Community Development Committee

McHenry Municipal Center
333 S Green Street
McHenry, IL 60050

April 8, 2019

AGENDA

1. Call to Order

2. Public Comment: Any person wishing to address the Committee will be asked to identify themselves for the record and will be asked but are not required to provide their address. Public comment may be restricted to three-minutes for each individual speaker. Order and decorum shall be maintained at public meetings.

3. Motion to approve the February 11, 2019 Committee Development Meeting Report.

4. Taxi Cab License Discussion

5. Snow Shoveling Discussion

6. Department updates.

7. Motion to adjourn the meeting.
Community Development Committee
Meeting Minutes
February 11, 2019

Call to Order/Roll Call
Alderwoman Condon called the meeting to order at 7:05 p.m. Members present: Alderman Santi, Alderman Devine and Alderwoman Condon. Others present: Director Polerecky.

Public Comment
None.

Motion to approve the December 10, 2018 Community Development Meeting Minutes
Alderwoman Condon asked if any of the Committee Members had any questions or comments on the December 10, 2018 meeting minutes. The Committee Members offered no comments. There being no further discussion on the motion, A Motion was made by Alderman Santi and seconded by Alderman Devine to approve the December 10, 2018 Community Development Meeting Minutes as presented. Roll call: Vote: 3-ayes by unanimous voice vote. 0-nays, 0-abstained. Motion carried.

Discussion on 2019 Committee Topics
Director Polerecky commented on the topic of snow shoveling both residential and commercial sidewalks. He reported that this topic comes up frequently with respect to both types of zoning districts. He noted that several years ago the City amended the Municipal Code Chapter 21 “Streets and Sidewalks” as a portion of this section of the code conflicted with State Statutes.

There was some discussion with respect to the inconsistency of the business owners’ sidewalk snow removal efforts in the Downtown Commercial District. The Committee Members discussed possible suggesting to the Downtown Business Association to create a program in which the business owners remove the snow from the sidewalks that are adjacent to their businesses and the City would then clear the snow from the streets. The Committee Members suggested Business Owner, Mr. Dave Miller would be the best candidate to act as a liaison with the other business owners and implement a sidewalk snow removal program. The Committee will continue to discuss this matter in the spring.

Director Polerecky commented on the topic of a possible Municipal Code amendment with regards to Chapter 25, Article II Taxicab regulations. He reported that there had been some discussion regarding requiring background checks on individual taxi cab drivers. However, typically there is a tremendous amount of employee turnover in this type of industry which would make the background checks on each individual driver burdensome on Staff. In addition, there are only three taxicab companies operating in the City limits. However, there are many companies operating in surrounding communities which cannot be regulated by the City.
There was some discussion on other ride service companies such as Uber and Lyft, which are self-regulated. Director Polerecky commented on the fact that he is aware that Uber does conduct background checks on their drivers. This matter will be discussed in more detail at an upcoming Committee Meeting.

Director Polerecky commented on the topic of permitting backyard chickens in residential areas. He continued on to report that the Committee had discussed this topic in the past and at that time the decision was made not to bring a code amendment to the full City Council. However, the Committee was open to revisiting the topic in three years, which would be sometime this year.

Director Polerecky commented on the fact that chickens are loud, dirty and smell. Which could be problematic in high density residential areas. This matter will discuss in length at an upcoming Community Development Committee Meeting.

Director Polerecky commented on the topic of adopting a Vacant Structure Ordinance. He reported that many communities have done so to encourage property owners of both commercial and residential properties to fill their vacant buildings. In addition, the Ordinance would allow the City to inspect the vacant properties this action would mitigate any potential code violations such as fire suppression systems and other hazardous building related issues.

Director Polerecky commented on the codification process which will be instrumental in singling out contradictions with State Statutes and out dated building code and fee references.

Director Polerecky reported that he is working on drafting a Request for Proposal with respect to the Capital Development Fee Schedule. He noted that the fees have not been professionally reviewed since 2005.

Director Polerecky asked the Committee Members to forward him any other topics that they wished to discuss in an upcoming Committee meeting.

**Department Updates**
Director Polerecky provided the Committee Members with an update on the Legend Lakes Subdivision. He reported that they had applied for and received three single family home building permits and broke ground on two model homes.

Director Polerecky provided the Committee Members with an update on the Oaks of Irish Prairie Subdivision. He reported that they had applied for and received eighteen building permits. He noted that both of these developments continue to sell homes due to the recent reductions in fees.
Director Polerecky reported that as of December 31st the Department had completed 106 inspections and 482 code compliance tasks. He noted that this winter season the department’s activities has not slow down due to inclement weather. He anticipates that the spring and summer seasons will be very busy.

There was some discussion with respect to Staffing levels. Director Polerecky commented on the recent change with regards to how Staff manages grass mowing violations. He reported that by Staff simply knocking on property owners’ doors instead of sending letters and going through the labor intensive lien process has freed up Staff time. In addition, Director Polerecky reported that he has some thoughts on creative Staffing initiatives.

Director Polerecky commented on the fact that he believes in the near future Patriot Estates Developer will be requesting a bond reduction for a portion of their development commonly referred to as Patriot Lakes.

Director Polerecky reported that he along with Director Hobson has been working with the Oaks at Irish Prairie’s developer drafting a concept park plan. However, the park would be owned by the HOA not the City.

Director Polerecky reported that Starbucks has now begun renovations on what was once the Twisted Burger.

Director Polerecky commented on the renovations to the Watertower Marina. He reported that they have address IDNR and the Army Corps of Engineers concerns. In addition, they have constructed the piers and will be installing them as weather permits. He continued on to report that the boat slips will be ready in time for this year’s boating season. However, they are still contemplating the scope of the renovation design due to the cost of a sprinkler system.

Director Polerecky reported that Aldi’s grand opening is scheduled for Thursday, February 14th. The remodeled store is larger and has state-of-the-art equipment.

Director Polerecky reported that the department is operating smoothly and Staff has been working on the State of the City address, codification and the RFP for the replacement of the rooftop unit number four located at the municipal center.

Director Polerecky along with the Committee Members discussed the Old Bridge Tavern’s renovation efforts.

There was a brief discussion with respect to an incident that happen with American Vactor LLC.
Motion to adjourn the meeting

There being no further public business to discuss, a Motion was made by Alderman Santi and seconded by Alderman Devine to adjourn from the public meeting at 7:55 p.m. Roll call: Vote: 3-ayes by unanimous voice vote. 0-nays, 0- abstained. Motion carried.

Respectfully submitted,

Debra Meadows

Approved this______ day of __________, 2019

________________________________________
Alderwoman Condon
Community Development Committee Agenda Supplement

DATE: April 8, 2019

TO: Community Development Committee

FROM: Ross Polerecky, Director of Community Development

RE: Taxi Cab Licensing

Chapter 25 in the municipal code details regulations required in order to operate a vehicle for hire within the city of McHenry. The purpose of this agenda supplement is to familiarize the committee with the ordinance, identify some of the challenges associated with the current ordinance and receive direction from the committee on how to proceed. Included in this agenda supplement is the current ordinance along with the Illinois Taxi Safety Act. The McHenry police department has volunteered to be present at this meeting to help answer any question relating to complaints regarding taxi cab companies.

Some of the struggles of this ordinance include:

- Enforcement of ride share programs like Uber and Lyft.
- Enforcement of taxi cab companies not located within the City of McHenry but that do drop off and pickup in the City of McHenry
- Large turnaround of employed drivers
- Fair enforcement

A quick search of surrounding communities shows that most communities have ordinances that mirror the city of McHenry’s ordinance however these communities struggle with the same items McHenry is facing. A query of complaints relating to our ordinance show that the City has little or no complaints relating to the operation of taxi cabs within the city, all complaints found revolve
around patrons utilizing a cab company not paying their fare, this is not directly related to licensing taxi cab companies.

The current ordinance only allows five taxi cab companies to be licensed in the city, over the last ten years no more than three companies a year have registered with the city. It is the opinion of staff that due to more people using ride share companies, the limited number of registered cab companies and the lack of complaints filed against cab companies that this ordinance be removed from the municipal code and allow cab companies to operate in the city of McHenry without a licensing requirement.
VEHICLES
(625 ILCS 55/1)
Sec. 1. Short title. This Act may be cited as the Taxi Safety Act of 2007.
(Source: P.A. 95-598, eff. 6-1-08.)

(625 ILCS 55/5)
Sec. 5. Requirements for the operation of taxicabs.
(a) The taxi driver's picture, the taxi driver's license or registration number, and the taxicab medallion number or an exterior identification number must be posted in a visible location in each cab.
(b) There must be posted in a visible location in each taxicab a telephone number for a passenger to call if the taxi driver is operating the taxicab in a reckless manner.
(c) If a taxi driver collides with a pedestrian while operating a taxicab, resulting in bodily injury, then any responding law enforcement officers must test the taxi driver for drug and alcohol use.
(Source: P.A. 95-598, eff. 6-1-08.)

(625 ILCS 55/15)
Sec. 15. Taxi safety reporting. In counties in which vehicle citation records are not readily available to the public, the clerk of the circuit court shall furnish a list of all moving violations involving a taxi or an individual licensed or registered as a taxi driver upon the request of a unit of government that licenses, registers, or otherwise regulates taxi drivers.
(Source: P.A. 97-1062, eff. 1-1-13.)

