

ORDINANCE NO. 3953

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTER 15 OF THE CODE OF THE CITY OF MESQUITE BY DELETING SECTION 15-44 IN ITS ENTIRETY AND ADDING A NEW SECTION 15-44 REGARDING THE DUTY OF AN ABUTTING PROPERTY OWNER TO RECONSTRUCT OR REPAIR EXISTING SIDEWALKS, CURBS, GUTTERS AND DRIVEWAY APPROACHES; ESTABLISHING POLICIES AND PROCEDURES FOR THE ADMINISTRATION OF THE 50/50 COST SHARE PROGRAM FOR REPLACING EXISTING SIDEWALKS, CURBS, GUTTERS AND DRIVEWAY APPROACHES; ESTABLISHING CERTAIN RESTRICTIONS PERTAINING TO SUCH REPLACEMENTS; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR A PENALTY NOT TO EXCEED FIVE HUNDRED (\$500.00) DOLLARS FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, replacement or repair of sidewalks, curbs, gutters and driveway approaches is the responsibility of the adjacent property owner; and

WHEREAS, on January 16, 1989, the City Council elected to participate in a 50/50 Cost Share Program with eligible property owners for the replacement of sidewalks, curbs, gutters and driveway approaches; and

WHEREAS, it has become necessary for the City to revise its current policies and procedures for the administration of the 50/50 Cost Share Program and incorporate such revisions into the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That Chapter 15 of the Code of the City of Mesquite is hereby amended by deleting Section 15-44 in its entirety and adding a new Section 15-44 to read as follows, in all other respects said Code and Chapter to remain in full force and effect:

**Sec. 15-44. Repair of defective, etc., sidewalk, etc., by abutting property owner; notice to repair; failure to comply with notice; City cost share program.**

- (a) *Duty of owner.* When a sidewalk, driveway approach, curb, gutter or appurtenance becomes defective, unsafe or hazardous, it shall be the duty of the owner of the abutting property to reconstruct or repair same, and the expense of such work shall be borne by the abutting property owner. When a sidewalk, driveway approach, curb, gutter or appurtenance is found to be defective, unsafe or hazardous, the Building Official shall notify the owner of the abutting property to reconstruct or repair same.
- (b) *City cost share program.* The City may participate in the reconstruction or repair of the sidewalk, driveway approach, curb or gutter with eligible property owners provided

monies are available for such participation. If monies are available the City participation shall be on a 50/50 basis.

(c) *Policies and procedures of cost share program.* The City's 50/50 cost share program, hereinafter referred to as "the Program" shall operate as follows:

(1) *Eligible properties:* Abutting property owners of the following types of properties are eligible to participate in the Program: Single-family residences, duplexes and condominiums. Also included are town homes that are individually owned and are part of a Homeowners Association (H.O.A.). Only sidewalks, drive approaches, curbs and gutters within the City's right-of-way are eligible. In no event will reconstruction/repairs be performed on private property.

(2) *Cost:* The property owner's share of cost under the Program shall be as follows:

SCHEDULE OF CHARGES  
FOR 50/50 COST SHARE PROGRAM  
(abutting property owner's share)

Sidewalk Replacement	\$2.00	Per Square Foot
Curb and Gutter Replacement	\$10.50	Per Linear Foot
Driveway Approach Replacement	\$2.50	Per Square Foot

(3) *Additional costs not included:* The cost of repairs calculated pursuant to the above Schedule of Charges for the 50/50 Cost Share Program does not include any necessary tree or tree root removal expense. All costs of such removal shall be the responsibility of the abutting property owner and must be completed prior to the beginning of reconstruction/repair. In addition, the City shall not be responsible for damage that may occur to sprinkler systems, trees, shrubs or other improvements in the City's right-of-way. It shall be the responsibility of the abutting property owner to protect such improvements prior to and during reconstruction/repair.

(4) *Method of payment:* The abutting property owner shall make payment to the City in the full amount of their share prior to commencement of reconstruction/repair or in 12 or 24 monthly payments at an interest rate of eight percent per annum. Payment agreements must be made through the City Tax Office with the first payment due and paid prior to commencement of the reconstruction/repair and each subsequent payment due on the dates set forth in the agreement.

(5) *Lien:* Where the abutting property owner makes a payment agreement with the City Tax Office, their share of the cost of the reconstruction/repair performed by the City, together with interest shall constitute a personal claim against them and shall be secured by a lien on such property which may be enforced against the owner in the manner provided by law. Upon full and final payment of such costs the City will release the lien.

(6) *Rework:* In the event the replaced sidewalk, curb, gutter or driveway approach

reconstructed through the Program fails within one year of the completion of the replacement under the Program, the City shall make appropriate repairs, as determined to be necessary by the City, to the failed section at no further cost to the property owner.

- (7) *Refund and Reimbursement:* An abutting property owner may request a refund of monies they have paid anytime prior to the City beginning work in connection with the reconstruction/repair. Refunds will not be made after the City begins work. An abutting property owner shall be eligible for reimbursement of the portion of the cost of replacement/repair in connection with the Program if within two years of the completion of the replacement/repair the City undertakes a capital improvement project to reconstruct the street and/or underlying utilities abutting the abutting property owner's property and the sidewalk, curb, gutter or driveway approach reconstructed/repared through the Program is replaced in connection with such capital improvement project. Reimbursement shall apply only to affected areas included in the capital improvement project, and there shall be no eligibility for reimbursement for the portion of a driveway approach that was, in connection with the Program, widened beyond the original approach width.

SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall be affected and shall remain in full force and effect.

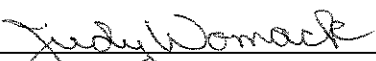
SECTION 5. That any person, firm, or corporation violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction in the Municipal Court shall be punished by a fine not to exceed Five Hundred (\$500.00) Dollars for each offense.

SECTION 6. That this ordinance shall take effect immediately from and after its passage.

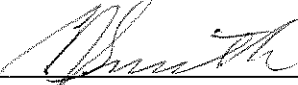
DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 19th day of May, 2008.

  
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John Monaco  
Mayor

ATTEST:

  
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Judy Womack  
City Secretary

APPROVED:

  
\_\_\_\_\_  
B. J. Smith  
City Attorney