

***TOWN OF ODESSA***  
**THE MAYOR AND COUNCIL OF THE TOWN OF ODESSA**  
**ORDINANCE: 2016 -03**

**AN ORDINANCE ESTABLISHING REGULATIONS AND RESPONSIBILITY FOR  
SIDEWALK MAINTENANCE, REPAIR, REPLACEMENT, AND INSTALLATION  
THROUGHOUT THE TOWN OF ODESSA**

WHEREAS, the Town of Odessa is authorized under section 4.3 of the town Charter to “exercise any and all powers which, under the Constitution or Laws of the State of Delaware, it would be competent for this Charter to specifically enumerate;”

WHEREAS, the Delaware General Assembly has authorized other municipalities in the State of Delaware, such as Magnolia, Smyrna, Harrington, Wyoming, Felton, and Bethany Beach, through their municipal charters to require the owners of property adjacent to sidewalks to pay for all or a portion of the repairs and improvements to the adjacent sidewalks;

WHEREAS, the Delaware General Assembly has authorized other municipalities in the State of Delaware, such as Smyrna, Georgetown, Felton, and Seaford, through their municipal charters to require the owners of property adjacent to sidewalks to be responsible for the removal of snow and ice from those adjacent sidewalks;

WHEREAS, the Town of Odessa does not have the financial means or resources to perform maintenance to sidewalks and repair, replace, and install sidewalks as the need arises;

WHEREAS, property owners directly benefit from having well maintained sidewalks adjacent to their property and are better situated to monitor the condition of sidewalks adjacent to their property and take preventative measures to reduce damage to the sidewalks; and

WHEREAS, in the opinion of the Town Council of the Town of Odessa, property owners should be financially responsible for the repair, replacement, or installation of those sidewalks immediately adjacent to and abutting their property.

NOW THEREFORE, BE IT HEREBY ADOPTED by the Town Council of the Town of Odessa, a majority thereof concurring in council duly met, as follows:

Section 1. An “Ordinance Establishing Regulations and Responsibility for Sidewalk Maintenance, Repair, Replacement, and Installation throughout the Town of Odessa” is hereby adopted as follows:

1. Responsibility for sidewalks. Every property owner shall maintain any sidewalk abutting his/her property in a safe and useable condition, including compliance with Americans with Disabilities Act (ADA) guidelines. Sidewalks which are not continuously even or which collect rain water on any part of the walking surface, or which do not meet ADA guidelines, shall not be considered safe and useable.

- 1.1 Snow and Ice Removal. It shall be unlawful for the owner of any premises in the town, in front or by the side of which shall be a sidewalk, pavement or walkway, to permit or allow snow or ice to remain thereon for a longer period than 24 hours after the snow has ceased to fall or the ice has ceased to form. Every owner shall cause a pathway to be cleared of at least three feet wide or the width of the sidewalk if the sidewalk is less than three feet wide. Every owner who shall permit or suffer the same to remain on such sidewalks, pavement or walkways, in violation of this section, shall be guilty of maintaining a nuisance and upon conviction thereof before any court of competent jurisdiction shall forfeit and pay a fine of \$50.00, plus the cost incurred in connection with same. Any private agreement between an owner and a tenant or management company pertaining to the maintenance of sidewalks shall not relieve the owner of responsibility for complying with the terms of this article.
2. Assessment of Sidewalk Conditions. When the need for repairs, replacement, or installation of sidewalks is brought to the mayor's attention, the mayor shall investigate the matter, and based on the results of the investigation, may make recommendations to the town council for sidewalk maintenance, repairs, or replacement. In conducting the investigation, the mayor may rely as needed on the services of the town building inspector or such other professionals as may be needed to determine whether there is a need for the repair, replacement, or installation of a sidewalk.
3. Public hearing; notice. If the town council decides to consider a recommendation that includes the repair, replacement, or installation of sidewalks located on, adjoining, along, or in front of private property, it shall adopt a resolution which shall state that, on a named day and a named hour and place, the council will meet to hold a public hearing and consider the question of repair, replacement or installation of sidewalks with a specified material or materials and according to the town's specifications, on a named street in front of the property of named owners and assessing the costs thereof against such owners. The said resolution shall be published at least one week prior to the meeting aforesaid in at least one issue of a newspaper published for circulation in the Town of Odessa or in a newspaper published elsewhere in New Castle County, if there be none published in Odessa. The resolution shall also be mailed via certified mail, return receipt requested, to all property owners that could be assessed costs for the repair, replacement, or installation of sidewalks. The council shall hold a meeting in accordance with said resolution at which it shall hear the aforesaid owners of property and other residents of the town appearing on the question referred to in the resolution.
4. Resolution of Town Council. After such hearing, if the mayor and council believe it necessary to have the sidewalks at issue repaired, replaced, or installed, the mayor and council may adopt a resolution outlining the work to be performed, the timeframe for completing the work, and whether or not to charge the property owner or owners for the whole and entire cost of such sidewalk repair, replacement, or installation as hereafter provided in paragraph 6 or to allow the property owner(s) the opportunity to have such sidewalk repaired, replaced, or installed as hereafter provided in paragraph 5.
5. Written notice to property owners. Following any public hearing conducted as provided in paragraph 3 above, the town council may, in the sound exercise of its reasonable

discretion, allow the affected property owner(s) a reasonable period of time (as determined by the town council) not to exceed one year, to cause such sidewalk repair, replacement, or installation to be constructed/performed at their own expense. In such event, the town council shall cause written notice of such decision to be sent or delivered to such property owner(s), which notice shall state:

