

CITY OF BURTON
LEGISLATIVE COMMITTEE MEETING MINUTES
MARCH 3, 2008, 6:30 P.M., COUNCIL CHAMBERS
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The Meeting was called to order by Chairwoman Laurie Tinnin at 6:34 p.m.

MEMBERS PRESENT: Ellenburg, Tinnin and Conley.

MEMBERS ABSENT: None.

OTHERS PRESENT: Atty. M. Joliat, G. Kray, DPW Director and J. Adams, Deputy Clerk.

**PURPOSE OF THE MEETING: DISCUSSION AND POSSIBLE ECOMMENDATIONS
CONCERNING THE FOLLOWING:**

- 1. Ordinance 65(C), An Ordinance to require property owners to remove snow and ice from sidewalks adjacent to their premises and providing penalties for the violation thereof.**

PRESENTATION: None.

AUDIENCE PARTICIPATION:

Bud LeGrande, 2105 E. Buder, spoke regarding empty abandoned houses in his neighborhood that have sidewalks not shoveled. He expressed with the economy, there will be many more like this. He does feel that businesses should clear off their sidewalks.

Bud Brady, 3289 Cheyenne, asked who is legally responsible if someone falls and is injured on your property.

Herbert Burnett , 1178 Carman, stated he moved in his home when Burton was a township. He helps four elderly widowed neighbors with their sidewalks. He opposes fines if you don't keep your sidewalks cleaned. You can't push your snow out in the streets but the snow plows comes along and blows it up on the sidewalk after you get it cleaned off. They tell seniors on TV not to shovel snow or they can have a heart attack, and then this ordinance states they can put you in jail.

Robert Sak, 3172 Eastgate, asked who is in charge of the Burton library because their sidewalks were not shoveled when he went there on Saturday. Mr. Sak questioned further code enforcement of other ordinances and the call in complaint system.

Art Jankowski, 4108 Leith, stated he believes the City should find money to clean sidewalks.

John Stapish, PO Box 190134, stated the City should take care of their properties first. He mentioned sidewalks at Fire Station 3, call in complaints, and selected enforcement.

COMMITTEE DISCUSSION:

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Mrs. Conley stated sidewalks along Center Rd. were not plowed. She suggested community service to help the elderly with snow removal or to have the City do it as previously mentioned.

Mrs. Ellenburg said she researched other communities. Our ordinance states 24 hours to clear off the streets. Davison includes tree limbs and water. In Grand Blanc everyone is responsible for getting their sidewalks cleaned up. Clio is a small city and they remove the ice and snow only on Vienna Rd., Mill Rd. and main streets. Mt. Morris said they did designated areas such as streets that lead to a school. In Fenton everyone cleans their own sidewalks and they have 24 hours to do it after the last snowfall. In Mt. Morris it is after 3 inches of snow. Mrs. Ellenburg said she feels sidewalks going to schools should be cleared off and it is the resident's responsibility to clean it off. It would be a great cost if the City had to hire someone to do this. She likes the way Mt. Morris designates areas where businesses have to do it and areas that are traveled a lot. In neighborhoods and other areas where sidewalks go to nowhere, she doesn't see a necessity to have those sidewalks plowed.

Mrs. Tinnin addressed the earlier question of who is legally responsible.

Mr. Joliat responded if the ordinance is in place that puts the responsibility on the property owner, and that owner does not shovel or clear the snow, and the slip and fall is because of the snow and not because the sidewalk is defective, but because the sidewalk is snow covered and slippery, then an individual that is injured would have a claim against the property owners on that liability issue.

Mrs. Ellenburg interjected that Michigan Supreme Court issued a ruling that if it is obvious that it is slippery, then basically to file a lawsuit you cannot do that anymore in the State of Michigan. If it is there and it is obvious, and you know it is snow and ice, then you don't have a case. So I don't see where the property owner would be responsible or the City. The State has really taken a lot of slip and fall situations out of people suing because of the fact people were doing it all the time.

