TO: City Council

FROM: Eric Hansen, Public Works Director

DATE: 4/16/2014

SUBJECT: Staff Recommendation for Sidewalk Repair

Background: At the March City Council meeting the Public Works Director gave an update on projects that were approved at budget hearings in November of 2013. One of those projects, contracted sidewalk grinding, was discussed in length by the Council and staff was directed to review our current Municipal Code and determine if it had the correct verbiage to force abutting property owners to repair and/or replace deficient sidewalk areas.

Review: Staff reviewed our current SMC 8.45 which covers nuisance enforcement, RCW’s regarding property owner’s responsibility of sidewalks, and current court cases relating to liability issues of sidewalk hazards. City staff then conferred with the City’s legal attorney to get his opinion if the City, under current regulations, did have the power to enforce property owners to repair abutting sidewalks and if it would shift the liability onto the property owner.

Conclusion: It appears that our ordinance on sidewalk liability may not meet the requirements of RCW 35.68.020 to place liability on property owners, and recent court cases suggest that we can't rely on our ordinance to dispel liability. We would also need to assess each hazard to determine if it was caused by the City or the property owner, and be prepared to defend our determination.

Recommendation: After several discussions with City staff members, it was concluded that it would cost $72 for a lien filing fee and an additional $72 for a lien release fee if property owner refused to fix the identified hazard. These charges could be recovered at time of property sale, but the 3 to 5 hours of staff time would not be recovered. The average cost per hazard removal would be $72.25, according to the quote we received in February, 2014. Due to these contributing factors, and for improved overall sidewalk safety, the Public Works Director recommends proceeding with the previous plan to hire a contractor to remove trip & fall hazards at a cost not to exceed $5000 annually.
Liability (Rivett v. Tacoma, 123 Wn.2d 573 (1994))

In the *Rivett v. Tacoma* decision, the state supreme court invalidated Tacoma ordinance provisions that imposed liability upon abutting property owners for damages caused by defective sidewalks, regardless of fault. Tacoma's ordinance was not based upon the statutory provisions of Chs. 35.68 through 35.70 RCW. It was based upon the city's authority as a first class city to regulate public rights-of-way, including sidewalks, and upon its nuisance authority.

If your jurisdiction has a provision that imposes liability upon property owners for injuries caused by sidewalk conditions, particularly where there is no requirement of a finding that the property owner caused the hazardous sidewalk conditions, it is advisable to remove that provision. If you have questions about the validity of your sidewalk ordinance in light of Rivett, we suggest you contact legal counsel.

- Sidewalks After Rivett: A Discussion of Tort Liability, Preventive Ordinances and Other Strategies, by Milton G. Rowland, Assistant City Attorney of Spokane. MRSC Library Loan

When a jurisdiction fails to keep its sidewalks in a reasonable state of repair, free of dangerous and unsafe conditions, the results can be costly in terms of injury claims. Many cities and towns have ordinances that impose the cost of sidewalk repair upon abutting property owners. If a sidewalk needs repair, the jurisdiction requests the abutting property owner to make the repair. If the repair is not made, the jurisdiction will make the repair and bill the property owner. While these ordinances provide a means to repair and maintain sidewalks, they do not relieve the jurisdiction from liability.
RCW 35.68.020: Resolution — Contents.

No such improvement shall be undertaken or required except pursuant to a resolution of the council or commission of the city or town, hereinafter referred to as the city council. The resolution shall state whether the cost of the improvement shall be borne by the city or whether all or a specified portion shall be borne by the city or whether all or a specified portion shall be borne by the abutting property owner; or whether the abutting owner is required to construct the improvement at his or her own cost and expense. If the abutting owner is required to construct the improvement the resolution shall specify the time within which the construction shall be commenced and completed; and further that if the improvement or construction is not undertaken and completed within the time specified that the city will perform or complete the improvement and assess the cost against the abutting owner.

[2009 c 549 § 2117; 1965 c 7 § 35.68.020. Prior: 1949 c 177 § 2; Rem. Sunn. 1949 § 9332h 1]

RCW 35.70.020: Owners' responsibility.

