ORDINANCE 2015- 4 Draft Ordinance 2015-C

AN ORDINANCE OF THE CITY OF VILLA HILLS, KENTON COUNTY, KENTUCKY, AMENDING SECTIONS 150.04 AND 150.05 OF CHAPTER 150 OF THE CITY OF VILLA HILLS CODE OF ORDINANCES AND ADDING NEW SECTIONS TO CHAPTER 150 REGARDING THE MAINTENANCE AND REPAIR OF SIDEWALKS.

WHEREAS, The City of Villa Hills has deemed it to be in the best interest of its citizens to amend its Code of Ordinances providing that home owners be responsible for sidewalks located on their property; and

WHEREAS, The City of Villa Hills desires to have a program in place to address deteriorated or damaged sidewalks when the property owner fails to act;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF VILLA HILLS, KENTUCKY AS FOLLOWS:

Section I

Section 150.04 is amended as follows:

150.04 SIDEWALK CONSTRUCTION

(A) The developer, builder, or contractor in all subdivision development and the owner of any subdivided lot, except for planned unit developments (PUD) and residential cluster developments (RCD), shall be required to build sidewalks along the entire frontage of both sides of the street or streets, including cul-de-sacs and courts, abutting the lot or lots. Construction specifications such as size, type of material, thickness, and other specifications shall be in accord with the specifications as set forth in the Kenton County Subdivision Regulations.

(B) In all PUD and RCD developments, as defined in §§ 10-10 and 10-11 of the Villa Hills Zoning Regulations, sidewalks shall be required in front of all constructed areas and shall be required on one (1) side of the street in all undeveloped areas. Sidewalks shall be connected between all constructed areas wherever logistically feasible.

(C) All required sidewalks shall be constructed and finished prior to occupancy of any building on the lot. No occupancy permit shall be issued for a building unless the sidewalk is completed and approved by the City Inspector.

(D) Sidewalks shall be required to be built for all developed lots regardless of whether a building exists on the lot or not.

(E) All sidewalks shall be completed within twelve (12) months from the date of approval by the city of the final plat or the date of recording of the plat at the County Clerk's office, whichever comes first.

(F) After sidewalks are completed, the owner of the property shall be responsible for the maintenance and, when necessary, the repairs to the sidewalk within such property.

(G) [~~When, upon inspection by the City Inspector, a sidewalk is found to be in need of repair, the owner of record shall be so notified by the city. The property owner shall then have thirty (30) days to~~

~~start the repair work or advise the City Inspector of the reasons for the delay. The City Inspector shall then authorize an extension of up to ninety (90) days to complete the work.~~

~~(H) In the event that after proper and reasonable notification a property owner fails to undertake necessary repair work, the city shall undertake the repairs, with all related costs chargeable to the owner of record.~~

~~(I)~~] This subchapter shall only apply in areas in which the subdivision regulations require the construction of sidewalks as of the effective date of the ordinance codified in this subchapter and thereafter. The owner of no existing lot shall be required to construct a sidewalk unless the subdivision regulations applicable to that lot require such construction.

Section II

A new section of the City of Villa Hills' Code of Ordinances Chapter 150 be created as follows:

150.041 BROKEN SIDEWALKS AND CURBS.

(A) All broken and unsafe sidewalks within the city are declared to be a public nuisance.

(B) No person owning property in the city shall permit or suffer the existence of any broken or unsafe sidewalk fronting or abutting their property.

(C) All existing sidewalks within the City of Villa Hills, and those hereafter constructed within the City of Villa Hills, shall be, and shall hereafter become, the sole responsibility of the property owner upon which such sidewalks front or abut. This responsibility shall include, but not be limited to, repairs, maintenance, and replacement. Nothing herein shall abrogate the said property owner's rights to seek redress from any person or entity causing damage to the sidewalks.

150.042 DUTY OF PROPERTY OWNER TO MAINTAIN AND REPAIR.

(A) It shall be the duty of every person owning lots or real estate fronting and abutting on any sidewalk in the city to maintain, at his or her own expense and in a suitable state of repair, the sidewalk, so far as it fronts or abuts upon his or her lots or real estate.

(B) Every property owner shall repair all holes, uneven surfaces, and other defects in the sidewalk, and he or she shall reconstruct or replace all or any part of the sidewalk that is not capable of ordinary restoration or repair. The material used for the repair, replacement, or reconstruction shall be of similar grade and texture as that used in the construction of the sidewalk.

150.043 NOTICE OF VIOLATION; COST ASSESSMENT; LIEN.

In the event that the City Inspector determines that any sidewalk or portion thereof in the city is in violation of this subchapter, the City Administrator/Clerk shall cause a written notice to be mailed by both first class mail and certified mail, return receipt requested, to every owner of abutting real estate in regard thereto along with a copy of this subchapter a written description and photograph of the sidewalk and the conditions in violation of this chapter. The notice shall state that unless the violations are eliminated and

the condition of the sidewalk conforms to the requirements of this subchapter within sixty (60) consecutive calendar days after the notice was mailed, the city shall cause the condition of the sidewalk to conform to the requirements of this subchapter. Unless it is finally determined in an administrative hearing that there was no violation of the terms and provisions of this subchapter and the determination of the enforcement officer was erroneous, each owner of the abutting property shall be jointly and severally liable to the city for all costs and expenses incurred by the city in causing the sidewalk to conform to the requirements of this subchapter and the cost of the collection thereof, including reasonable court costs and attorney's fees. In order to secure payment, the city shall have a lien upon the abutting real estate, which shall be superior to all other liens thereon, except liens for ad valorem taxes and public improvement assessments.

