

**106-O-13**

**AN ORDINANCE**

**Amending Title 7 of the City Code,  
Relating to Sidewalks in the City of Evanston**

**WHEREAS**, Article VII, § 6 of the Illinois Constitution sets forth the powers of home rule units of government, and the City of Evanston is a home rule unit of government. Namely, a home rule unit may:

... exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals, and welfare; to license; to tax; and to incur debt.

; and

**WHEREAS**, the powers of a home rule unit such as the City are to be construed liberally pursuant to Article VII, § 6(m) of the Illinois Constitution, and the City's powers as a home rule authority are: "...to be given the broadest powers possible" *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992). A city's power to regulate and license for the protection of public health and safety is drawn directly from the Constitution, and any such power may only be expressly limited by the General Assembly. Article VII, § 6(i) of the Illinois Constitution; 131 Ill.2d at 230; and

**WHEREAS**, the expansive grant of the home rule mandate in Article VII of the Illinois Constitution is: "broad and imprecise in order to allow for great flexibility..." *City of Evanston v. Create, Inc.*, 85 Ill.2d 101 (1981)(Evanston's broadly construed home rule powers confirmed that Evanston's residential landlord tenant ordinance was constitutional). Indeed, the Supreme Court opined:

The city of Evanston is a densely populated and highly urbanized community... In accordance with the goals attempted to be achieved by the creation of home rule, the local governing body can create an ordinance specifically suited for the unique needs of its residents and is keenly and uniquely aware of the needs of the community it serves.

*Id.* at 113; and

**WHEREAS**, statutes are presumed constitutional and the burden of rebutting that presumption is on the party challenging the validity of the statute to clearly demonstrate a constitutional violation. *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008); and

**WHEREAS**, a court has a duty to uphold the constitutionality of a statute/ordinance when reasonably possible, and if a statute's/ordinance's construction is doubtful, the court will resolve the doubt in favor the statute's/ordinance's validity. *Id.* citing to *People ex rel. Sherman v. Cryns*, 203 Ill.2d 264, 291 (2003); and

**WHEREAS**, the Illinois Supreme Court held that “[i]f a subject pertains to local government and affairs, and the [Illinois] legislature has not expressly preempted home rule, municipalities may exercise their power”. *Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 988 N.E.2d 75, 82-83 (2013), citing *City of Chicago v. StubHub, Inc.*, 979 N.E.2d 844 (2011); and

**WHEREAS**, if the General Assembly has enacted legislation regarding local government affairs without expressly preempting home rule, “home rule units ‘may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State’s exercise to be exclusive’”. *Palm*, *supra*, at 83, citing Illinois Constitution 1970, Art. VII, § 6(i)); and

**WHEREAS**, the City has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and that protect the public health, safety, and welfare of its citizens; and

**WHEREAS**, the Local Government and Governmental Employees Tort Immunity Act, 745 ILCS 10/3-105 provides in pertinent part:

§ 3-105. (a) Neither a local public entity nor a public employee is liable for an injury caused by the effect of weather conditions as such on the use of streets, highways, alleys, sidewalks or other public ways, or places, or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing. For the purpose of this section, the effect of weather conditions as such includes but is not limited to the effect of wind, rain, flood, hail, ice or snow but does not include physical damage to or deterioration of streets, highways, alleys, sidewalks, or other public ways or place or the ways adjoining any of the foregoing, or the signals, signs, markings, traffic or pedestrian control devices, equipment or structures on or near any of the foregoing or the ways adjoining any of the foregoing resulting from weather conditions.

745 ILCS 10/3-105; and

**WHEREAS**, the Illinois Supreme Court specifically held that:

..we recognize the dangers posed by natural accumulations of snow and ice. The absence of a duty to remove them "does not rest upon the notion that the conditions presented by such accumulations are safe. To the contrary, the hazards presented have always been acknowledged, but the imposition of an obligation to remedy those conditions would be so unreasonable and impractical as to negate the imposition of a legal duty to do so.

