or permanent abatement to be billed to the abutting property owner as a municipal lien or to be recovered in a civil suit against the owner at the current hourly rates of the department of public service's equipment and personnel, or those of its contractual agent, including the cost for materials provided that cannot be reasonably salvaged by the city if not paid in-full to the City within thirty (30) calendar days after correction of the violation, In the event such amount is not paid in-full within thirty (30) calendar days after correction of the violation, three-fourths (3/4) of the cost of such correction shall be charged as a lien upon the real estate together with both an "administration service charge" in the amount of \$_____, as well as interest which shall be set at the Prime Rate, as reported by The Wall Street Journal's bank survey from time-to-time which must be paid in-full by no later than three (3) years after being placed as a lien upon the property tax duplicate;

903.13 - Appeal procedure.

Any persons affected by any notice issued in connection with this chapter may request and shall be granted a hearing before the Property Maintenance Appeals Board on all matters set forth in such notice, provided that:

(A)

Such person shall file a written petition requesting such appeal hearing with the Department of Engineering, within ten (10) calendar days after the notice is served; and,

(B)

The petition shall set forth the factual reasons why a particular violation or violations is being appealed.

Appeals to the Property Maintenance Appeals Board shall be conducted and the notice of the board findings shall be completed as set forth in the Building Appeals Board, Chapter 1361 of the Celina Codified Ordinances to the extent said Chapter 1361 is not inconsistent with this Code.

903.14 - Prohibition against failure to comply with notice of violation.

No person shall violate any provision of this Code or any rules or regulations promulgated by the Director in accordance with this chapter.

No owner or person having charge or authority over a violation of this Code shall fail to comply with a notice of violation, or emergency order Code, or any rules or regulations promulgated by the Director in accordance with this chapter, obstruct or interfere with the execution of such order, or omit to obey such notice of violation or emergency order.

No person shall fail to comply with the time specified in a notice of violation or emergency order after receiving notification of being in violation of this Code, or any rules or regulations promulgated by the Director in accordance with this chapter.

903.15 - Procedure upon failure to comply with notice of violation.

Whenever, upon inspection the Director or their designee(s), determines that there are reasonable grounds to believe that there is a violation of this Code resulting in the existence of an actual or potential public nuisance, or whenever there exist conditions that adversely affect the health, safety or welfare of any person, or when notices or orders issued pursuant to this Code or other notice sections of city codes do not alleviate such public nuisance or condition, they may:

(A)

Cause the correction or abatement of any condition which violates any section of this Code and employ the necessary labor to perform the task;

Upon performance of the labor mentioned above with respect to abatement of the above-mentioned public nuisances, the Director shall with respect to each parcel of land report to City council a statement of the charge for the services, the amount paid for performing the labor, and the fees of the City personnel who made the service of the notice and return;

Upon receipt of the statement and approval thereof by Council, the Clerk of Council shall make a return in writing to the Mercer County Auditor of such statement that shall be entered upon the tax duplicate of the county for the purpose of assessing these costs.

(B)

Cause to be filed a civil complaint for injunctive relief seeking abatement of the public nuisance in a court of jurisdiction. The procedures to be followed will be pursuant to the Ohio Rules of Civil Procedure; or

(C)

Cause to be filed a criminal complaint in a court of jurisdiction.

Celina Draft 2 after Committee Meeting (drafted: 9-20-2016)

903.99 - Penalty.

Notwithstanding any additional civil injunctive action or finding, whoever violates any provision of this chapter shall be deemed guilty of a **misdemeanor of the third degree.**

Each day such violation is committed, or permitted to continue, shall constitute a separate offense and shall be punishable as such.

Strict liability is intended to be imposed for violation of this chapter.