

ORDINANCE NO. 23-07-01

AN ORDINANCE TO AMEND TITLE 12 OF THE MIDDLETOWN MUNICIPAL CODE REGARDING SIDEWALK MAINTENANCE AND REPAIR.

SECTION I. BE IT ORDAINED AND ENACTED by the Burgess and Commissioners of Middletown that Title 12, Chapter 04.040 of the Middletown Municipal Code be, and hereby is amended as shown below. Language being deleted is designated by being ~~in brackets and striken through~~. New language is designated by being in **BOLD CAPITAL LETTERS**.

Title 12- STREETS, SIDEWALKS AND PUBLIC PLACES

12.04.040 – Sidewalk Maintenance, **INSPECTIONS** and Repair.

A. ~~{Unchanged}~~

B. A hazardous condition shall be considered to exist when any of the following conditions exist in any portion of the sidewalk:

1. A vertical crack or a horizontal crack or separation of one inch or greater.
2. The presence of a tilt in the sidewalk, whether caused by settlement, upheaval or other condition, which creates a differentiation in height of two inches or greater in any four foot or less length or width of the sidewalk.
3. Any hole which is greater than three inches in diameter as measured from its widest point.
4. The presence of spalled or pitted areas where in a ~~[six by six]~~ **SIX-BY-SIX** inch area the condition of spalling or pitting exhibits a depth of one inch or greater in any section of sidewalk.
5. Any other condition of the sidewalk which is determined by the town administrator **OR HIS DESIGNEE**, after due inspection and observation, to constitute a hazard to public health, safety and welfare.

~~{C. Upon determining that a hazardous condition exists on a sidewalk, the town administrator or his or her designee shall provide notice of such hazardous condition to the owner of the property which abuts, adjoins or is adjacent to that sidewalk. The notice shall identify the location and nature of the hazardous condition, shall advise the owner of the requirement to repair or replace the sidewalk so as to abate the condition, and shall order the owner to abate the condition within a reasonable time, not to be less than fourteen (14) days from the date of the notice and order. The notice and order shall also advise the owner of the right to request an appearance before the burgess and commissioners to contest the order of abatement.}~~

**C. THE TOWN WILL INSPECT ALL SIDEWALKS, WITHIN THE PUBLIC RIGHT AWAY, ON A FOUR (4) YEAR INSPECTION CYCLE. THIS MEANS THAT APPROXIMATELY ONE QUARTER OF THE TOWN WILL BE INSPECTED EVERY YEAR TO IDENTIFY HAZARDOUS CONDITIONS.**

**D. UPON DETERMINING THAT A HAZARDOUS CONDITION EXISTS ON A SIDEWALK, THE TOWN ADMINISTRATOR OR DESIGNEE SHALL PROVIDE NOTICE OF SUCH HAZARDOUS CONDITION TO THE OWNER OF THE PROPERTY WHICH ABUTS, ADJOINS OR IS ADJACENT TO THAT SIDEWALK. THE NOTICE SHALL IDENTIFY THE LOCATION AND NATURE OF THE HAZARDOUS CONDITION, SHALL ADVISE THE OWNER OF THE REQUIREMENT TO REPAIR OR REPLACE THE SIDEWALK SO AS TO ABATE THE CONDITION, AND SHALL ORDER THE OWNER TO ABATE THE CONDITION WITHIN A REASONABLE TIME, NOT TO BE LESS THAN THIRTY (30) DAYS FROM THE DATE OF THE NOTICE AND ORDER. THE NOTICE AND ORDER SHALL ALSO ADVISE THE OWNER OF THE RIGHT TO REQUEST AN APPEARANCE BEFORE THE BURGESS AND COMMISSIONERS TO CONTEST THE ORDER OF ABATEMENT.**

~~{D.}~~ E. The notice and order shall be given by either (1) personal delivery to the owner of the property, or (2) by leaving the notice with a person of suitable age and discretion at the owner's residence, office or place of business, or (3) by certified or registered mail addressed to the last known address of the owner of the property. If the owner of the property is unknown or the owner's whereabouts cannot be determined after reasonable efforts, then the notice and order may be given by posting the notice and order on the property in a conspicuous location. Notice to any one owner of the property shall be adequate and shall be considered notice to all owners of the property.

~~{E.}~~ F. Upon receiving a notice and order to repair or replace a hazardous sidewalk, the owner may request an opportunity to appear before the burgess and commissioners and be heard regarding the order and necessity to abate the condition. Such request must be presented to the town administrator no later than ten (10) days from the date of the notice. The burgess and commissioners, after any such appearance, may reverse, affirm or modify the order to abate the condition.

~~{F.}~~ G. If the property owner fails to timely request an appearance before the burgess and commissioners and fails to abate the hazardous condition within the time period stated in the notice and order, or if the property owner fails to abate the hazardous condition within the time period established by the burgess and commissioners after the appearance by the owner, then the town may make the required repairs or replace the sidewalk as necessary, and the owner(s) of the property shall be jointly and severally liable for the cost of doing so. The cost of the repair or replacement shall constitute a lien on the property and may be collected in the same manner as taxes on the property.

~~{G.}~~ H. All [~~repairs, maintenance and~~] replacement of sidewalks performed by the property owner or his or her agents, employees or contractors shall be performed in accordance with the standards for such work as set forth in the town of Middetown Design Manual (**AVAILABLE ON THE TOWN'S WEBSITE**). Any such work not performed in accordance with such standards shall be

considered as the equivalent of a failure to perform the [~~required repairs, maintenance or~~ replacement. **REPAIR AND MAINTENANCE SUGGESTIONS CAN BE FOUND ON THE TOWN'S WEBSITE.**

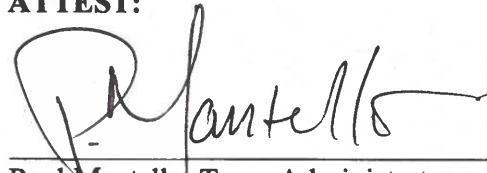
~~[H.]~~ I. In the event that the condition of the sidewalk constitutes an emergency and an immediate threat to the health, safety and welfare of the public, then the town may make such required repairs or maintenance without notice to the property owner or an opportunity to appear before the burgess and commissioners, and the property owner(s) shall remain jointly and severally liable for the costs of such repairs or maintenance as above; provided, however, that the town shall only undertake such repairs or maintenance as shall be immediately necessary to alleviate the emergency situation.

**J. RESIDENTS MAY IDENTIFY AND NOTIFY THE TOWN ANYTIME THEY OBSERVE SIDEWALKS IN HAZARDOUS CONDITIONS AT ANY LOCATION WITHIN TOWN LIMITS BY EMAILING OR CALLING TOWN HALL. THESE LOCATIONS WILL BE INSPECTED WITHIN SEVEN (7) BUSINESS DAYS.**

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED** that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

INTRODUCED ON THE 24th DAY OF July, 2023  
PASSED ON THE 14th DAY OF August, 2023  
EFFECTIVE DATE: September 3, 2023

ATTEST:

  
\_\_\_\_\_  
Paul Mantello, Town Administrator

**BURGESS AND COMMISSIONERS  
OF MIDDLETOWN**

BY:   
\_\_\_\_\_  
John D. Miller, Burgess