*Krywin v. Chicago Transit Authority*, 238 Ill.2d 215, 938 N.E.2d 440 Ill., 2010; and

**WHEREAS**, Illinois courts recognize that governmental units are not obligated to remove snow and ice accumulating from natural conditions where accumulation covers a large geographical area and constitutes a hazard generally known to the public; and

**WHEREAS**, the Illinois Supreme Court established long ago that it is unreasonable to expect a city to expend the resources and labor necessary to keep streets and other public ways continuously safe from ice and snow during the winter. *Graham v. City of Chicago*, 346 Ill.638 (1931); and

**WHEREAS**, cities are not liable for injuries caused by natural accumulations of ice and snow on public property. *Moore v. Chicago Park District*, 951 N.E.2d 1194, (1<sup>st</sup> Dist. 2011); and

**WHEREAS**, the City of Evanston is 7.8 square miles, contains 274 miles of sidewalk, that for each mile of sidewalk there are approximately 1,000 sidewalk panels, that there are 41.5 miles of paved alleys and 28.25 miles of unpaved alleys in the City of Evanston, and

**WHEREAS**, the legislative intent and judgment of the City of Evanston, as expressed in this Ordinance amending Title 7 of the City Code, is to state that private property owners are responsible for removing natural accumulations of snow and ice on public sidewalks adjacent to their property, such expression which is controlling; and

**WHEREAS**, due to the hundreds of miles of streets and sidewalks in the City of Evanston, it is fiscally impracticable for the City to shovel, clear, salt and clear natural accumulations of snow and ice on all sidewalks; and

**WHEREAS**, Illinois courts recognize that a City may only be liable for conditions relative to its property only if it is first established that a City had actual or constructive notice of an unreasonably unsafe condition. *Zameer v. City of Chicago*, 2013 WL 3794172 (1<sup>st</sup> Dist. App. 2013); *Brzinski v. Northeast Illinois Commuter R.R. Corp.*, 892 N.E.2d 1142 (2008); and

**WHEREAS**, due to the hundreds of miles of streets and sidewalks in the City of Evanston, it is fiscally impracticable for the City to have a property inspection/replacement/repair program for all sidewalks, curb cuts and other areas of City property; and

**WHEREAS**, the City Council considered and adopted this Ordinance pursuant to its home rule, regulatory, and police powers, and, following its deliberations, adopted this Ordinance that is rationally related to legitimate government purposes; and

**WHEREAS**, it is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid, see *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747; and

**WHEREAS**, the language of the Local Government and Governmental Employees Tort Immunity Act, sections 10/2-103, 10/2-105, are incorporated via reference as if fully set forth herein; and

**WHEREAS**, under the separation-of-powers doctrine, courts must respect units of local government, such that the City Council's mandate in adopting this ordinance is entitled to high deference. See *Board of Education of Dolton School District 149 v. Miller*, 349 Ill.App.3d 806 (1<sup>st</sup> Dist. 2004); *Moore v. Grafton Township*, 2011 WL 3524417 (2<sup>nd</sup> Dist. 2011); and

**WHEREAS**, all persons desiring to be heard on these matters were heard, legislative findings made, a legislative Record created, and this matter was considered by the City Council of Evanston.

**NOW BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

**SECTION 1:** That the foregoing recitals are found as fact and incorporated herein by reference.

**SECTION 2:** Title 7, Chapter 2, Section 9 of the Evanston City Code of 2012, as amended, is hereby amended and revised to read as follows:

7-2-9-3. SIDEWALKS TO BE CLEAR OF SNOW, ICE, DIRT AND WEEDS.

(A) *Snow and Ice* Whenever there is a snowfall with an accumulation of four inches (4") or more within any twenty four (24) span of time, every owner or occupant of a dwelling or other building, or proprietor or lessee of any enclosed lot or premises, shall clear a path at least thirty six inches wide (36") on the sidewalks in front of or adjoining such house, building or premises of snow and ice. The path shall be created and cleared within twenty four (24) hours of any four inch or greater (4") snowfall, and the path shall be maintained and clear of snow and ice. If the snow and ice is hardened and congealed such that removal is unduly burdensome or may damage the sidewalk, the sidewalk shall have sand, salt or similar deicing material spread upon its surface. The path shall be cleared and created to give access to abutting property and public ways. All landlords shall clear snow and ice from private sidewalks, walkways, stairs, driveways, parking spaces, parking lots, and similar areas on private property to permit access for tenants and invitees to such private property.

