

ORDINANCE NO. 1384 C.S.

AMENDING TITLE 12 OF THE CITY OF MARTINEZ MUNICIPAL CODE BY  
ADDING CHAPTER 12.31 "SIDEWALK MAINTENANCE AND REPAIR" AND  
FINDING THAT THE ADOPTION THEREOF IS EXEMPT FROM THE  
REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL  
QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES  
SECTIONS 15301, 15302 AND 15061 (b)(3)

WHEREAS, the City Council of the City of Martinez wishes to provide for the maintenance and repair of sidewalks within the City of Martinez; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARTINEZ DOES ORDAIN AS FOLLOWS:

**SECTION 1. Title 12.** Chapter 12.31 is hereby added to read as follows:

**Chapter 12.31 SIDEWALK MAINTENANCE AND REPAIR**

**12.31.010 Purpose and Findings.**

The purpose of this Section is to impose upon property owners the affirmative duty to repair and maintain the sidewalk area adjoining their property in a safe and non-dangerous condition. This duty runs to and in favor of members of the public using the sidewalk area.

**12.31.020 Duty to Maintain Sidewalk.**

**A. Owner's Responsibility.** Except as provided in subsection B of this section, the owner of property which fronts on sidewalk area shall maintain and repair the sidewalk area in a reasonably safe condition, at the owner's expense. If the owner makes an alteration to the sidewalk, the Owner must obtain an encroachment permit from the City prior to the work and use ordinary care in making the alteration and in keeping the altered portion of the sidewalk in a reasonably safe condition.

The provisions of Chapter 22 of Part 3 of Division 7 of the California Streets and Highways Code (Sections 5600 through 5630 inclusive), as they now exist or may hereafter be amended, are adopted as the procedure governing the maintenance and repair of sidewalks, driveways, and driveway approaches in the City. For the purposes of this Chapter, "sidewalk" shall have the same

meaning as defined in Section 5600 of the California Streets and Highways Code, and shall also include a "driveway" and a "driveway approach."

It is unlawful for any person, firm or corporation owning any building, lot or premises in the City, fronting on any portion of an improved street or way where a sidewalk is laid to allow any portion of such sidewalk in front of such building, lot, or premises to be out of repair, or to become, be or remain defective, or to become, be or remain dangerous to the users thereof for any reason. Such person, firm or corporation must at all times keep each such sidewalk in such condition that it will not endanger persons or property passing thereon, will not interfere with public convenience in the use thereof, or be or remain an obstruction or impediment to normal, customary and usual pedestrian or vehicular traffic. Such property owner shall be responsible for all maintenance and repairs, including that required to repair damage caused by tree roots, needed to keep the sidewalk improvements in a safe condition.

The Owner has the primary and exclusive duty to perform such maintenance and repair, whether or not notified by the City and whether or not the City has performed similar maintenance in the past. The City may notify the Owner when the sidewalk is out of repair, in conformance with California Streets and Highways Code sections 5610 and following.

The Owner shall comply with City of Martinez Resolution 062-14 requiring the preservation of sidewalk stamps commemorating the government work plan date or other significant information related to the time of the original construction to the maximum extent practicable.

B. Exceptions. An adjacent property owner is not responsible for sidewalk damage and repair if

1. The damage is caused by a utility structure, such as a PG&E structure, telephone pole or structure, storm drain, cable television structure, fire hydrant, or similar utility structure, and the property owner has notified both the City and the appropriate utility company of any obvious damage or defects in the sidewalk.

2. Another entity or individual, such as a homeowner's association, commercial property association, or other individual or entity, has entered into a written agreement or covenant with the property owner and the City pursuant to which such other individual or entity assumes responsibility for sidewalk damage and repair.

**12.31.030 Liability of Owner.**

The owner required by Section 12.31.020 to maintain and repair the sidewalk area shall owe a duty to members of the public to keep and maintain the sidewalk area free from sidewalk defects and in a safe and non-dangerous condition. If, as a result of the failure of any owner to maintain the sidewalk area in a non-dangerous condition as required by Section 12.31.020, any person suffers injury or damage to person or property, the owner shall be liable to such person for the resulting damages or injury.

**12.31.040 Persons in Possession.**

If the owner is not the person in possession of the property, then the responsibilities, duties and liabilities imposed by this chapter are also imposed on the person in possession of the property.

**12.31.050 Joint Owners.**

If more than one party is an owner, then the responsibilities, duties and liabilities established by this Chapter are joint and several as to each party.

**12.31.060 Assessments on Property.**

If the owner fails to maintain or make repairs to the sidewalk area after notice is provided pursuant to Chapter 22 of Part 3 of Division 7 of the California Streets and Highways Code (Sections 5600 through 5630 inclusive), then the City may undertake such maintenance and repairs and confirm and collect assessments for the costs and expenses of such maintenance and repair as set forth in California Streets and Highways Code Sections 5616 through 5630 including but not limited to placing a lien on owner's property, having the assessment placed on the property tax rolls or any other method of collection legally available to the City.

**SECTION 2. CEQA.** The adoption hereof is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15301 (Existing Facilities), 15302 (Replacement or Reconstruction) and 15061(b)(3) in that the ordinance calls only for the repair or replacement of existing sidewalks that have become damaged or are in need of repair. No new facilities are contemplated by or required to be constructed as a result of the adoption of this ordinance. It can therefore be seen with certainty that there is no possibility that the adoption of this ordinance may have a significant effect on the environment.

**SECTION 3. Severability.** Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION 4. Effective Date.** This Ordinance shall take effect sixty (60) days after adoption as provided by Government Code Section 36937.

**SECTION 5. Posting.** At least five (5) days prior to its final adoption, a certified copy of the full text of this ordinance shall be posted in the office of the City Clerk.

Within 15 days after adoption the City Clerk shall publish a summary of this ordinance with the names of those City Council members voting for and against the ordinance in a newspaper of general circulation published and circulated in the City of Martinez.

APPROVED: \_\_\_\_\_  
Rob Schroder, Mayor

ATTEST: \_\_\_\_\_  
Deputy City Clerk

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of the City Council of the City of Martinez, held on the 18, day of February, 2015, and duly passed and adopted at a Regular Meeting of said City Council held on the 4, day of March, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ  
CITY CLERK, CITY OF MARTINEZ