(625 ILCS 55/20)
Sec. 20. Home rule. A home rule unit may not regulate the operation of taxicabs in a manner that is less restrictive than the regulation by the State of the operation of taxicabs under this Act. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.
(Source: P.A. 95-598, eff. 6-1-08.)
ARTICLE II. TAXICABS

Sec. 25-16. Defined.
The term "taxicab" as used in this Article shall mean and include any vehicle used to carry passengers for hire but not operating on a fixed route and shall also include limousine service.

Sec. 25-17. License required; application.
It shall be unlawful to engage in the business of operating a taxicab in the City without first having secured a license therefore. Applications for such licenses shall be made in writing to the Clerk, and shall state thereon the name of the applicant, the intended place of business and the number of cabs to be operated.

Sec. 25-18. Number of licenses.
There shall be no more than five taxicab licenses in the City. No person or corporation shall be issued more than one license, nor shall a license be issued unless the licensee has taxicabs in service. (MC-96-658)

Sec. 25-19. Character of applicant.
No taxicab license shall be issued to or be held by any person who is not a person of good character or who has been convicted of a felony; nor shall such license be issued to or held by any corporation if any officer thereof would be ineligible for a license under the foregoing conditions.

Sec. 25-20. Fee established; payment.
The annual fee payable in advance for taxicab licenses shall be $100.00 for each cab company or owner plus $20.00 for each taxicab operated. All such fees shall be paid to the Clerk at the time application is made.

Sec. 25-21. Return of fee on license denial.
In the event the license applied for has been denied, the fee shall be returned to the applicant.

Sec. 25-22. Deposit of fee.
If the license is granted, then the fee shall be deposited in the general corporate fund or such other fund as shall have been designated by the Council by proper action.

Sec. 25-23. Fee in addition to other fees.
The fee required by this Article shall be in addition to the motor vehicle license fee and all other fees required by ordinance. (MC-89-477)
Sec. 25-24. Notice, fee when vehicles added.  
Whenever the number of cabs operated shall be increased during the license year the licensee shall notify the Clerk of such change and shall pay the additional fee to the Clerk.

Sec. 25-25. Certificate of License required.  
The Clerk shall issue certificates of license for the number of cabs covered by each license.

Sec. 25-26. Display of Certificates of License.  
The certificates of license shall be displayed in a prominent place on each taxicab while it is in use.

Sec. 25-26.1. Term of license.  
Licenses to engage in the business of operating a taxicab within the City shall be the same as the fiscal year of the City (May 1 to April 30).

Sec. 25-27. Replacement of vehicles.  
If a taxicab is withdrawn from service and another taxicab replaces the one withdrawn, the licensee shall notify the Clerk who shall issue a certificate of license for such replacement taxicab without additional charge to the licensee.

Sec. 25-28. Notice of vehicle identification number, state registration number.  
The licensee shall notify the Clerk of the vehicle identification number and state registration number of each cab operated and of the corresponding City vehicle sticker number.

Sec. 25-29. RESERVED. (MC-96-658)

Sec. 25-30. Requirements for vehicles,

(a) No taxicab shall be operated unless it bears a state license duly issued; and no such cab shall be operated unless it is equipped with proper brakes, lights, tires, horn, muffler, rear vision mirror, and windshield wiper in good condition.

(b) No taxicab shall be operated unless it has passed semi-annual inspection and examination by as certified inspection agency. Following said semi-annual inspection, certification of safety shall be provided to the City Clerk and shall be so noted on the certificate of license when issued. (MC-96-658)

(c) If the inspection/examination shows the taxicab is not in a safe mechanical condition, it shall not be operated on the streets of the City until it has been repaired, submitted to a retest at an approved testing station and a current Certificate of Safety is issued.

(d) At the time of application for a City license, a copy of the Certificate of Safety then in effect shall be filed with the City Clerk. No City license shall be issued without the filing of the copy of the Certificate of Safety. (MC-96-658)
Sec. 25-31. Marking of vehicles.
Each taxicab, except limousines, while operated, shall have on each side, in letters readable from a distance of twenty feet, the name of the licensee operating it. If more than one cab is operated by a licensee each cab shall be designated by a different number, and such number also shall so appear on each side of such cab.

Sec. 25-32. Drivers to be licensed.
No person shall drive a taxicab unless he shall have secured a license therefor, as provided by the Statutes of the State of Illinois. No person shall drive a taxicab until he has exhibited such license to the Chief of Police or his designee who will issue a certificate that the applicant has complied with the provisions of this Article.

Sec. 25-33. Conduct of drivers.
It shall be unlawful for any driver of a taxicab while on duty to drink any intoxicating liquor, or to use any profane or obscene language, to shout or call to prospective passengers, or to disturb the peace in any way.

Sec. 25-34. List of drivers required.
The licensee shall submit a list of drivers to the City Clerk semi-annually.

Sec. 25-35. Bond or insurance required.
No taxicab shall be operated unless it is covered by a bond or public liability policy as required by statute.

Sec. 25-36. Obedience to traffic rules.*
It shall be the duty of every driver of a taxicab to obey all traffic rules established by statute or ordinance.

Sec. 25-37. Use in perpetration of crime.
It shall be unlawful to knowingly permit any taxicab to be used in the perpetration of a crime or misdemeanor.

Sec. 25-38. Duty to accept passengers.
It shall be the duty of the driver of any taxicab to accept as a passenger any person who seeks to so use the taxicab, provided such person is not intoxicated and conducts himself in an orderly manner. No person shall be admitted to a taxicab occupied by a passenger without the consent of the passenger.

Sec. 25-39. Route to be direct.
The driver shall take his passenger to his destination by the most direct available route from the place where the passenger enters the cab.

* Cross Reference - Traffic regulations generally, Ch. 13.
Community Development Committee
Agenda Supplement

DATE: April 8, 2019

TO: Community Development Committee

FROM: Ross Polerecky, Director of Community Development

RE: Snow Shoveling Ordinance Discussion

Each year as winter falls upon us the topic of snow shoveling comes up. The Community Development Committee has asked that this discussion be brought back to the committee for a review or further discussion. Included in this packet is a history of the past nine years that includes each CDC discussion and the minutes associated with those meetings. In brief, the City Council voted to eliminate a snow shoveling ordinance in August of 2013. Since 2013 the Community Development Department has handled snow complaints on an educational basis, a brochure explaining the benefits of snow shoveling was created and is distributed to property owners in areas of concern (attached). Over the years the largest hurdle was how to handle the liability of requiring someone to shovel a public right of way in front of their property. There is a distinct difference between residential and commercial properties. In the attached documents it is explained, with a case study, the differences between requiring snow shoveling on residential properties vs commercial properties. In brief a business owner may be liable for someone that gets hurt on their property, a residential property owner is protected by tort immunity. A brief search of surrounding community’s shows that most communities do have an ordinance requiring snow shoveling, these communities include:

- Barrington
- Fox Lake
- West Dundee
- Richmond
- Crystal Lake
Cary

Other villages such as Woodstock currently handle snow shoveling like the City of McHenry and strongly encourage it without an ordinance on the books.

Complaints:
While the city does not track snow shoveling complaints any longer a discussion with office staff has determined that most of the complaints for snow shoveling in residential areas revolves around schools and bus stop locations. In commercial areas most of the complaints are in the North Richmond Road area and the three downtown locations. During the winter of 2018 office staff said they received between 15-20 calls in regards to non-shoveled sidewalks.

Due to the legal nature of this topic if the committee would like to have a further discussion on reinstating the snow shoveling ordinance it is recommended that this topic be forwarded to the full council and be placed on the agenda as a discussion item, this will allow for the city attorney to handle any legal related questions.
SAFETY TIPS

Children should NEVER play in snow drifts, windrow of snow, or piles close to any street or driveway. An accident may be unavoidable if a vehicle can’t stop.

If sidewalks are not cleared by the adjoining property owner, school children and pedestrians may occasionally walk along the edge of the street. Motorists are reminded to watch for pedestrians walking in the street. Give them the right of way, and slow down when nearing any pedestrian or school children.

Allow additional space and time when approaching stop signs and crosswalks. Please be aware of the road conditions, and slow down. Pedestrians are reminded to walk in the opposite direction of traffic.

Always take the time to completely clear snow and ice from all vehicle windows. Remember to include your headlights and brake/tailights so other drivers are aware when you approach or slow down. By not doing so, you risk not only yourself, but the lives of your passengers, fellow motorists, and unwary pedestrians.

FIRE HYDRANTS

PLEASE ASSIST THE FIRE DEPARTMENT BY CLEARING SNOW FROM ANY FIRE HYDRANT NEAR YOUR HOME TO MAINTAIN ACCESS TO THE WATER SUPPLY

SIDEWALK SNOW REMOVAL

The City encourages all residents to remove accumulations of snow and ice from public sidewalks adjacent to their homes and property within 24-hours after the accumulation of such snow and ice began.

Always do your best to keep sidewalks clean and free from debris and litter at all times.

The cleaning of snow from the sidewalks makes it possible for school children and all residents to move safely around the neighborhood and community.
SNOW REMOVAL
HINTS AND TIPS

Do not push or blow snow into the street. This practice leaves a windrow of snow in a travel lane which is hazardous and illegal.

Do not push snow across the street onto the parkway in front of your neighbor's residence. Place snow on the parkway in front of your own home.

When removing snow from your driveway approach, please push the snow so that it is downstream (with the flow of traffic) of your driveway when the plows pass.

Dress properly, always layer your clothing, don't get over heated and take frequent breaks while shoveling snow.

If you hire a contractor to assist with snow removal, please tell them to avoid leaving snow in the street, pushing snow across the street or around a fire hydrant.