Mr. Joliat said that is true. It is a defense that the property owner would raise that this condition was open and obvious and then it becomes the question that the property owner defends in Court.

Mrs. Tinnin read aloud the proposed 90.080 Snow and Ice; Removal Required, Section A and Section B. She addressed further Sections 1 and 2 of the ordinance currently in effect. Section 2 states any person, firm or corporation violating the provisions of this ordinance shall upon conviction thereof be punished by a fine of not more than \$500 and/or imprisonment for not more than 90 days in the County jail in the discretion of the Court. Mrs. Tinnin stated she is sure everyone feels that should be changed.

Mrs. Ellenburg stated the ordinance she obtained from the website does not indicate any of that.

Mr. Joliat explained that is the proposed re-codification of the sidewalk ordinance, taking it from a misdemeanor punishable by 90 days to a municipal civil infraction punishable only by a fine.

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Mrs. Ellenburg reiterated that she likes the way Mt. Morris did their ordinance. It takes the older people off the hook with the sidewalks that go nowhere. I think our school, business, and well traveled sidewalks need to be cleared off.

Mrs. Tinnin asked how many miles of sidewalks do we currently take care of.

Mr. Kray said he does not know the exact miles but it is quite a lot.

Mrs. Tinnin indicated she has concerns with the complaint basis process because you can't do it indiscriminately. We are in violation of our own ordinance if that takes place.

Mr. Joliat said on the municipal civil infraction amendment in the re-codification, the language says it may be issued. The ordinance being considered in the re-codification would grant whoever the enforcing authority is, discretion whether to issue a civil infraction citation or not.

Mrs. Tinnin said she does not have a problem with that but the first section says it shall be unlawful for any owner / occupant, how do you send a letter out to a certain area based on somebody making a complaint rather than doing it across the board. You either send out letters to everybody that is in violation or you send no letters out. I don't see how it can be a complaint basis only.

Mr. Kray said it is consistent with the way we handle many of our ordinances. There are many that we handle on the complaint only basis. If we are going to look at changing need the way we handle this ordinance, we need to look at the way we handle all of them.

Mrs. Tinnin suggested that they could state sidewalks installed at the unreimbursed cost of the owner. She thinks most of the sidewalks weren't paid for except through the cost of new subdivisions.

Mr. Kray indicated that without having the history he could not speak to that. Most of the sidewalks put in since he has been here are at the project expense which is taxpayers at large.

Mrs. Tinnin said she does not like the complaint only basis.

Mr. Joliat said in most code enforcement matters, or municipal civil infractions or misdemeanor tickets are issue, when we are in Court prosecuting these matters, we try to get compliance rather than fines and jail time because that does not do any good. The code enforcement officer wants compliance, whoever complains wants compliance, and that is the goal. Sometimes a letter or a notice gets it, and sometimes it is a talk from the judge that gets it.

Mrs. Tinnin said we do have an obligation to provide safe and healthy to our residents. I don't think trying to abolish this ordinance is the answer, and maybe the rest of the Council will have some other ideas other than eliminating the part where you can be sent to jail. That will be changed with the adoption of the codified ordinances.

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Mrs. Tinnin said she would like to see DPW put in some information in the water and sewer bills when it comes winter time to inform people. There are a lot of communities that issue information as far as what is expected of them during winter time of removal of snow and ice.

Mr. Kray said he will put that in as a recommendation.

Mr. Martinbianco stated a resident has a KraNur Farm address and through no fault of their own, a sidewalk appeared along Davison Rd. which is a side egress to their property, but it is not their property name. How do you address that issue. I would suggest that probably the City has some ownership to that liability because we used federal and state funding to install those sidewalks at no expense to the residents at that point in time, and they didn't have any representation during that point in time that decision was made. The Davison Rd. sidewalks, given our sidewalk to street improvement program that would go from Belsay Rd. to Genesee Rd. and ultimately down Genesee Rd. back to Kelly Lake Park and ultimately be a walking community in that respect. I guess that is one thing you have to take into account. The problem we have there is the suitability that did not have a Davison Rd. address that are being made responsible for the Davison Rd. access, that is part of the problem I have with the entire issue. Mr. Martinbianco stated further, this was shared by many of those residents.

