

## **Ordinance No. 514**

**An Ordinance to amend the City Code Chapter 209, Street and Sidewalks, Article I, clarifying the duty off property owners and occupants to maintain sidewalks adjacent to their premises.**

**WHEREAS**, Section 14 of the City Charter of the City of New Castle (hereinafter referred to as “the City”) provides that City Council may, by ordinance, require the owners of real property in the City undertake and pay for the paving, repaving, repair or re-laying, of sidewalks, curbing and gutters with such material or materials and according to such specifications as the City may determine; and

**WHEREAS**, historically, it has been the policy of the City to require property owners to maintain, repair and replace sidewalks, curbing and gutters adjacent to their property, as reflected in sections 210-11 G, 209-1 and 140.15 of the City Code; and

**WHEREAS**, the City Code contains a number of locations where references are made to the obligation of property owners to repair, replace and maintain City sidewalks, curbs and gutters including section 210-11 G relating to the repair of curbing or sidewalks damaged by trees or tree roots; section 209-1 relating to the removal of snow, hail, ice or other matters or things obstructing the free passage of pedestrians; and section 140.15 relating to the removal of trees and shrubbery obstructing City sidewalks; and

**WHEREAS**, the City Council desires to make clear that the repair, maintenance and replacement of City sidewalks, curbing and gutters within the City of New Castle is the responsibility of the adjacent property owner regardless of the cause or nature of any defect or state of disrepair.

**NOW, THEREFORE**, be it ordained by the Council of the City of New Castle, that section Chapter 209, Article I, is revised as follows:

**SECTION 1:** Chapter 209, Article I of the City Code is hereby renamed as **“Removal of Snow and Ice/General Repair and Maintenance.”**

**SECTION 2:** Chapter 209, Article I of the City Code is hereby amended to add a new Section 209-1 A which shall read, in its entirety, as follows:

### **§209-1 A. - Duty of abutting owner to maintain sidewalks, curbing and gutters in safe condition.**

- A. Every property owner shall maintain all sidewalks, curbing and gutters abutting his property in a safe and useable condition. Any repair or replacement of sidewalks, curbing or gutters shall be in 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 otherwise pose a health and safety hazard shall not be considered safe and useable.

- B. For properties in the Historic Residential (HR) and Historic Commercial (HC) zoning districts, materials used to repair or replace sidewalks, curbing and gutters should be consistent with the original materials being repaired or replaced and consistent with the Historic Review Guidelines approved by the City Council. Generally, sidewalks must be constructed of salvaged or antique brick to the greatest extent possible and curbing must be granite. Proposed repair or replacement of sidewalks, curbing and gutters in the HR and HC zoning districts that do not comply with the Historic Review Guidelines must be approved by the Historic Area Commission pursuant to Chapter 230, Article VII of the City Code.
- C. The City Code Official shall provide written notice via certified mail to the abutting property owner to repair or replace any sidewalk, curb or gutter which, in the Code Official's judgment, is not safe and useable. Materials used in any such repair or replacement shall be the same or substantially similar to the original materials. In the event the owner shall fail to repair or replace such sidewalk, curb or gutter within 45 days after notification to do so by the Code Official, the Code Official shall take such steps as are deemed appropriate to repair or replace such sidewalk, curbing or gutter, and the cost of the repair or replacement, including an administrative fee equal to 20% of the cost of the repair and installation, shall be assessed against the said owner and shall be due and payable within 60 days after the mailing of assessment notices and shall become a lien against such abutting property. Assessments and administrative fees not paid within such period shall bear interest at the rate of 12% per annum.
- D. An appeal may be made from a decision of the Code Official regarding sidewalk, curbing or gutter repair or replacement by making an appeal to the Board of Building Appeals within twenty (20) days of the Code Official's written decision. The Board of Building Appeals shall have jurisdiction to hear and consider such appeal and may affirm, modify or reject the determination of the Code Official.

**SECTION 3.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase irrespective of the fact that any one or more thereof is declared unconstitutional or invalid.

**SECTION 4.** Ordinances or parts of Ordinances in conflict herewith are hereby repealed; provided that any such repeal shall not abate a right of action already accrued under any repealed Ordinance.

**SECTION 5.** This Ordinance shall become effective immediately upon passage.

First Reading: December 12, 2017

Second Reading: January 16, 2018

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

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Linda Ratchford, President of Council

I hereby certify that the foregoing Ordinance was duly approved by the Council of the Mayor and Council of New Castle upon the dates above set forth and signed by the President of Council.

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Brian G. Whittaker, City Clerk

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2018

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Mayor