If an owner, lessee, proprietor or occupant neglects or refuses to clear such snow and/or ice, the City may clear such snow and/or ice or authorize some person to do the same on behalf of the City. The City, in its sole discretion, may issue notices of violation to an owner, lessee, proprietor, or occupant for violations of this section. If the City's agent clears snow and/or ice, a notice of lien of the cost and expense thereof incurred by the

City shall be recorded by filing a lien in the office of the Cook County Recorder of Deeds.

The notice of lien shall consist of a sworn statement setting out:

1. A description of the real estate sufficient for identification thereof;
2. The amount of money representing the cost and expense incurred or payable for the service; and
3. The date when the cost and expense was incurred by the City.

Such notice shall be filed within sixty (60) days after the cost and expense is incurred.

Upon payment of the cost and expense after the notice of lien was filed as provided herein, the lien shall be released by the City or person in whose name the lien was filed and the release shall be filed of record. Nothing in this section imposes upon the City a duty of care or create a cause of action against the City for personal injury or for damage to personal property due to natural accumulations of snow and ice.

(B) *Dirt and Weeds*. Every owner, lessee, proprietor or occupant under this section shall keep sidewalks clear and free of all obstructions at all times, including but not limited to, dirt and weeds.

(C) *Off-Street Parking Areas*. Every owner or occupant of any dwelling house or other residential building, or proprietor or lessee of any business, commercial or public premises within the City, shall clear the off-street parking spaces and access thereto for spaces required to be provided under zoning or other City codes for said premises of ice and snow within twenty four (24) hours of any four inch (4") or greater snowfall.

**SECTION 3:** Title 7, Chapter 3, Section 3 of the Evanston City Code of 2012, as amended, is hereby further amended and revised to read as follows:

### 7-3-3. ORDINARY CARE BY CITY

The City will exercise ordinary care to maintain its property under this section in a reasonably safe condition for the use in the exercise of ordinary care of people whom the City intends and permits to use the property in a manner in which and at such times it was reasonably foreseeable that it would be used. The City shall not be liable for any injury unless it is proven that it has actual or constructive notice of the existence of such a condition that is not reasonably safe in reasonably adequate time prior to an injury to have taken measures to remedy or protect against such condition.

**SECTION 4:** That this Ordinance 106-O-13 shall be in full force and effect from and after its passage and approval in the manner provided by law.

**SECTION 5:** That if any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable. The terms and provisions of this Chapter shall be liberally construed so as to effectuate the purposes set forth in this Ordinance. Each and every recital and legislative finding regarding this Chapter is to be construed and interpreted severally.

**SECTION 6:** That the foregoing findings and recitals contained herein, as well as the meeting minutes and legislative Record regarding this issue are found as fact and incorporated herein by reference. The findings, recitals, and legislative Record are declared to be prima facie evidence of the law of the City of Evanston, and shall be



received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

**SECTION 7:** That in accordance with the Tort Immunity Act, 745 ILCS 10/3-102(b) and 105(a), the City shall not be deemed to have constructive notice of weather conditions regarding sidewalks, because the City does not maintain an inspection/shoveling/clearing system to assess and address weather conditions regarding sidewalks, and weather conditions are by definition transitory conditions that may affect a sidewalk such that an inspection/shoveling/clearing system could not be operated by the City.

**SECTION 8:** That in accordance with the Tort Immunity Act, 745 ILCS 10/ et. seq., the City shall not be deemed to have constructive notice of conditions regarding sidewalks that are not open and obvious, because the City does not maintain an inspection system, nor employ a dedicated sidewalk inspector, to regularly assess, inspect, and register conditions regarding sidewalks.

**SECTION 9:** That this Ordinance 106-O-13 shall be in full force and effect as of December 1, 2013.

Introduced: October 14, 2013

Approved:


Adopted: October 28, 2013

October 30, 2013

  
Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

  
Rodney Greene, City Clerk

  
W. Grant Farrar, Corporation Counsel