CLEARING SNOW FOR MAIL

Clearing snow from the area in front of your mailbox is difficult for the City's large plow trucks. Residents are asked to help by shoveling out the remaining snow so that mail deliveries can continue.

If a mailbox is inadvertently damaged by the city's snowplowing efforts, the City will replace the mailbox with a standard box as soon as snowplowing efforts for that storm are completed.

If a post has been broken by the City during snow removal operations a temporary mailbox will be installed until weather conditions allow for permanent replacement.

Please report broken mailboxes and /posts to Public Works immediately. (815-363-2186)

ON STREET PARKING PROHIBITED

Please assist our employees during snow removal, and avoid being ticketed or towed, by obeying the no parking restrictions when it snows.

McHenry's parking ordinance does not allow parking between 2:00am and 6:00am.

In the event the City receives a snowfall of 3 inches or more, on-street parking is prohibited for residents until such time that streets are adequately cleared of the snow.

Your compliance with these regulations will significantly benefit the efforts of snowplow drivers. In addition, you will avoid the risk of receiving a ticket or your vehicle being towed.

Please note that during an average snowfall, City trucks need to make more than one pass down the street in order to clear snow all the way to the curb. Even though the snow stops falling and the plow has been down the street, please refrain from parking on the street until a reasonable period of time has passed.
COMMITTEE SUPPLEMENT

TO: Community Development Committee

FROM: Douglas Martin, Deputy City Administrator

FOR: August 24, 2010, Community Development Committee Meeting

RE: Snow Removal on Public Sidewalks

Background. Several months ago at a Committee meeting during public input there was an inquiry and clarification requested from two local citizens regarding the law on snow removal particularly in commercial areas of the city. Currently, the municipal code includes the following language in Chapter 21, Streets and Sidewalks.

Sec. 21-18. Duty to remove deposits on sidewalks. The owners or occupants of all property facing on or abutting sidewalks, shall remove from any existing sidewalk abutting their property, all accumulations of snow and ice within 24 hours after the accumulation of such snow and ice began, and shall keep the said abutting or adjacent sidewalks clean and free from debris and litter at all times.

Analysis. Although this language was adopted many years ago with seemingly good intentions, due to the volume of complaints and amount of staff time required for this one issue, staff does not consistently enforce this provision of the municipal code. Snow removal across the board has become less common over the years, particularly on public sidewalks, throughout the city.

If a complaint is received, regardless whether it’s in a commercial, residential or other area, staff will contact the violator of the ordinance, inform them of the concern and ask them to remove the snow from the sidewalk adjacent to their property. Staff has even sent multiple letters to the same property owners, as well as stop by their place of business or residence, encouraging the removal of snow; however, staff does not believe this ordinance could be equitably applied and enforced throughout the city without a significant increase in labor dedicated solely to this issue.

Numerous residents and business owners throughout town do not consistently remove snow from their adjacent sidewalk. This is one of those things we assumed residents and business owners would do but is not the case and over time the number of people who violate this provision has literally increased exponentially. In addition, non-residential property owners do not receive the same protection under current state law, which in turn acts as another disincentive to comply.
Attached is the state law, Civil Immunities Snow and Ice Removal Act, regarding the removal of liability for an owner, lessor, occupant or other person in charge of residential property who removes snow or ice from a sidewalk abutting their property. Currently state law does not apply this protection to commercial property owners.

In addition, attached is an excerpt from the same chapter in the state statutes, which addresses local government and governmental employees’ tort immunity. On page two the last paragraph addresses liability for a local public entity and public employees if an injury occurs resulting from weather conditions along public rights-of-way.

**Recommendation.** Because the existing ordinance provision is not consistently enforced staff recommends deleting Section 21-18 from the City municipal code.
Illinois Compiled Statutes

Information maintained by the Legislative Reference Bureau
Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as Public Acts soon after they become law. For information concerning the relationship between statutes and Public Acts, refer to the Guide.

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes indicates that a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

CIVIL IMMUNITIES
(745 ILCS 75/) Snow and Ice Removal Act.

(745 ILCS 75/0.01) (from Ch. 70, par. 200)
Sec. 0.01. Short title. This Act may be cited as the Snow and Ice Removal Act.
(Source: P.A. 86-1324.)

(745 ILCS 75/1) (from Ch. 70, par. 201)
Sec. 1. It is declared to be the public policy of this State that owners and others residing in residential units be encouraged to clean the sidewalks abutting their residences of snow and ice. The General Assembly, therefore, determines that it is undesirable for any person to be found liable for damages due to his or her efforts in the removal of snow or ice from such sidewalks, except for acts which amount to clear wrongdoing, as described in Section 2 of this Act.
(Source: P.A. 81-591.)

(745 ILCS 75/2) (from Ch. 70, par. 202)
Sec. 2. Any owner, lessee, occupant or other person in charge of any residential property, or any agent of or other person engaged by any such party, who removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk resulting from his or her acts or omissions unless the alleged misconduct was willful or wanton.
(Source: P.A. 81-591.)


7/20/2010
CIVIL IMMUNITIES
(745 ILCS 10/) Local Governmental and Governmental Employees Tort Immunity Act.

(745 ILCS 10/Art. III heading)
ARTICLE III--IMMUNITY FROM LIABILITY FOR INJURY OCCURRING IN THE USE OF PUBLIC PROPERTY

(745 ILCS 10/3-101) (from Ch. 85, par. 3-101)
Sec. 3-101. As used in this Article unless the context otherwise requires "property of a local public entity" and "public property" mean real or personal property owned or leased by a local public entity, but do not include easements, encroachments and other property that are located on its property but that it does not own, possess or lease.
(Source: Laws 1965, p. 3983.)

(745 ILCS 10/3-102) (from Ch. 85, par. 3-102)
Sec. 3-102. (a) Except as otherwise provided in this Article, a local public entity has the duty to exercise ordinary care to maintain its property in a reasonably safe condition for the use in the exercise of ordinary care of people whom the entity intended and permitted to use the property in a manner in which and at such times as it was reasonably foreseeable that it would be used, and shall not be liable for 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.

(b) A public entity does not have constructive notice of a condition of its property that is not reasonably safe within the meaning of Section 3-102(a) if it establishes either:
(1) The existence of the condition and its character of not being reasonably safe would not have been discovered by an inspection system that was reasonably adequate considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property; or
(2) The public entity maintained and operated such an inspection system with due care and did not discover the condition.
(Source: P.A. 84-1431.)

(745 ILCS 10/3-103) (from Ch. 85, par. 3-103)
Sec. 3-103. (a) A local public entity is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public
property where the plan or design has been approved in advance of the construction or improvement by the legislative body of such entity or by some other body or employee exercising discretionary authority to give such approval or where such plan or design is prepared in conformity with standards previously so approved. The local public entity is liable, however, if after the execution of such plan or design it appears from its use that it has created a condition that it is not reasonably safe.

(b) A public employee is not liable under this Article for an injury caused by the adoption of a plan or design of a construction of, or an improvement to public property.
(Source: Laws 1965, p. 2983.)

(745 ILCS 10/3-104) (from Ch. 85, par. 3-104)

Sec. 3-104. Neither a local public entity nor a public employee is liable under this Act for an injury caused by the failure to initially provide regulatory traffic control devices, stop signs, yield right-of-way signs, speed restriction signs, distinctive roadway markings or any other traffic regulating or warning sign, device or marking, signs, overhead lights, traffic separating or restraining devices or barriers.
(Source: P.A. 84-1431.)

(745 ILCS 10/3-105) (from Ch. 85, par. 3-105)

Sec. 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.
COMMUNITY DEVELOPMENT COMMITTEE MEETING
Tuesday, August 24, 2010
Aldermen’s Conference Room, 7 p.m.

In Attendance: Chairman Alderman Condon, Alderman Santi, Alderman Peterson.

Staff in Attendance: Deputy City Administrator Martin, Deputy Clerk Kunzer

Also in Attendance:
Dave Miller, 1208 N Riverside Drive, McHenry
Debra McClaughery, 5320 W Highland Drive, McHenry.

Chairman Alderman Condon called the meeting to order at 7 p.m.

Public Input Session
There was no one in attendance who wished to comment during the Public Input Session.

Discussion: Snow Removal
Deputy City Administrator Martin stated the City’s Municipal Code currently requires owners or occupants of all property facing on or abutting sidewalks, to remove from any existing sidewalk abutting their property all accumulations of snow and ice within 24 hours after the accumulation began. He noted the ordinance has not been enforced due to the large job it would entail. There are numerous businesses and residents who do not comply with the ordinance. In addition, residential property owners are protected by State Statute from liability after shoveling their public walk. Commercial property owners have no such protection. The City also faces liability once the snow has been shoveled as it is not protected by Statute.

Deputy City Administrator Martin noted in addition to the liability issue, enforcement is a major problem. He suggested if City Staff wrote all offenders a citation, Staff would be inundated with administrative paperwork. He noted other communities face the same issue, although local government has tort immunity in many cases.

Deputy City Administrator Martin stated with regard to the downtown area, many business owners do not shovel the public walks. He suggested one possible means of addressing the issue is to organize the downtown areas to have someone clear the walks and have the business owners pay them to have it done. But, again, there would be liability for the person shoveling the walks. It also appears to be inequitable to enforce the ordinance with regard to residential sidewalks (whose owners are exempt from liability), but to avoid enforcing it in the commercial district (whose owners are not exempt from liability).

Following much discussion and debate, Staff is of the opinion the section requiring the removal of snow and ice deposits from City walks be deleted from the Municipal Code as it cannot be equitably enforced.
Chairman Condon inquired why the State only provides residential property owners with an exemption from liability following shoveling of the public walks.