- 5.1 That the town council has determined that certain sidewalk repairs, replacements or installations are required to be made on, adjoining, along, or in front of the property owner's property and identifying such property(s) by street address and/or tax map parcel number;
  - 5.2 That the property owner has been given a specified period of time (not to exceed one year from the date of the notice) to cause such repairs, replacements or installations to be constructed or performed at the property owner's expense;
  - 5.3 That, if the property owner elects to have the work done himself, the property owner must:
    - 5.3.1 Obtain a building permit from the town for which the fee shall be waived by the town;
    - 5.3.2 Cause such construction/repairs to be in compliance with town specifications as set out in the town's specification and in a workmanlike manner;
    - 5.3.3 Cause such construction to be consistent with the town's planned construction for abutting streets, curbs and properties (with regard to, among other things, material, grade, and elevation); and
    - 5.3.4 Obtain a final inspection and approval from the town building inspector;
  - 5.4 That, if the property owner does not cause such sidewalk repairs, replacements or installations to be completed within the time specified by the town council, the town will cause such sidewalk repairs, replacements or installations to be done pursuant to paragraph 6 hereafter; and
  - 5.5 That the property owner may decline the opportunity to have the sidewalk repairs, replacements or installations done himself/herself at his/her own expense by notifying the town in writing of his/her desire to have the town proceed under paragraph 6 hereafter.
6. Sidewalk improvements performed by Town. In the event that (1) the town council determines not to allow the property owner(s) an opportunity to cause the sidewalk repairs, replacements or installations to be constructed/performed at their own expense, or (2) the property owner declines, in writing, the opportunity to do so, or (3) the property owner fails to fully complete all such requirement repairs, replacements or installations within the time specified, the town may proceed to have such repairs, replacements or installations constructed/performed and the entire costs of such repairs, replacements or installations shall be the responsibility of the property owner(s). Where such sidewalk repairs, replacements or installations front on two or more properties, the total cost of such repairs, replacements or installations shall be allocated among the property owners

affected, pro rata, on a “front foot” or “lineal foot” basis. Subject to paragraph 7 hereafter, such costs shall be due and payable within 90 days of the completion of the repairs, replacements or installations.

7. Payment plans for low income individuals. In the event that the town council votes to repair, replace or install sidewalks on, adjoining, along, or in front of properties owned by persons who qualify as low to moderate income as defined in subsection 10 of this section and that person’s share of the repair, replacement or installation costs are under \$1,000.00, they will be permitted to pay the costs in ten equal payments due with their annual taxes over the course of ten years. Each payment shall be equal to ten percent of the total cost of the repair, replacement or installation. In the event that their share of the repair, replacement or installation costs exceed \$1,000.00, that property will be permitted to pay the cost in 20 equal payments due with their annual taxes over the course of 20 years. Each payment shall be equal to five percent of the total cost of the repair, replacement or installation.
8. Financial responsibility of property owners. It is the intent of this ordinance that property owners shall be responsible for the cost of all sidewalk improvements adjacent to his/her property including, but not limited to, settling caused by existing utilities.
9. Cost of improvements to be lien. The costs of any such sidewalk improvements, if not paid prior to the next-succeeding annual tax assessment, shall be a lien against the property as provided in § 11 of the town Charter, as it may hereafter from time to time be amended, or any future corresponding provision of law. In addition, or in lieu thereof, where any amount due the town for sidewalk improvements is not paid when due as hereinabove provided, the town may proceed to take remedial action as provided for in § 12 of the town Charter, as it may hereafter from time to time be amended, or any future corresponding provision of law. Nothing in this section shall be deemed to preclude the town from proceeding under the provisions of 25 Del. C. Ch. 29 (as it may hereafter from time to time be amended, or any future corresponding provision of law) and where appropriate, to secure or collect payment of any amounts due from benefitted properties for sidewalk repairs, replacements, or installations made hereunder.
10. Definition of low to moderate income individuals. For purposes of this section, low to moderate income persons are defined as those persons whose incomes do not exceed the income limits for lower income families pursuant to section 9 of the United States Housing Act of 1937 as amended and provided to the state by HUD in a table of income limits as set forth by dollar amount and family size. (These income limits are periodically revised by HUD and are made available by the state housing authority to the town.)

Section 2. This ordinance shall take effect immediately upon its enactment by the Mayor and Council of the Town of Odessa.

INTRODUCED: September 12, 2016  
FIRST READING: \_\_\_\_\_  
BY COUNCIL MEMBER: Kathleen Harvey  
PUBLIC HEARING: \_\_\_\_\_  
FINAL PASSAGE ON: \_\_\_\_\_

VOTE: \_\_\_ Ayes, \_\_\_ Nays

Harvey Smith, \_\_\_\_\_

Lindsay Rice, \_\_\_\_\_

Betts Jackson, \_\_\_\_\_

John Freeman, \_\_\_\_\_

Kathleen Harvey, \_\_\_\_\_

\_\_\_\_\_  
Kathleen H. Harvey, Mayor

Attest: \_\_\_\_\_  
Barbara Roberts, Secretary