Mrs. Tinnin indicated Council may have some suggestions during Council Discussion tonight and add something onto the agenda tonight.

Mrs. Ellenburg asked how would Mt. Morris have the residents do well traveled without a discrimination on that.

Mr. Joliat responded your example of where they lead to a school, or where its well traveled, or people walk from a senior citizen home to a credit union, places like that. If you identify the functions rather than who lives there, you are trying to make it safe for the use. You could focus your enforcement and follow the Mt. Morris model. Mr. Joliat said he hasn't seen their ordinance. City of Flint has the same type of ordinance Burton does where you make everybody clear the sidewalks and nobody clears them and you are left with this problem where some people want to walk on the sidewalks and can't.

Mrs. Ellenburg said there are some people in Burton that walking is there only means of travel. Saginaw Street is somewhat cleared and people waiting for buses are standing in snow.

Mr. Martinbiano stated the last Council approved sidewalks down Center Rd. that seemingly go from nowhere to nowhere. It goes from Atherton to Lippincott and it is a great walked area. He asked who is going to be ultimately responsible for clearing the out lots and areas in front of McDonalds and any of the other commercial enterprises that are up and down that street. I am thinking the ultimate responsibility falls within those enterprises that the sidewalks clear. These people didn't ask for them and all they are saying is now we are responsible for them.

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Mr. Martinbianco stated further, the City foisted this responsibility and the liability between them and the City itself because it is in the right-of-way. We are developing a walkability system but we are not developing a walkability responsibility from a City standpoint.

Mrs. Ellenburg stated when she talked to Fenton and asked them about their area businesses and sidewalks, they said it is those businesses responsibility to clear that sidewalk whether they asked for the sidewalk or not, they are in front of their business. They are to give a service to the residents that visit their business.

Mrs. Tinnin said Mr. Martinbianco brought up a good point. If you are going to try to make a walkable community, you need to have a plan that will effectuate how you are going to enforce the walkable community ordinance that goes along with clearing your sidewalks.

Mrs. Ellenburg said if there is water on the sidewalks, we are responsible to keep those sidewalks maintained as structured as possible. It is not the resident's responsibility to go out and pour new concrete, it is the City's responsibility.

Mr. Martinbianco asked why stop at a sidewalk. Why don't we say the shoulders of the road should be kept in the same form. I live on Lippincott, which is not a heavily traveled area, but I see people walk up and down the right of way on the shoulder of the road. Then somebody has to maintain the shoulder of the road to make it a walkable area for them where there is no sidewalk involved. Now we are talking a pandora's box about opening that up to many, many suggestions as far as what is a walkable community and what is not. If it is our objective, lets figure out how we are going to get it done, how are we going to maintain it, who is going to pay for it and make sure that it is an attained thing. We see people walking up and down the shoulders of the road every day.

Mrs. Tinnin asked if it is the Committee's recommendation to leave the ordinance as written in the hopes the City will enforce it uniformly and wait till we adopt the new codified ordinance. She would like to see more ordinances from other cities.

Mrs. Ellenburg said she felt it was important to come back with some comparisons from other cities so we have something to work with to give us a guideline and maybe something from another city would be good for us.

Mrs. Tinnin said she would like to see what sidewalks we do take care.

Mr. Kray stated he will get a list of city properties we are maintaining.

COMMITTEE RECOMMENDATIONS:

The Legislative Committee unanimously supports and recommends to City Council to approve 90.080 Snow and Ice; Removal Required, as amended, and will be adopted when City Council adopts the codified ordinances.

Meeting adjourned at 7:17 p.m.

jra