Ms. McClaughery stated it is a State Statute that business property owners are now exempt from liability. Both Chairman Condon and Deputy City Administrator Martin responded the revision to the Statute exempting commercial property owners from liability has not been enacted yet.

Alderman Peterson stated his office is located in Whispering Point Center and the Center’s maintenance association provides for the removal of snow from sidewalks within the Center, but not from the sidewalks along Hanley and Crystal Lake Road. Snow is not removed from those walks. He noted many times kids have to walk in the street to and from school at West Campus because the sidewalks have not been cleared. He noted if a third party business owner clears the walks, the liability would be theirs.

Mr. Miller stated that what Alderman Peterson is suggesting is that it is up to the property owner to get the walks cleared.

Chairman Condon stated she understands the City has an enforcement issue. She suggested it would be a nightmare if the City chooses to enforce the ordinance only in certain areas that it believes need to be cleared, i.e. Green Street, Riverside, Drive, Main Street, etc.

Alderman Santi stated this issue is like opening a can of worms. Is it the property owner or the business owners leasing the space who should be responsible for making sure the walk is cleared? He noted in many cases businesses clean only their lots and internal walkways, but do not clear the public walks abutting City streets. Alderman Santi stated he would like to have something in the ordinance requiring cleared sidewalks, but it may be too huge of an obstacle to overcome. It is a difficult issue. The City should not be playing favorites as to which businesses or residents should be required to clear the public walks while others do not have to follow the ordinance. Alderman Santi noted there needs to be a resolution to the issue but he is not sure how it can be resolved.

Alderman Peterson suggested the Downtown Business Association should be able to handle the clearing of the downtown walkways. They should be able to work it out among themselves.

A lengthy discussion ensued regarding the issue of clearing the public walks and whether or not the ordinance should remain in the City’s Municipal Code. Alderman Peterson stated he would like to encourage residents and businesses to continue to clear the public walks by leaving the ordinance in place.

Mr. Miller inquired what happens when someone is injured when they have to walk in the roadway, such as Route 120, because sidewalks have not been cleared. Mr. Miller stated it is an ambiguous term. To state that it is not possible to equitably enforce the ordinance if the snow/ice removal requirement remains in place is not a solution to the problem. By keeping the ordinance on the books, it may encourage others to shovel snow from the walks. He further suggested by writing tickets the City could help the problem and it could eventually take care of itself. He
suggested the City increase the fine for noncompliance in order to make it worthwhile to have people follow the ordinance.

Ms. McGlaughery stated she belongs to RABA and for many years there have been businesses which do not want to participate in the organization. There are several that do not shovel their walks.

Mr. Miller noted he is extremely frustrated. If someone does not clear their walk and he falls he stated he would sue.

Ms. McGlaughery stated there was language included in her lease requiring her to shovel her walk. Mr. Miller stated it should be the tenant’s responsibility to clear the walkways.

Chairman Condon stated she does not disagree with the sentiments expressed. However, it is impossible to make people do the right thing. She expressed concern that nothing would happen unless the ordinance is somehow enforceable. She noted the City is at a barebones staffing level and logistically it would be impossible to enforce this ordinance.

Mr. Miller suggested a stiff fine be imposed and that the matter could go through the City’s new administrative adjudication process to be resolved. He noted if people find it impossible to move from store to store due to the impassibility of the walks, the City still lose sales tax revenue.

Alderman Peterson stated snow is an act of God and snow removal has become less common. He is not sure why this is true. He suggested it could be laziness, fear of a lawsuit – he is not sure. It comes down to a legal question – what can the City legally do to enforce the ordinance.

Chairman Condon inquired if Mr. Miller had contacted local legislators. Mr. Miller responded in the negative. Alderman Condon stated she would be more comfortable requiring enforcement if the State Statutes would indemnify commercial businesses as well as private homeowners. She suggested that might be something Mr. Miller would like to pursue.

Alderman Peterson reiterated he is not in favor of completely doing away with the ordinance requiring clearing of public walkways.

Alderman Santi inquired if there was any way to have an ordinance in place with teeth in it so that it could be enforced?

Chairman Condon suggested leaving the current ordinance in place for one year. If an unshoveled walk is brought to Staff’s attention, it should be tracked, with a notice, then a warning and finally a ticket being issued. She requested a log be maintained of all snow on sidewalk complaints received and include action taken with the ultimate resolution/action. She stated it is important to determine the amount of Staff time utilized in tracking the violations. In this way the committee would have additional information which could be used to evaluate the ordinance in one year’s time. She noted this would be a complaint-driven enforcement.
Chairman Condon requested a motion from the floor to direct Staff to enforce the current ordinance on a complaint-driven basis for one year subject to Staff maintaining a log of all complaints received including all follow-up action, with the matter to be reviewed next spring. The evaluation in the spring would include all Staff man-hours used to log and enforce the ordinance.

Motion by Santi, seconded by Peterson, to direct Staff to enforce the current snow removal from public walkways ordinance on a complaint-driven basis for one year subject to Staff maintaining a log of all complaints received including all follow-up action, with the matter to be reviewed next spring. The evaluation in the spring would include all Staff man-hours used to log and enforce the ordinance.

Voting Aye: Santi, Peterson, Condon.
Voting Nay: None.
Absent: None.
Motion carried.

**Continued Discussion: Drive-In Establishments**

Deputy City Administrator Martin noted at the last committee meeting discussion occurred regarding basic guidelines being established to assist in the review of drive-in facilities when they come before the City for consideration and approval. Following much discussion, the committee chose not to amend the Zoning Ordinance with regard to drive-in establishments. Instead, Staff was directed to create a handout which could be provided to businesses who were considering adding a drive-in facility to their establishment. Staff has prepared a proposed handout which is presented to the committee for consideration this evening.

Chairman Condon noted the guidelines did not include a provision for an escape lane and requested this be added. Alderman Santi concurred.

Alderman Santi inquired if there is a minimum legal turning radius required for emergency vehicles. Deputy City Administrator Martin responded noting the Fire District verifies the site plan is acceptable by using a wheel base diagram overlay on the site plan to ensure all of its vehicles would be able to maneuver on the site.

It was the consensus of the committee to approve the use of the proposed Drive-In Establishment Guidelines as prepared by Staff subject to the inclusion of a provision for an escape lane.

**Continued Discussion: Temporary Uses**

Deputy City Administrator Martin stated the committee at its May meeting discussed at length proposed amendments to the temporary use permit regulations in the City’s Zoning Ordinance. The committee directed Staff to create a more detailed temporary use permit application and bring it to the committee for consideration. Based on the committee's discussion, Staff created a new Temporary Use Permit Application Form and Regulations. Staff is seeking a referral to City Council for a recommendation to send this matter to the Planning and Zoning Commission for public hearing.
COMMITTEE SUPPLEMENT

TO: Community Development Committee

FROM: Douglas Martin Deputy City Administrator

FOR: January 22, 2013, Community Development Committee Meeting

RE: Snow and Ice Accumulation Removal

ATT: 1. Village of Lombard Press Release w/snow removal requirements
2. City of Urbana w/snow removal requirements
3. Community Development Committee Minutes dated March 16, 2010 and May 17, 2011

BACKGROUND. The topic of snow and ice removal was discussed at the March 16, 2010, October 26, 2010 and May 17, 2011 Community Development Committee meetings. The Committee directed staff to enforce the provisions of Sec. 21-18 of the McHenry Municipal Code by complaint only and keep a log of staff time associated with enforcement.

Chapter 21, Sec. 21-18. Duty to remove deposits on sidewalks states “The owners or occupants of all property facing on or abutting sidewalks, shall remove from any existing sidewalk abutting their property, all accumulations of snow and ice within 24 hours after the accumulation of such snow and ice began, and shall keep the said abutting or adjacent sidewalks clean and free from debris and litter at all times.

During the winter of 2011/2012 the City experienced:

- Five major snow events between December and February which generated a total of 12 complaints;
- From the 12 complaints 92 individual properties were identified as being in violation;
- Notification was made by personal visits or letters being sent to the 92 property owners;
A total of 347 tasks were completed and approximately 77 hours of staff time was consumed to identify the properties and investigate the violations, log the information, send notification/speak to property owner and conduct follow-up inspections.

ANALYSIS. If a complaint is received, regardless whether it's in a commercial, residential or other area, staff will contact the property owner, inform them of the concern and ask them to remove the snow from the sidewalk adjacent to their property. Staff has even sent multiple letters to the same property owners, as well as stop by their place of business or residence, encouraging the removal of snow. If a complaint is received about one property on a block notices are sent to all homes within the same block.

Numerous residents and business owners throughout town do not consistently remove snow from their adjacent sidewalk. This is one of those things we assumed residents and business owners would do but is not the case and over time the number of people who violate this provision has literally increased exponentially. In addition, non-residential property owners do not receive the same protection under current state law, which in turn acts as another disincentive to comply.

As discussed and directed by the Committee two years ago staff has taken a less enforcement-oriented approach to this issue and tried very hard to work with property owners. Moving forward staff believes to obtain compliance and maintain the integrity of this ordinance, violation notices and if necessary citations should be sent to those property owners which do not comply. Staff is seeking feedback from the Committee if this is the direction they would like to head. The alternative would be to delete this provision from the Municipal Code.

While some communities do have similar regulations (see attached) staff believes this provision is antiquated, cannot be equally enforced and thus should be removed from the Municipal Code. Staff has spent a lot of time working on this issue with property owners. Sometimes the issue is moot because the snow melts within 24 hours; however, there is a gray area determining when snow has partially melted or removed. If the Committee directs staff to continue with enforcement staff would like the ability to follow through with violation notices, citations and administrative adjudication otherwise it would not worthwhile the City to partially address the issue.