150.044 RIGHT TO HEARING; ADMINISTRATIVE PROCEDURES.

Within thirty (30) consecutive calendar days after any determination by the enforcement officer that any sidewalk or portion thereof in the city is in violation of the terms and provisions of this subchapter and the mailing of the notice to the owners of abutting property any owner of abutting property may request an appeal by the Mayor or Mayor's designee in regard to any violation of the terms and provisions of this subchapter and any determinations of the Enforcement Officer according to the following procedure:

(A) The appeal shall be in writing and shall include a description of the sidewalk and the conditions determined to be in violation of this subchapter and the name, address and telephone number of the owner of the abutting real estate appealing the decision. It shall be filed with the City Administrator/Clerk during regular business hours.

(B) Immediately upon receipt of a hearing request conforming to the requirements described, the City Administrator/Clerk shall schedule the hearing with the Mayor or Mayor's designee no later than fourteen (14) days after receipt of the written request, and shall mail a written notice of the time, date and place to the applicant by certified mail, return receipt requested, at least ten (10) days prior thereto.

(C) At the time, date and place scheduled for the hearing, the Mayor or Mayor's designee shall conduct a due process hearing to determine from the evidence presented whether or not any of the terms or provisions of this subchapter have been violated; and

(D) Within seven (7) days thereafter, cause a written decision to be mailed to the appellant, by first class mail, and deliver a copy thereof to the enforcement officer. The written decision of the Administrative Officer shall include factual determinations and a conclusion that the provisions of this subchapter were either violated or not violated by the sidewalk involved in this appeal, or otherwise.

(E) Nothing in this section shall prevent the City of Villa Hills from developing sidewalk assistance program(s), whether through the City or through other community organizations or groups to assist individuals who meet the qualifications of any such assistance program in lieu of the administrative process to ensure the repair of broken or unsafe sidewalks.

150.045 REPAIR AUTHORIZED; LIABILITY OF COSTS TO PROPERTY OWNER.

In the event that within sixty (60) days after the date that the aforedescribed violation notice was mailed to the owners of abutting property:

(A) The sidewalk defects described therein haven't been repaired or otherwise eliminated, so that the condition of the sidewalk described therein conforms to the requirements of this chapter; and

(B) There has been no decision by the Mayor or Mayor's designee, in an appeal from the violation notice, that the sidewalk involved in the appeal wasn't in violation of this chapter; then the Enforcement Officer shall cause the sidewalk defects described in the aforedescribed violation notice to be eliminated, by the repair or reconstruction thereof, through material and equipment of the city, and the time and labor of employees thereof, or independent contractors therefore, so that the condition of the sidewalk conforms to the requirement of this ordinance.

(C) Nothing in this section shall prevent the City of Villa Hills from developing a list of all sidewalks that violate this subchapter and to use discretion to prioritize the replacement of any sidewalks found to be in violation of this subchapter which were not repaired or replaced by the abutting property owner based on appropriate criteria, including but not limited to the severity of the defect, the amount of pedestrian usage, or any other such factors reasonably seen fit for consideration in order to best use the available resources of the City set aside for such replacement.

Section III

Section 150.05 is amended as follows:

150.05 ENFORCEMENT.

The City Inspector, a qualified person **or persons** designated by the Mayor to conduct the function of City Inspector, is charged with the enforcement of the provisions of §§ 150.03 [~~and 150.04~~] **through 150.045**. The City Inspector shall have the full authority from the city to enforce the provisions hereof and is empowered to take whatever steps necessary to accomplish said purpose.

Section IV – Provisions Severable

The provisions of this ordinance are severable; and the invalidity of any provision of this ordinance shall not affect the validity of any other provisions thereof; and such other provisions shall remain in full force and effect as long as they remain valid in the absence of those provisions determined to be invalid.

Section V – Conflicting Ordinances Repealed

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section VI – Effective Date and Publication

This Ordinance shall take effect and be in full force from and after its passage, publication, which may be in summary form, and recording, according to law.

Passed by the City Council this 15th day of April, 2015.

City of Villa Hills, Kentucky

A Municipal Corporation of the Home Rule Class

Irvin T. "Butch" Callery

Irvin T. "Butch" Callery, Mayor

ATTEST:

Craig T. Bohman

Craig T. Bohman, City Administrator/Clerk

Sponsor: Kilburn

First Reading: March 18, 2015

Second Reading: April 15, 2015

Ayes: 6

Nays: 0

Abstentions: n/a Absent: n/a Published: 4-23-15