



**ORDINANCE NO. 2016-07**

AN ORDINANCE AMENDING CHAPTER 136 OF THE CODE OF ORDINANCES, CITY OF GUTHRIE CENTER, IOWA, BY AMENDING SECTION 136.04 RESPONSIBILITY FOR MAINTENANCE

BE IT ENACTED by the City Council of the City of Guthrie Center, Iowa;

SECTION 1. AMENDMENT. The code of Ordinances, City of Guthrie Center, Iowa, is amended by changing the wording Section 136.04 of Chapter 136 to be more specific, which is hereby adopted to read as follows:

**136.04 RESPONSIBILITY FOR MAINTENANCE.** The owner of any lot or parcel thereof abutting upon any sidewalk on the city streets in the city shall maintain said sidewalk in a state of good repair, free from cracks, holes and unevenness so that the sidewalk does not constitute a safety hazard. A state of sidewalk disrepair is hereby declared a public nuisance. The owner of any lot or parcel who fails to repair said sidewalk shall be liable to any person injured as a result of such failure and shall further save, defend, indemnify and hold harmless the City of Guthrie Center from and against any claim arising out of the failure to maintain said sidewalk.

SECTION 2. REPEALER. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 4. WHEN EFFECTIVE. The ordinance shall be effect from and after its final passage, approval and publication as provided by law.

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2016 and approved this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Dennis F. Kunkle, Mayor  
City of Guthrie Center, Iowa

ATTEST:

\_\_\_\_\_  
Laura M. Wolfe, City Clerk/Administrator  
City of Guthrie Center, Iowa

## Slip, fall cases on city sidewalks

*Who is liable for a public sidewalk slip and fall: the city, the abutting property owner, or both?*

It depends. When it comes to snow and ice, the law is clear. Under *Code of Iowa* Section 364.12(2), the abutting property owner is responsible for the removal of snow and ice within a reasonable time and may be liable for damages.

What about liability for failing to repair or maintain the sidewalk? Here, the *Code* is silent. The statute merely refers to snow or ice removal, and not failure to maintain and repair sidewalks. As a result, Iowa courts have held that an ordinance must “expressly impose” liability on abutting property owners for failing to maintain a public sidewalk. If a city fails to create an ordinance containing such language, it will likely lead to bad results. In *Busselle v. Doubleday* (1992) the city’s ordinance merely followed the *Code* section above and did not expressly impose liability on the property owner for failure to maintain the sidewalk. Therefore, the plaintiff’s claim against the abutting property owners was dismissed.

In a more recent Iowa Supreme Court case, *Madden v. City of Iowa City* (2014), a bicyclist was injured while riding on a city sidewalk



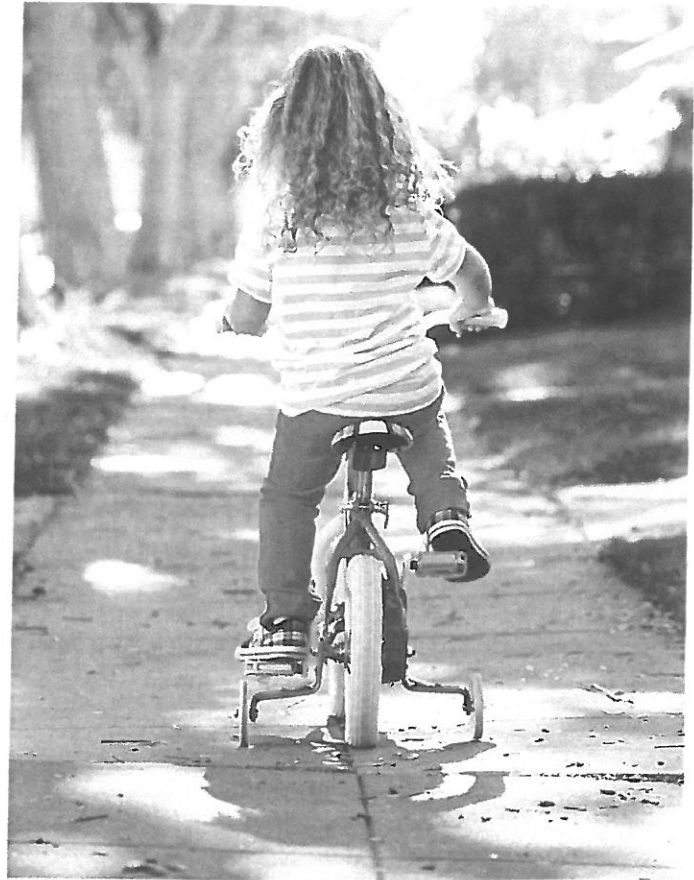
abutting the University of Iowa campus. The sidewalk was reportedly cracked and uneven, which is what caused the plaintiff to fall. The plaintiff sued the city for negligence, and the city in turn sued the State of Iowa on behalf of the University of Iowa as a third-party defendant. The State of Iowa moved to dismiss the city’s claim against it, which the court denied. The court found that the city had presented a valid claim of indemnification because the city ordinance was sufficient to impose liability on the State of Iowa. The ordinance at issue expressly stated: “The abutting property owner shall maintain the sidewalk in a safe condition, in a state of good repair, and free from defects. The abutting property own-

er may be liable for damages caused by failure to maintain the sidewalk.” The court further stated that when an ordinance “validly imposes a maintenance obligation and also imposes liability on the abutting landowner, the city is entitled to indemnification from the abutting landowner for any damages arising out of its failure to maintain the sidewalk.”

The city of Fort Madison’s sidewalk ordinance is an example of an ordinance that incorporates the *Madden* court’s reasoning: “The owner of any lot or parcel thereof abutting upon any sidewalk on the city streets in the city shall maintain said sidewalk in a state of good repair, free from cracks, holes and unevenness so that the sidewalk

does not constitute a safety hazard. A state of sidewalk disrepair is hereby declared a public nuisance. The owner of any lot or parcel who fails to repair said sidewalk shall be liable to any person injured as a result of such failure and shall further save, defend, indemnify and hold harmless the city of Fort Madison from and against any claim arising out of the failure to maintain said sidewalk.”

*The moral of the story:* while the abutting property owner is liable for injuries allegedly caused due to snow and ice without action by the city, the abutting property owner may not be liable for injuries incurred because of broken or unsafe sidewalks. To ensure that abutting property owners are liable for sidewalk related injuries, cities should review their sidewalk ordinances now to ensure they expressly impose liability on the abutting property owner for failure to maintain the sidewalk.



*Wilford “Bill” Stone is an attorney with Lynch Dallas, P.C., a law firm located in Cedar Rapids. Stone represents private employers, cities and school districts across Iowa, and regularly represents insurance companies, including ICAP, defending personal injury and other lawsuits on behalf of cities and other public entities.*