Staff is seeking direction from the Committee whether to completely enforce the removal of snow and ice from public sidewalks or alternatively delete the provision requiring property owners to remove snow and ice accumulation from public walks within 24 hours.
Posted on: November 20, 2012

Village of Lombard Reminds Residents, Business Owners of Snow & Ice on Public Sidewalk Ordinance

Lombard ordinance requires snow removal from public sidewalks adjacent to commercial properties.

Within 24 hours of the end of each snowstorm, public sidewalks (near the street) adjacent to commercial properties must have a path cleared to provide safe passage so pedestrians do not have to walk in the street. This is particularly important in areas of high pedestrian traffic including Main Street near Glenbard East, Downtown Lombard and along Roosevelt Road. Please get communications in place now so that the sidewalks near the street will be snow-free throughout the winter, recommends Joan Rogers, Code Enforcement Coordinator for the Village.

While the ordinance does not require snow removal from public sidewalks abutting residential properties, the same hazards exist. Some people have expressed a concern regarding liability involved in removing snow, stated Rogers, but the Illinois Snow and Ice Removal Act (745 ILCS 75/2) provides that anyone who “removes or attempts to remove snow or ice from sidewalks abutting the property shall not be liable for any personal injuries allegedly caused by the snowy or icy condition of the sidewalk.”

Those who have sump pumps draining toward the front yard are reminded to switch the drainage to the rear yard for the winter months to prevent icing of the sidewalks. Village code does require those having any surface water drainage mechanisms or conduits onto a sidewalk or street to take action to prevent icing.

Please help to keep the pedestrians of our community safe by keeping sidewalks clear of snow and ice. If you have any questions regarding snow or ice removal, please contact Code Enforcement at (630) 620-5749.
City of Urbana Sidewalk Snow Removal

The Urbana City Council passed an ordinance on December 5, 2011 which requires property owners within identified snow removal districts to clear the adjacent public sidewalk of snow and ice. Sidewalk clearance must occur within 24 hours of a declaration made by the Public Works Director. After a winter storm, notice that the sidewalk clearance requirements are in effect will be issued through local media outlets and on the City's website.

For more information, view the Frequently Asked Questions below, click on the links to the ordinance and maps, or call the Environmental Compliance Officer at Urbana Public Works (217.384.2416).

If you wish to employ a snow removal service for sidewalk snow clearance, please consult the local telephone directory.

Frequently Asked Questions

1. What is the purpose of this ordinance?

   The goal of this ordinance is to maintain safe, passable sidewalks for the public to travel upon, even following winter storms.

2. When is the ordinance effective?

   Enforcement of the ordinance will begin January 3, 2012.

3. What does the ordinance require me to do?

   Property owners are required to clear public sidewalks adjacent to all sides of their property of snow and ice. The ordinance requires that a 48" path be cleared for the full frontage of the property. For those property owners adjacent to an intersection or public crosswalk, a path must be cleared to the street. This requirement is effective after a winter storm event of 2" or greater of snow or a declared ice event.

4. How will I know when these requirements are effective?
The City's Public Works Director will make an official declaration and send it to all news media outlets for announcement. Citizens can also visit the City's website for announcements. Impacted property owners can also be added to an e-mail notice list by contacting the Urbana Public Works Department at 217.384.2342.

5. What if it takes multiple storms to reach the 2" threshold?

The Public Works Director will make the determination of when the official declaration will be made for property owners to begin clearing the adjacent sidewalks.

6. How much time will I have to shovel the snow or clear the ice, sleet or freezing rain?

You will have 24 hours to clear sidewalks after the public announcement by the Public Works Director.

7. Where am I expected to put the snow?

You are expected to store the snow on your property, if possible. Otherwise, snow may be placed in the parkway between the sidewalk and the street curb. Please bear in mind that streets with on-street parking still need access to vehicles and parking meters. Your help in ensuring access is appreciated. Depositing snow onto City streets is prohibited.

8. What if I can't clear off the snow, ice, sleet or freezing rain because it has become too hard?

The ordinance requires you to spread sand, salt or other abrasive material and make a reasonable effort to clear the walk.

9. Will the City of Urbana comply with this requirement?

Yes. The City of Urbana will clear all sidewalks adjacent to City-owned properties.

10. How much of the sidewalk do I need to clear?

You are required to clear the full width of the sidewalk, or 48 inches (4 feet), whichever is less in width. You must clear the entire length of your property. Property owners on corner lots are also required to shovel paths to the nearest crosswalks.
11. What if I am out of town when it snows or I am physically unable to shovel?

Property owners are expected to have arrangements in place to have the adjacent sidewalk cleared if they are unable to personally attend to the matter.

12. What if the snow plow pushes snow back onto the sidewalks?

Typically the declaration to clear sidewalks will be made near the completion of street plowing activities. However, the ordinance states that owners must maintain the sidewalk in a reasonably clear manner after the initial clearance.

13. Does the passage of this ordinance increase civil liability?

The weight of legal authority (including the Illinois Snow and Ice Removal Act 745 ILCS 75/1) indicates that the ordinance itself imposes no additional civil liability on individuals for shoveling snow. Like any legal question, there is no absolute answer that fits all circumstances.

14. What areas are covered by the three snow removal districts?

See the maps or ordinance.

15. Is there some way my neighbors and I can organize to clear an area?

Yes. Individual neighborhoods, streets, districts are free to contract for the removal system that best meets their needs. The City encourages this, however will not play a role in organizing such groups. Interested parties may contact the Public Works Department for a list of contractors or volunteers who are seeking to provide these services.

16. Do other communities have this requirement?

Yes, many cities in Illinois over 25,000 in population have similar requirements, as do cities in other Midwestern states.

17. What are the penalties?
If a person fails to clear snow, ice, sleet, or freezing rain, the City or its contractor will do it. After the City completes the work, the property owner will be billed for the City's cost, plus a fine and administrative costs. Fines start at $25 for a first offense and administrative fees are set at $55.

18. Will property owners be warned before the City clears the sidewalk?

The City will provide one warning per winter storm season to each property owner before clearing the sidewalk. A warning may come in the form of a personal visit, door hanger, or phone call. Such a warning gives the property owner an additional 24 hour before the City clears the sidewalk.

19. Who should people call with questions or to make a complaint?

Call the Environmental Compliance Officer at Urbana Public Works (217.384.2416) during regular business hours.
COMMUNITY DEVELOPMENT COMMITTEE MEETING
January 22, 2013

Discussion Regarding Snow and Ice Accumulation Removal

Deputy City Administrator Martin reiterated to the Committee that snow and ice removal was discussed at the March 16, 2010, October 26, 2010 and May 17, 2011 Community Development Committee meetings and staff was directed to enforce the provisions of Sec. 21-18 of the McHenry Municipal Code by complaint only and keep a log of staff time associated with enforcement.

During the winter of 2011/2012 the City experienced:

- Five major snow events between December and February which generated a total of 12 complaints;
- From the 12 complaints 92 individual properties were identified as being in violation;
- Notification was made by personal visits or letters being sent to the 92 property owners; and
- A total of 347 tasks were completed and approximately 77 hours of staff time was consumed to identify the properties and investigate the violations, log the information, send notification/speak to property owners and conduct follow-up inspections.

Deputy City Administrator Martin stated staff has taken a less enforcement-oriented approach to this issue as directed by the Committee two years ago and has tried very hard to work with property owners. The ordinance is hard to enforce due to timing of the complaints and temperature and weather variables on a daily basis. Enforcement also often requires a judgment call in determining when snow has partially melted or been removed and these issues can be a cause of questionable determination if enforcement is continued and violations go to court. It is staff's belief that to obtain compliance and maintain the integrity of the ordinance, violation notices and citations, if necessary, should be sent to those property owners which do not comply.

Staff is seeking direction from the Committee whether to completely enforce the removal of snow and ice from public sidewalks or alternatively delete the provision requiring property owners to remove snow and ice accumulation from public walks within 24 hours.
A brief discussion ensued. Chairman Alderman Condon opined there appears to be an unfair advantage since commercial property owners are not given civil immunity from liability for non-compliance with the state’s snow and ice removal act and residential property owners are. She stated she is not concerned with the staff time being used if the ordinance can actually be enforced, which is proving to be difficult to accomplish. Chairman Alderman Condon suggested the Committee recommend deleting the provision from the Municipal Code and use the State’s Snow and Ice Removal Act as a point of reference if complaint calls are received.

Alderman Peterson and Alderman Santi continued the discussion and expressed concern particularly in high traffic pedestrian districts such as the downtown business districts. It was suggested that a snow district might be established in these business areas and the business owners could unite and produce a plan for maintaining their sidewalks, possibly in cooperation with the McHenry Chamber of Commerce. Alderman Peterson and Alderman Santi agreed with Chairman Alderman Condon regarding the disparity in liability for non-compliance for commercial property owners as opposed to residential property owners.

In response to a question asked by Alderman Santi regarding what action will be taken and what response will be given to snow complaints if the provision is abolished, Deputy City Administrator Martin stated a letter could be mailed to the offending property owner notifying them of the Illinois Snow and Ice Removal Act and advising them of their responsibility to clean their sidewalks.

Motion by Peterson, seconded by Santi directing Staff to forward a recommendation to delete the provision for snow removal ordinance from the Municipal Code to full Council for consideration.

