

ORDINANCE NO. 2013-01

AN ORDINANCE AMENDING FLAGSTAFF CITY CODE TITLE 8, *PUBLIC WAYS AND PROPERTY*, CHAPTER 8-03, *STREETS AND PUBLIC WAYS*, SECTION 8-03-001-0004, *REMOVAL OF SNOW AND/OR ICE*

RECITALS:

WHEREAS, in the immediate aftermath of inclement winter weather, certain Flagstaff residents and businesses fail to remove snow and ice from the sidewalks and curb ramps/cuts abutting their premises, or fail to clear sidewalks of snow and ice in a manner that ensures that all pedestrians can safely traverse public sidewalks; and

WHEREAS, this failure to adequately remove snow and ice from the public sidewalks results in a lack of reasonable access and mobility for residents and visitors, and causes significant public safety issues; and

WHEREAS, the current version of the City's snow removal ordinance contains various provisions that frustrate the efficient and timely removal of snow and ice from public sidewalks, thereby hindering the flow of pedestrian traffic and, ultimately, endangering the health, safety and welfare of the citizens of the City of Flagstaff; and

WHEREAS, in order to provide more uniform and effective regulation of public sidewalks, the Mayor and City Council of the City of Flagstaff desire to amend Flagstaff City Code, Section 8-03-001-0004, Removal of Snow and/or Ice, in order to update the City's snow and ice removal requirements, and to add measures that protect pedestrians from the dangers associated with the accumulation of snow and ice on public sidewalks.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That Section 8-03-001-0004, REMOVAL OF SNOW AND/OR ICE, is hereby amended as follows:

SECTION 8-03-001-0004 REMOVAL OF SNOW AND/OR ICE:

- A. Deposit on Public Thoroughfares: It shall be unlawful for any person within the corporate limits of the City to remove or cause to be removed any snow or ice from any private property within said City and place or deposit same upon a public street, avenue, alley or sidewalk within the City. For purposes of this section, "person" means any person, firm, partnership, association, organization, corporation, company or organization of any kind, public or private.
- B. Removal Required: ~~The owner, occupant, tenant or person~~ Any person having the care of who owns, leases or occupies any a building, or lot or parcel of land bordering on any public street, avenue, alley, square or other public place within the City shall at all times keep the sidewalks, curbs, and crosswalk ramps leading into crosswalks abutting upon or adjacent to the building, lot or lots parcel owned or occupied by them free and clear of

any accumulation of snow, ice, dirt or other obstruction. Any such owner or occupant person who fails to remove the snow, ice, dirt or other obstruction from the sidewalks as promptly as reasonably possible, but in any event no later than within twenty four (24) hours after the accumulation of snow and ice, shall be deemed guilty of a misdemeanor. Such persons are jointly and severally liable for such responsibility, both criminally and administratively. The removal of snow and or ice shall mean free of snow and or ice for the entire constructed width and length of the sidewalk-, except those with a width exceeding five feet, which must be cleared to a width of at least five feet. The accumulation may be from any source, including snow plows, traffic, precipitation, or drifting. (Amended Ord. No. 2008-31, 11/04/2008)

- C. Noncompliance Comprehensive Planning and Code Administrator Authorized to Correct Hazardous Situation on Sidewalks: Should any owner or occupant of person owning, leasing or occupying any building, grounds or premises lot or parcel within the City fail, neglect or refuse to remove from the sidewalk, curbs and crosswalk ramps adjacent thereto, within twenty four (24) hours after written notice from the Public Works Director or designee all accumulations of snow, ice, or other obstruction from the entire constructed width and length of the sidewalk, as required by subsection (B.) of this section, including the tops of those curbs which indicate parking restrictions, and clear passage of sidewalk ADA ramps leading to crosswalks, then the Public Works Director Comprehensive Planning and Code Administrator (the "Code Administrator") or designee is authorized to remove such snow, ice or other obstruction at the expense of such owner or occupant. If the Code Administrator intends to charge any person responsible for keeping sidewalks, curbs, and ramps abutting the premises clear of snow or ice, then the Code Administrator will satisfy the requirements of this section. In the event of such removal, the Public Works Director or designee shall prepare a bill for the actual costs of removal of snow, ice, dirt or other obstruction, including the actual costs of any additional inspection and other incidental connected costs. The statement shall inform the owner or occupant that failure to pay the bill will result in a lien against the property. If the actual costs are not paid by the owner or occupant within ten (10) calendar days after receipt of the bill, the bill shall be collectible from the person or persons owning or occupying such building, grounds or premises. For purposes of this section, "Comprehensive Planning and Code Administrator" means the City of Flagstaff's Comprehensive Planning and Code Administrator, or his or her designee. (Amended Ord. No. 2008-31, 11/04/2008)
- D. If the Code Administrator finds that any portion of a sidewalk, curb or ramp has not been cleared of snow or ice as required by subsection (B.) of this section, and that a hazardous condition exists, the Code Administrator is authorized to charge the costs of clearing the snow or ice to the person responsible under this section.
1. The Code Administrator will notify the person who owns, leases or occupies any building, lot or parcel of land, that such person must remove the snow or ice within the earlier of twenty-four hours or 12:00 noon of the day following the notice.
 2. Notice under this subsection is sufficient if hand delivered, emailed or telephoned to such person, or by posting on the premises. The Code Administrator shall provide at least one notice per annual snow season (November 1 to April 1) to persons responsible for keeping public sidewalks, curbs or ramps clear of snow or ice. After the first notice has been sent, the Code Administrator may cause the

public sidewalks, curbs and ramps to be cleared after the time period set forth in subsection 8-03-001-0004(B.).

