

MEMORANDUM

TO: Mayor Nathan Triplett

FROM: Thomas M. Yeadon, City Attorney *TM*

RE: **CLARIFICATION OF THE RESPONSIBILITY OF ABUTTING PROPERTY OWNERS AND THE CITY WITH REGARD TO SIDEWALK MAINTENANCE AND POTENTIAL PERSONAL INJURY CLAIMS**

DATE: February 5, 2015

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I have been asked to clarify the responsibilities of abutting property owners for maintaining and clearing sidewalks and clarify who has the potential liability if someone falls and injures themselves on a sidewalk.

Pursuant to section 38-123 of the East Lansing City Code, abutting property owners are responsible for the maintenance and repair of their sidewalks and are responsible to keep them free from all obstructions. This section reads:

It shall, in all cases, be the duty of the owner of every lot or parcel of land in the city to build sidewalks in front of or adjoining his/her premises and to reconstruct the sidewalks when so ordered by the council pursuant to the provisions of this article, and to maintain such walks in good repair and to keep them free from all obstructions.

Likewise, section 38-127 of the Code sets forth standards by which an owner must maintain the sidewalks adjoining the property, including the removal of rubbish, ice, and snow. Ice must be removed or an abrasive must be placed on it within 12 hours after it is formed. Snow must be removed to afford reasonably unimpeded passage by the public by midnight on the day it accumulates before noon and by midnight the following day if it accumulates after noon. Likewise, snow must be removed within 48 hours of the first snowfall. Snow that accumulates on a sidewalk as a result of plowing or drifting must be cleared within 24 hours.

Municipalities are statutorily responsible to maintain sidewalks installed adjacent to city, county, or state highways in reasonable repair. MCL 691.1402a(1). This particular duty is an exception to the general immunity of governments imposed by the Governmental Tort Liability Act. However, the GTLA goes on to state that a municipal corporation is not liable for the breach of a duty to maintain a sidewalk unless a plaintiff proves that at least 30 days before the occurrence of

the relevant injury, death, or damage, the municipal corporation knew, or in the exercise of reasonable diligence should have known, of the existence of the defect in the sidewalk under the Act. If a city is sued for failing to maintain a sidewalk, there is a presumption that the city maintained the sidewalk in reasonable repair which can only be rebutted by evidence that the injury was caused by either a vertical discontinuity defect of 2" or more in the sidewalk, or a dangerous condition in the sidewalk itself of a particular character other than a solely vertical discontinuity.

Tort liability in general is premised on the breach of a duty. That is to say a plaintiff has to allege and prove that a defendant owed a duty to the plaintiff and breached it in some fashion in order for the plaintiff to prevail. Duties establishing liability can be imposed by statute or ordinance, but in this instance, while it can be argued that the ordinance poses a duty on the property owner to maintain the sidewalk, the courts have uniformly held that liability not be placed on the abutting land owners because an ordinance requiring persons to keep their sidewalks free from ice imposes a purely public duty or a duty to the city and not to any private individual. Persons injured by slipping on the ice cannot bring private actions against the owner of the premises. See *Figueroa v Garden City*, 169 Mich App 619 (1988). Likewise, ordinances requiring property owners to indemnify the city for claims of this nature have been held to be void for lack of authority to adopt an ordinance of that nature. See *Bivens v City of Grand Rapids*, 443 Mich 391 (1993).

As such, adjoining property owners, while responsible to the City and public-at-large for maintaining sidewalks, are not responsible from a liability standpoint. Liability of the City is limited by the Governmental Tort Liability Act to the specific conditions set forth in the statute.

As always, if you have further questions or concerns, please feel free to contact me.