Aye: Condon, Santi, Peterson

Nay: None.

Absent: None.

Motion carried.
COMMITTEE SUPPLEMENT

TO: Community Development Committee
FROM: Douglas Martin Deputy City Administrator
FOR: June 11, 2013, Community Development Committee Meeting
RE: Snow and Ice Accumulation Removal

ATT:
1. January 22, 2013 Community Development Committee Minutes
2. Appellate Court Case
3. Snow and Ice Removal Act

BACKGROUND. On January 22 of this year the topic of snow and ice removal was discussed at the Community Development Committee. The Committee directed staff to forward a recommendation to delete the provision for snow and ice removal from the Municipal Code to the full Council for consideration (minutes attached). Since that meeting a local business owner, Dave Miller, brought the attached court case to staff’s attention.

ANALYSIS: The court case involves a plaintiff who files a negligence lawsuit following falling in the parking lot at a local gas station. Initially the trial court found the gas station 75% negligent and the plaintiff 25% negligent. The case subsequently went to the fourth district appellate court. The defendant’s argument was the snow and ice were a natural accumulation for which it had no duty to remove, warn or protect against. The appellate court agreed and stated: “To prove a claim of negligence, a ‘plaintiff must establish the existence of a duty, a breach of the duty, and an injury to the plaintiff was proximately caused by the breach.’” The court went on to state: “Although a property owner has no duty to remove natural accumulations, he ‘may be subject to liability if his voluntary undertaking to remove snow and ice is performed in a negligent manner.’”
A court case referenced in the brief stated: "it is unrealistic to expect property owners to keep all areas where people may walk clear from ice and snow at all times during the winter months." Finally the court stated "While defendant's removal and remediation of the snow may not have been perfect, the natural accumulation rule does not require perfection. Otherwise, property owners would be held to an onerous burden and would most likely find it more advantageous to forego snow-removal operations altogether. Because plaintiff's evidence failed to show an unnatural accumulation here, defendant could not be held liable." The trial court's judgment was reversed.

Staff spoke with Attorney McArdle about the case and he believes, in addition to its applicability on private property, this ruling could potentially impact public property. Below is the current City ordinance. Additionally, the Snow and Ice Removal Act is attached for the Committee's reference. The attached court case and the Snow and Ice Removal Act use similar language stating negligence can be found only if "the alleged misconduct was willful or wanton."

Chapter 21, Sec. 21-18. Duty to remove deposits on sidewalks states "The owners or occupants of all property facing on or abutting sidewalks, shall remove from any existing sidewalk abutting their property, all accumulations of snow and ice within 24 hours after the accumulation of such snow and ice began, and shall keep the said abutting or adjacent sidewalks clean and free from debris and litter at all times.

Staff is seeking direction from the Committee whether to pursue the recommendation from the January 22, 2103 Community Development Committee meeting or alternatively maintain the snow and ice removal ordinance as-written in the municipal code.
Discussion Regarding Snow and Ice Accumulation Removal

Deputy City Administrator Martin reiterated to the Committee that snow and ice removal was discussed at the March 16, 2010, October 26, 2010 and May 17, 2011 Community Development Committee meetings and staff was directed to enforce the provisions of Sec. 21-18 of the McHenry Municipal Code by complaint only and keep a log of staff time associated with enforcement.

During the winter of 2011/2012 the City experienced:

- Five major snow events between December and February which generated a total of 12 complaints;
- From the 12 complaints 92 individual properties were identified as being in violation;
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- A total of 347 tasks were completed and approximately 77 hours of staff time was consumed to identify the properties and investigate the violations, log the information, send notification/speak to property owners and conduct follow-up inspections.

Deputy City Administrator Martin stated staff has taken a less enforcement-oriented approach to this issue as directed by the Committee two years ago and has tried very hard to work with property owners. The ordinance is hard to enforce due to timing of the complaints and temperature and weather variables on a daily basis. Enforcement also often requires a judgment call in determining when snow has partially melted or been removed and these issues can be a cause of questionable determination if enforcement is continued and violations go to court. It is staff's belief that to obtain compliance and maintain the integrity of the ordinance, violation notices and citations, if necessary, should be sent to those property owners which do not comply.

Staff is seeking direction from the Committee whether to completely enforce the removal of snow and ice from public sidewalks or alternatively delete the provision requiring property owners to remove snow and ice accumulation from public walks within 24 hours.

A brief discussion ensued. Chairman Alderman Condon opined there appears to be an unfair advantage since commercial property owners are not given civil immunity from liability for non-compliance with the state’s snow and ice removal act and residential property owners are. She stated she is not concerned with the staff time being used if the ordinance can actually be
enforced, which is proving to be difficult to accomplish. Chairman Alderman Condon suggested the Committee recommend deleting the provision from the Municipal Code and use the State’s Snow and Ice Removal Act as a point of reference if complaint calls are received.

Alderman Peterson and Alderman Santi continued the discussion and expressed concern particularly in high traffic pedestrian districts such as the downtown business districts. It was suggested that a snow district might be established in these business areas and the business owners could unite and produce a plan for maintaining their sidewalks, possibly in cooperation with the McHenry Chamber of Commerce. Alderman Peterson and Alderman Santi agreed with Chairman Alderman Condon regarding the disparity in liability for non-compliance for commercial property owners as opposed to residential property owners.

In response to a question asked by Alderman Santi regarding what action will be taken and what response will be given to snow complaints if the provision is abolished, Deputy City Administrator Martin stated a letter could be mailed to the offending property owner notifying them of the Illinois Snow and Ice Removal Act and advising them of their responsibility to clean their sidewalks.

Motion by Peterson, seconded by Santi directing Staff to forward a recommendation to delete the provision for snow removal ordinance from the Municipal Code to full Council for consideration.

Aye: Condon, Santi, Peterson

Nay: None.

Absent: None.

Motion carried.
COMMUNITY DEVELOPMENT COMMITTEE MEETING  
June 11, 2013

Discussion Regarding Snow and Ice Removal  
Deputy City Administrator Martin reiterated to the Committee that on January 22, 2013 the topic of snow and ice removal was discussed at the Community Development Committee meeting. The Committee, at that time, directed Staff to forward a recommendation to delete the provision for snow and ice removal from the Municipal Code and to present the recommendation to full Council for consideration. Since the meeting in January, a local business owner, Dave Miller, brought to the attention of Staff a court case he believed was pertinent to the topic.

Deputy City Administrator Martin informed the Committee that the court case involves a plaintiff, who files a negligence lawsuit following a fall in the parking lot at a local gas station. Initially, the trial court found the gas station 75% negligent and the plaintiff 25% negligent. The case subsequently went to the Fourth District Appellate Court. The defendants argued that the snow and ice were a natural accumulation, for which it had no duty to remove, warn or protect against. The Appellate Court agreed and stated: "To prove a claim of negligence, a ‘plaintiff must establish the existence of a duty, a breach of duty, and an injury to the plaintiff was proximately caused by the breach.’" The Court went on to state: "Although a property owner has no duty to remove natural accumulations, he ‘may be subject to liability if his voluntary undertaking to remove snow and ice is performed in a negligent manner.’"

A case referenced in the Court’s brief stated: "It is unrealistic to expect property owners to keep all areas where people may walk clear from ice and snow at all times during the winter months." Finally, the Court stated: "While defendant’s removal and remediation of the snow may now have been perfect, the natural accumulation rule does not require perfection. Otherwise, property owners would be held to an onerous burden and would most likely find it more advantageous to forego snow removal operations altogether. Because plaintiff’s evidence failed to show an unnatural accumulation here, defendant could not be held liable.” The trial court’s judgment was reversed.

Staff has spoken with the City Attorney, David McArdle, regarding the case. He believes, in addition to its applicability on private property, this ruling could potentially affect public property. Deputy City Administrator Martin provided the Committee with the current City ordinance and also provided the Snow and Ice Removal Act, 745 ILCS 75. The verbiage in the
court case and the Snow and Ice Removal Act use similar language stating: negligence can be found only if “the alleged misconduct was willful or wanton.”

Staff is seeking direction from the Committee regarding whether to pursue the original recommendation from January 22, 2013 from the Community Development Committee or, alternatively, maintain the snow and ice removal Ordinance as written in the Municipal Code.

Chairman Alderman Condon opined there is more strength in following a state mandate. Following a brief discussion, it was the consensus of the Committee to proceed with the recommendation to delete the provision for snow and ice removal from the Municipal Code and to submit the recommendation to the full Council for consideration.

Appellate Court Caption

District & No. Fourth District
Docket No. 4-11-0992

Argued July 10, 2012
Filed August 22, 2012

Held
The accumulation of snow and ice on the parking lot at defendant's convenience store where plaintiff fell was a natural accumulation, regardless of the fact that the area had been plowed and salted, and defendant was not subject to liability for failing to remove the accumulation.

Decision Under Review
Appeal from the Circuit Court of Vermilion County, No. 08-L-36; the Hon. Michael D. Clary, Judge, presiding.

Judgment
Reversed and remanded with directions.
Counsel on Appeal

Richard A. Chapin (argued), of Chapin & Long, P.C., of Champaign, for appellant.

Mario C. Palermo (argued), of Woodruff, Johnson & Palermo, of Aurora, for appellee.

Panel

PRESIDING JUSTICE TURNER delivered the judgment of the court, with opinion. Justices Appleton and Knecht concurred in the judgment and opinion.

OPINION

¶ 1 In September 2008, plaintiff, Annette Barber, filed an amended negligence complaint against defendant, G.J. Partners, Inc., following a fall with injury at a Danville gas station. In August 2011, a jury found in plaintiff’s favor and awarded damages in the amount of $496,609.67, before reducing it to $372,457.25, which represented the jury’s allocation of plaintiff’s negligence in the amount of 25%.

¶ 2 On appeal, defendant argues the trial court erred in refusing to enter judgment in its favor as it had no duty to remove, warn, or protect against a natural accumulation of snow or ice. We reverse and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 In September 2008, plaintiff filed an amended negligence complaint against defendant for injuries suffered in a fall at defendant’s gas station on February 16, 2007. The complaint alleged defendant failed to properly maintain its premises by allowing snow to be piled into an unnatural accumulation near its lined parking spaces, failed to warn plaintiff of the dangerous condition of its premises, and failed to adequately inspect the premises to prevent an unnatural accumulation of snow. Plaintiff alleged defendant’s negligent acts and/or omissions caused her to trip and fall on the piled up snow adjacent to the customer parking spaces on defendant’s premises. Plaintiff claimed she suffered serious and permanent personal injuries.

¶ 5 In June 2009, defendant filed a motion for summary judgment, claiming no evidence showed the accumulation of ice upon which plaintiff slipped was an unnatural accumulation or that it posed an unreasonable risk of harm to people on the property. In July 2009, the trial court denied the motion. In April 2010, plaintiff filed her second amended complaint. In August 2010, defendant filed a motion for summary judgment, which the court denied.

¶ 6 In August 2011, a jury trial was conducted. Alice Hoskins testified she was an assistant manager at the BP gas station in February 2007. She stated the normal procedure in wintery
conditions was to have someone plow the parking lots and have employees “put salt down on the metal plates out in the front, because they were slick.” The two metal plates allowed access to gauges beneath the parking lot surface. A photo of one of the plates indicates it was approximately 45 inches in diameter. The face of the plate appears to be approximately one-half inch below the surface of the parking lot. The plates were near the front entrance to the convenience store.

¶ 7
Since the metal plates were not level with the ground, Hoskins stated the snowplows would fill or pack the plates with snow. After the snowplow was finished, employees would try to scrape the metal plates with a shovel and put salt or chemicals down. Hoskins stated the salt would have little or no effect when the temperature was below 28 degrees Fahrenheit. At that temperature or below, the salt “might melt just a little bit,” like the top layer, and employees would “take a shovel and chip [the snow] away, if [they] could.” When the top layer melted, a “slushy layer” would develop and vehicles running over the plate “would pack [the snow] down and you couldn’t hardly do anything with it.” Prior to February 16, 2007, Hoskins had slipped and fallen while going over the metal plates. She also had customers tell her the plates were slick. Hoskins stated she would mention to customers that the plates could be slick and for them to be careful. She also stated the station had cones but they were hardly ever used.

¶ 8
Danielle Osmundson’s testimony was presented by her videotaped evidence deposition. She testified she worked at the BP gas station on February 16, 2007, and there was snow on the ground. During snowy conditions, employees were to clear the sidewalks and near the gas pumps. Both a shovel and salt were available. On the date in question, the snowplows had cleared snow from the lot. Osmundson stated the metal plates were “troublesome,” as they “were always covered in ice and snow and very slippery.” With the plates being slightly below ground, it was common for the snowplows to leave snow and ice on the them. Osmundson stated she would warn customers about the metal plates and tell them to be careful. Because the snowplow had left snow and/or ice on the metal plates, Osmundson and her boyfriend put salt down on the plates on the morning of plaintiff’s fall. Approximately 20 to 30 minutes later, plaintiff parked her truck on top of a metal plate. Osmundson believed ice on the metal plate caused plaintiff to fall.

¶ 9
Plaintiff testified that on February 16, 2007, she and her husband drove from Champaign to Danville. With there being a snowstorm in the area a couple of days before, plaintiff stated it was “snowy out everywhere” but the roads were clear. She pulled into the gas station parking lot and “it looked like it had been cleaned.” When she exited the vehicle, she stepped down, slipped, and broke her foot. After she was helped back into her truck, she looked down and noticed a circular spot of ice. As a result of her injury, plaintiff had to undergo three surgeries. She was unable to return to work as a certified nursing assistant and “couldn’t get outside to do things [she] used to do.”

¶ 10
On cross-examination, plaintiff testified she did not know whether she fell on the metal plate or the concrete, stating it was “a gray spot.” She agreed that she testified in her discovery deposition that she did not look down before exiting the truck. She also testified in her deposition that she did not slip on a metal cover but thought it was ice on top of concrete.
¶ 11 The parties stipulated to plaintiff’s medical bills. Plaintiff then rested. Defendant moved for a directed verdict, which the trial court denied. Defendant’s evidence consisted of certified copies of weather records for February 2007. The temperature was near zero at the time of plaintiff’s fall. Defendant then filed a motion for directed verdict at the close of all the evidence, arguing the snow and ice was a natural accumulation and defendant had no duty to warn or protect plaintiff from such an accumulation. The court denied the motion.

¶ 12 Following closing arguments, the jury found in plaintiff’s favor. The jury listed the total amount of damages as $496,609.67, based on medical expenses of $75,276.33, pain and suffering of $250,000, lost earnings of $21,333.34, and loss of a normal life in the amount of $150,000. After finding plaintiff 25% negligent, the jury reduced the total award to $372,457.25.

¶ 13 In September 2011, defendant filed a motion for judgment notwithstanding the verdict, claiming there was no evidence to show defendant caused or contributed to the creation of an unnatural accumulation of snow or ice upon which plaintiff fell. In October 2011, the trial court denied the motion. This appeal followed.

II. ANALYSIS

A. Standard of Review

¶ 16 Defendant argues the trial court erred in failing to direct a verdict in its favor at the close of plaintiff’s case and at the close of all the evidence and/or in failing to enter judgment notwithstanding the verdict. “[V]erdicts ought to be directed and judgments n.o.v. entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on that evidence could ever stand.” Jablonski v. Ford Motor Co., 2011 Ill. App. 1st 110096, ¶ 88, 955 N.E.2d 1138 (quoting Pedrick v. Peoria & Eastern R.R. Co., 37 Ill. 2d 494, 510, 229 N.E.2d 504, 513-14 (1967)). “Because the standard for entry of judgment n.o.v. ‘is a high one’ [citation], judgment n.o.v. is inappropriate if ‘reasonable minds might differ as to inferences or conclusions to be drawn from the facts presented.’ [Citation.]” York v. Rush-Presbyterian-St. Luke’s Medical Center, 222 Ill. 2d 147, 178, 854 N.E.2d 635, 652 (2006). As a question of law is involved, review of a trial court’s decision denying a motion for judgment n.o.v. is de novo. York, 222 Ill. 2d at 178, 854 N.E.2d at 652; see also Lawlor v. North American Corp. of Illinois, 409 Ill. App. 3d 149, 161, 949 N.E.2d 155, 170 (2011) (de novo standard is utilized when reviewing a trial court’s denial of motions for directed verdict and for judgment n.o.v.).

B. Natural Accumulation Rule

¶ 18 Defendant argues the condition in the parking lot causing plaintiff’s fall was a natural accumulation for which it owed plaintiff no duty. We agree.

¶ 19 To prove a claim of negligence, “a plaintiff must establish the existence of a duty, a breach of the duty, and an injury to the plaintiff that was proximately caused by the breach.” Vancura v. Karris, 238 Ill. 2d 352, 373, 939 N.E.2d 328, 342 (2010). “Under the natural
accumulation rule, a landowner or possessor of real property has no duty to remove natural accumulations of ice, snow, or water from its property." *Krywin v. Chicago Transit Authority*, 238 Ill. 2d 215, 227, 938 N.E.2d 440, 447 (2010). Even when landowners voluntarily remove snow, they do not owe a duty to remove natural accumulations of ice underneath the snow. *Kozlak v. Hayden*, 309 Ill. App. 3d 472, 476, 723 N.E.2d 321, 324 (1999); see also *Eades v. Harrisburg Medical Center*, 209 Ill. App. 3d 908, 910, 568 N.E.2d 470, 471 (1991) (*The mere removal of snow which may leave a natural ice formation on the premises does not constitute negligence.*).

¶ 20 Along with snow removal operations like shoveling and plowing, "the mere sprinkling of salt, causing ice to melt, although it may later refreeze, does not aggravate a natural condition so as to form a basis for liability on the part of the property owner." *Harkins v. System Parking, Inc.*, 186 Ill. App. 3d 869, 873, 542 N.E.2d 921, 924 (1989); *Lewis v. W.F. Smith & Co.*, 71 Ill. App. 3d 1032, 1038, 390 N.E.2d 39, 43 (1979). "Ruts and uneven surfaces created by traffic in snow and ice are not considered unnatural and cannot form the basis for liability." *Harkins*, 186 Ill. App. 3d at 872, 542 N.E.2d at 924.

¶ 21 Although a property owner has no duty to remove natural accumulations, he "may be subject to liability if his voluntary undertaking to remove snow and ice is performed in a negligent manner." *Judge-Zeit v. General Parking Corp.*, 376 Ill. App. 3d 573, 581, 875 N.E.2d 1209, 1216 (2007). Liability may arise if the snow or ice "accumulated because the owner either aggravated a natural condition or engaged in conduct which created a new, unnatural or artificial condition." *Whittaker v. Honegger*, 284 Ill. App. 3d 739, 743, 674 N.E.2d 1274, 1276 (1996).

¶ 22 In the case *sub judice*, defendant argues the only evidence was that the snow or ice in the parking lot was a natural accumulation from a prior snowstorm. Further, defendant claims the snow or ice on the metal plate remained after the lot had been plowed and salt had been sprinkled in the vicinity. Thus, defendant claims it cannot be held liable under the natural accumulation line of cases.

¶ 23 Here, the snow event that fell on the Danville area created a natural accumulation in defendant's parking lot. To help remedy the situation, an independent contractor plowed the lot and Osmundson and her boyfriend put salt down on the metal plates. We find the facts of this case fall under the natural accumulation rule.

¶ 24 In support of the jury verdict, however, plaintiff contends defendant's snow removal efforts created an unnatural accumulation on the metal plates that contributed to her fall. We find the "salting" aspect of the natural accumulation rule instructive. As stated, "the mere sprinkling of salt, causing ice to melt, although it may later refreeze, does not aggravate a natural condition so as to form a basis for liability on the part of the property owner." *Harkins*, 186 Ill. App. 3d at 873, 542 N.E.2d at 924; see also *Riccitelli v. Sterngold*, 1 Ill. 2d 133, 136-37, 115 N.E.2d 288, 290 (1953) (finding no liability where the defendant shoveled, an alternate thaw and freeze caused snow to melt, run onto sidewalk and freeze, and the defendant applied rock salt). The application of salt to an accumulation of snow and/or ice causes a change in the composition of the wintry mix. If the melted material refreezes, the composition will again change and form a new accumulation, one that the case law does not
consider unnatural. The same can be said in regard to plowing operations. A snowplow traversing a snowy parking lot; and even over a recessed metal plate as in this case, may change the composition of what is below the plow, but what remains does not amount to an unnatural accumulation. See Scott & White Memorial Hospital v. Fair, 310 S.W.3d 411, 419 (Tex. 2010) (stating “salting, shoveling, or applying deicer to a natural ice accumulation does not transform it into an unnatural one”). As a natural accumulation resulted from defendant’s plowing and salting, defendant had no duty to remove it and could not have been liable for plaintiff’s injuries.

¶ 25

We note shoveling and plowing snow-covered parking lots, along with salting ice-covered walkways, are desirable actions in this part of the country during the winter months. See Riccitelli, 1 Ill. 2d at 137, 115 N.E.2d at 290. But rarely can such remedial operations be done perfectly. See Ordman v. Dacon Management Corp., 261 Ill. App. 3d 275, 281, 633 N.E.2d 1307, 1311-12 (1994) (stating “it is unrealistic to expect property owners to keep all areas where people may walk clear from ice and snow at all times during the winter months”). Moreover, requiring such perfection would cause an unreasonable burden on property owners in this state. See Kellermann v. Car City Chevrolet-Nissan, Inc., 306 Ill. App. 3d 285, 290, 713 N.E.2d 1285, 1289 (1999) (noting “courts have consistently found it an unreasonable burden for a business to keep small areas such as parking lots, sidewalks, and entryways safe from naturally accumulated snow and ice”). To hold a property owner liable in these situations, absent certain circumstances, “would place the defendant in the position of an absolute insurer of the safety of its business invitees contrary to the settled law of our state.” Zide v. Jewel Tea Co., 39 Ill. App. 2d 217, 227, 188 N.E.2d 383, 388 (1963).

¶ 26

In this case, defendant took steps to clear the parking lot. Such actions are to be encouraged. While defendant’s removal and remediation of the snow may not have been perfect, the natural accumulation rule does not require perfection. Otherwise, property owners would be held to an onerous burden and would most likely find it more advantageous to forego snow-removal operations altogether. Because plaintiff’s evidence failed to show an unnatural accumulation here, defendant could not be held liable. Therefore, judgment notwithstanding the verdict should have been granted.

¶ 27

III. CONCLUSION

¶ 28

For the reasons stated, we reverse the trial court’s judgment and remand with directions to set aside the verdict and judgment entered thereon and enter judgment for defendant.

¶ 29

Reversed and remanded with directions.
AGENDA SUPPLEMENT

TO: Mayor and City Council
FROM: Douglas Martin Deputy City Administrator
FOR: August 5, 2013, Regular City Council Meeting
RE: Snow and Ice Accumulation Removal

ATT:
1. January 22, 2013 Community Development Committee Minutes
2. June 11, 2013 Community Development Committee Minutes
3. Ordinance amending Chapter 21 of the Municipal Code
4. Appellate Court Case
5. Snow and Ice Removal Act

BACKGROUND. The topic of snow and ice removal was discussed at several past Community Development Committee meetings in 2010 and 2011. The Committee directed staff to enforce the provisions of Sec. 21-18 of the McHenry Municipal Code by complaint only and keep a log of staff time associated with enforcement. Below is the current City ordinance.

Chapter 21, Sec. 21-18. Duty to remove deposits on sidewalks states "The owners or occupants of all property facing on or abutting sidewalks, shall remove from any existing sidewalk abutting their property, all accumulations of snow and ice within 24 hours after the accumulation of such snow and ice began, and shall keep the said abutting or adjacent sidewalks clean and free from debris and litter at all times.

On January 22 of this year the Community Development Committee considered the issue again and discussed staff's concern that the provision is antiquated, cannot be equally enforced and thus should be removed from the Municipal Code. At the January meeting The Committee directed staff to forward a recommendation to delete the provision for snow and ice removal from the Municipal Code to the full Council for consideration (minutes attached).
Since that meeting a local business owner, Dave Miller, brought the attached appellate court case to staff’s attention. Staff brought the case to the Community Development Committee for consideration at their June 11, 2013 meeting.

ANALYSIS: The court case involves a plaintiff who files a negligence lawsuit following falling in the parking lot at a local gas station. Initially the trial court found the gas station 75% negligent and the plaintiff 25% negligent. The case subsequently went to the fourth district appellate court. The defendant’s argument was the snow and ice were a natural accumulation for which it had no duty to remove, warn or protect against. The appellate court agreed and stated: “To prove a claim of negligence, a ‘plaintiff must establish the existence of a duty, a breach of the duty, and an injury to the plaintiff was proximately caused by the breach.” The court went on to state: “Although a property owner has no duty to remove natural accumulations, he ‘may be subject to liability if his voluntary undertaking to remove snow and ice is performed in a negligent manner.”

A court case referenced in the brief stated: “It is unrealistic to expect property owners to keep all areas where people may walk clear from ice and snow at all times during the winter months.” Finally the court stated “While defendant’s removal and remediation of the snow may not have been perfect, the natural accumulation rule does not require perfection. Otherwise, property owners would be held to an onerous burden and would most likely find it more advantageous to forego snow-removal operations altogether. Because plaintiff’s evidence failed to show an unnatural accumulation here, defendant could not be held liable.” The trial court’s judgment was reversed.

Staff spoke with Attorney McArdle about the case and he believes, in addition to its applicability on private property, this ruling could potentially impact public property. Additionally, the Snow and Ice Removal Act is attached for the Council’s reference. The attached court case and the Snow and Ice Removal Act use similar language stating negligence can be found only if “the alleged misconduct was willful or wanton.”

COMMUNITY DEVELOPMENT COMMITTEE: The Community Development Committee discussed the attached court case and decided to proceed with their original recommendation to delete the provision for snow and ice removal from the Municipal Code and to submit the recommendation to the full Council for consideration.
If the City Council concurs with the Community Development Committee it is recommended the attached ordinance deleting the provision for snow and ice removal in the municipal code be approved.
Motion by Condon, seconded by Santi, approving the Ordinance amending Municipal Code Chapter 6, Animals and Fowl.

Voting Aye: Santi, Glab, Blake, Wimmer, Peterson, Condon.
Voting Nay: None.
Absent: Schaefer

Motion carried.

COMMITTEE RECOMMENDATION TO APPROVE AN ORDINANCE DELETING MUNICIPAL CODE CHAPTER 21, ARTICLE I, SECTION 21-18, DUTY TO REMOVE DEPOSITS ON SIDEWALKS

Deputy City Administrator Martin informed Council that the topic of snow and ice removal was discussed at several meetings of the Community Development Committee in 2010 and 2011. The Committee directed Staff to enforce the provisions of Sec. 21-18 of the Municipal Code by complaint only and to keep a log of Staff time associated with enforcement.

On January 22, 2013, the Community Development Committee again considered the issue and Staff’s concerns that the provision is antiquated, cannot be equally enforced and thus, should be removed from the Municipal Code as discussed. At the January meeting the Committee directed Staff to forward a recommendation to delete the provision for snow and ice removal from the Municipal Code to full Council for consideration.

Deputy City Administrator Martin stated that since the January 2013 meeting, a local business owner, Dave Miller, brought to Staff’s attention an appellate court case involving a plaintiff who filed a negligence suit following falling in the parking lot at a local gas station. The defendant argued that the snow and ice the plaintiff slipped on was a natural accumulation for which it had no duty to remove, warn or protect against. The appellate court agreed with defendant. The Community Development Committee discussed the court case and it was their decision to proceed with their original recommendation to delete the provision for snow and ice removal from the Municipal Code and to submit the recommendation to Council.

Motion by Santi, seconded by Wimmer, approving the Ordinance deleting Municipal Code Chapter 21, Article I, Sec. 21-18 Duty to Remove Deposits on Sidewalks.

Voting Aye: Santi, Glab, Blake, Wimmer, Peterson, Condon.
Voting Nay: None.
Absent: Schaefer

Motion carried.

MAYOR STATEMENT AND REPORTS

Mayor Low congratulated the Noon Rotary Club of McHenry for a successful Blues, Brews & Bar-b-que event in Petersen Park this weekend.