In all cities of the second class and towns the burden and expense of constructing sidewalks along the side of any street or other public place shall devolve upon and be borne by the property directly abutting thereon. The cost of reconstructing or repairing existing sidewalks may devolve upon the abutting property subject to the limitations in RCW 35.69.020 (2) and (3).

[1996 c 19 § 5; 1994 c 81 § 62; 1965 c 7 § 35.70.020. Prior: 1915 c 149 § 1; RRS § 9155.]
35.69.010  << 35.69.020 >>  35.69.030

**RCW 35.69.020**  
Resolution of necessity — Liability of abutting property — Reconstruction.

(1) Whenever a portion, not longer than one block in length, of any street in any city is not improved by the construction of a sidewalk thereon, or the sidewalk thereon has become unfit or unsafe for purposes of public travel, and such street adjacent to both ends of said portion is so improved and in good repair, and the city council of such city by resolution finds that the improvement of such portion of such street by the construction or reconstruction of a sidewalk thereon is necessary for the public safety and convenience, the duty, burden, and expense of constructing or reconstructing such sidewalk shall devolve upon the property directly abutting upon such portion except as provided in subsections (2) and (3) of this section.

(2) An abutting property shall not be charged with any costs of construction or reconstruction under this chapter, or under chapter 35.68 or 35.70 RCW, in excess of fifty percent of the valuation of such abutting property, exclusive of improvements thereon, according to the valuation last placed upon it for purposes of general taxation.

(3) An abutting property shall not be charged with any costs of reconstruction under this chapter, or under chapter 35.68 or 35.70 RCW, if the reconstruction is required to correct deterioration of or damage to the sidewalk that is the direct result of actions by the city or its agents or to correct deterioration of or damage to the sidewalk that is the direct result of the failure of the city to enforce its ordinances.

[1996 c 19 § 3; 1965 c 7 § 35.69.020. Prior: 1927 c 203 § 2; RRS § 9332-2.]
A. Applicability. This section applies whenever the applicable department director determines that a nuisance has occurred or is occurring.

B. General. The applicable department director shall attempt to secure voluntary correction by contacting the person responsible for the nuisance and, where possible, explaining the violation and requesting correction.

C. Issuance of Voluntary Correction Agreement. A voluntary correction agreement may be entered into between the person responsible for the violation and the city, acting through the applicable department director.

1. Content. The voluntary correction agreement is a contract between the city and the person responsible for the violation under which such person agrees to abate the violation within a specified time and according to specified conditions. The voluntary correction agreement shall include the following:

   a. The name and address of the person responsible for the violation;

   b. The street address or other description sufficient for identification of the building, structure, premises, or land upon or within which the violation has occurred or is occurring;

   c. A description of the violation and a reference to the regulation which has been violated;

   d. The necessary corrective action to be taken, and a date or time by which correction must be completed;

   e. An agreement by the person responsible for the violation that the city may inspect the premises as may be necessary to determine compliance with the voluntary correction agreement;

   f. An agreement by the person responsible for the violation that the city may abate the violation and recover its costs and expenses (including attorney fees, expert witness fees, and court costs) and/or a monetary penalty pursuant to this chapter from the person responsible for the violation if the terms of the voluntary correction agreement are not satisfied; and

   g. An agreement that by entering into the voluntary correction agreement, the person responsible for the violation waives the right to a hearing before the court under this chapter or otherwise, regarding the matter of the violation and/or the required corrective action.
NUISANCE DEFINITIONS RELATING TO SIDEWALKS

f. Obstructions to the Public Right-of-Way. Use of property abutting a public street or sidewalk or use of a public street, sidewalk, fire hydrant or water meter, which causes any obstruction to traffic or to open access to the streets, sidewalks, fire hydrants or water meters; provided, that this subsection shall not apply to events, parades, or the use of the streets or public rights-of-way when authorized by the city. This section includes the existence of drainage onto or over any sidewalk, street, fire hydrant, water meter or public right-of-way, and the existence of any debris or plant growth on sidewalks adjacent to any property,

g. Vegetation. Any noxious or toxic weed or uncultivated plant, weeds or tall grass which may be a fire hazard, or any tree or shrub which is in danger of falling and creates a substantial risk of damage or injury, or which overhang or encroach upon any sidewalk or street so as to obstruct or impair the full and free use of sidewalk or street by the public,