3. The notice shall state that the snow or ice shall be removed and that, if it is not removed within the earlier of twenty-four hours or 12:00 noon of the day following the notice, the removal may be done at the behest of the City and all costs of the snow or ice removal may be imposed.

E. Charges for Snow or Ice Removal. If the person so notified fails to remove the snow or ice as required by the notice prescribed by subsection (D.) of this section, than the Code Administrator may cause the snow or ice removal to meet the requirements of this section and charge the costs thereof, the costs of inspection, plus an additional \$50.00 for administrative costs, to the person so notified and the owner, jointly and severally.

D.F. Hearing Procedure: An owner or occupant from whom a bill for snow or ice removal costs is collectible, as set forth above, may request an administrative hearing with regard to the bill under the procedures which follow.

1. Within ten (10) calendar days after receipt of the bill for the actual costs of removal of snow, ice, ~~dirt~~ or other obstruction from the City, as provide in Subsection D, above, the responsible party may request an administrative hearing regarding the written notice and the bill. The request for hearing must be in writing, state the objections to the notice and the bill, and be mailed or delivered to the Code Administrator ~~Director of Public Works~~.
2. Upon receipt of the hearing request, the Code Administrator ~~Director of Public Works~~ shall forward a copy of the request to the Municipal Court Administrator for assignment to a Municipal Court judge who shall preside as an administrative hearing officer. The Municipal Court Administrator shall promptly notify the parties of the hearing date for the matter. Neither the City nor the responsible party is required to be represented by counsel, but may be if they so choose. No pre-trial discovery shall be permitted absent extraordinary circumstances. Immediately before the hearing, both parties shall produce for inspection any exhibits and written or recorded statements of any witness which are to be offered at the hearing. Failure to produce exhibits or statements may result in the hearing officer denying admission of the evidence not produced. The hearing officer may call and examine witnesses, including the responsible party. All testimony shall be given under oath or affirmation. No person may be examined or cross-examined at a hearing except by the hearing officer, an attorney for a party, or the responsible party. The Arizona Rules of Evidence shall not apply in the hearing; any evidence offered may be admitted subject to a determination by the hearing officer that the offered evidence is relevant, material, and has some probative value to a fact at issue. If the party requesting the hearing fails to appear, the hearing officer may enter a finding for the City.
3. If the hearing officer determines, after hearing the parties and considering their evidence, that the City's notice to the responsible party was accurate, delivered to the proper party or parties, and that the bill for the actual cost of removal was supported by the City's evidence, then the hearing officer shall make a finding for the City on the bill. The responsible party may appeal the hearing officer's decision to the City Council at a regularly scheduled meeting by filing a written

request with the City Clerk for appeal within five (5) days after receipt of the hearing officer's decision. The request for appeal shall specify the grounds for reversal of the hearing officer's decision. The City Council may affirm, reverse, amend or remand the matter to the hearing officer if it finds that the hearing officer's decision is not supported by substantial evidence, is arbitrary and capricious, or is not in conformance with the law.

~~E.~~ G. If no hearing was requested on the notice or amount assessed for removal, or if an appeal was taken and the Council affirmed or modified the amount of the assessment, the assessment shall be recorded in the office of the Coconino County Recorder, including the date, amount of the assessment, and the legal description of the property against which the assessment is made. From the date of its recording, the assessment shall be a lien on the property and shall accrue interest at the rate prescribed by Arizona Revised Statutes, Section 44-1201. The City shall have the right to bring an action to enforce the lien in the Superior Court of Coconino County at any time after the recording of the assessment, but failure to enforce the lien by such action shall not affect its validity. The recorded assessment shall be prima facie evidence of the truth of all matters recited therein, and of the regularity of all proceedings prior to the recording of the assessment. A prior assessment for the purposes provided in this Section shall not be a bar to subsequent assessment or assessments for such purposes, and any number of liens on the same property may be enforced in the same action.

H. Both Prosecution and Correction of Condition Authorized. Proceeding under subsection 8-03-001-0004(C) through (G) shall not prevent or bar the City from prosecuting under 8-03-001-0004(B), nor shall prosecution under subsection 8-03-001-0004(B) prevent or bar the City from proceeding under subsection 8-03-001-0004(C) through (G).

SECTION 2. That the City Clerk be authorized to correct typographical and grammatical errors, as well as errors of wording and punctuation, as necessary; and that the City Clerk be authorized to make formatting changes needed for purposes of clarity and form, if required, to be consistent with Flagstaff City Code.

PASSED AND ADOPTED by the Mayor and City Council of the City of Flagstaff this 5th day of February, 2013.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY