

ORDINANCE NO. 14-26

**AN ORDINANCE AMENDING SECTION 660.05 OF THE CODIFIED
ORDINANCES OF THE CITY OF AVON TO PROVIDE REGULATIONS
GOVERNING THE RESPONSIBILITIES OF ADJACENT PROPERTY OWNERS AND
OCCUPIERS FOR THE CITY'S WALKING PATHS AND TRAILS
AND DECLARING AN EMERGENCY.**

WHEREAS, Avon City Council recognizes the health and recreational benefits to its citizens that come from the promotion of safe alternative modes of transportation including walking and bicycling; and

WHEREAS, the city's Bicycle and Pedestrian Master Plan , when fully built-out, will provide an alternate transportation link between key community resources such as parks, schools, health care facilities and commercial areas throughout Avon; and

WHEREAS, some property owners and occupants of property adjacent to proposed walking paths/trails have expressed concerns about their responsibility to maintain these paths/trails and the potential liability should they fail to do so; and

WHEREAS, Council, having considered their concerns, now desires to clearly set forth the law as it pertains to any and all adjacent property owner's or occupant's liability for any city installed walking path/trail with a width of eight (8) feet or wider; and

WHEREAS, doing so will be in the best interests of the health, safety, and welfare of all of Avon and the general public who will utilize these walking paths/trails.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVON, COUNTY OF LORAIN AND STATE OF OHIO:

Section 1 - That Section 660.05 of the Codified Ordinances of the City of Avon which currently reads as follows:

660.05 DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN.

(a) No owner or occupant of lots or lands abutting any sidewalk, curb or gutter shall fail to keep the sidewalks, curbs and gutters in repair and free from snow, ice or any nuisance, and to remove from such sidewalks, curbs or gutters all snow and ice accumulated thereon within a reasonable time, which will ordinarily not exceed 12 hours after any storm during which the snow and ice has accumulated.

(ORC 723.011; Adopting Ordinance)

(b) No owner of any lot or land abutting upon any street shall refuse, fail or neglect to repair or keep in repair and free from nuisance and obstruction the concrete sidewalk in front of such lot or land. The Director of Public Services may order the repair of such concrete sidewalk within thirty days from the date of written notice, or the immediate removal of such obstruction or the abatement of such nuisance.

(c) If the owner or person having charge of such land fails to comply with such written notice, the Director shall cause the sidewalks to be maintained and repaired. All expenses and labor costs incurred shall, when approved by Council, be paid out of Municipal funds not otherwise appropriated. Council shall make a written return to the County Auditor of its action, with a statement of the charges for its services, the amount paid for labor, the fees of the officers serving such notices and a proper description of the premises. Such amounts, when allowed, shall be entered upon the tax duplicate and be a lien upon such lands from and after the date of the entry, and shall be collected as other taxes and returned to the Municipality by the County with other regular tax settlements. The County Auditor shall be requested to segregate such miscellaneous receipts as to source.

(Ord. 117-63. Passed 4-10-63.)

(d) On any claim presented for bodily injury or property damage on the sidewalk, the adjoining or abutting property owner shall be held liable in tort for such damages to another. Ultimately, should the City be called upon to make such payment to a third party, the City will look to the adjoining/abutting landowner for contribution and indemnity.

(Ord. 163-04. Passed 9-13-04.)

(e) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor and shall be subject to the penalty provided in Section [698.02](#).

(Ord. 304-66. Passed 12-14-66.)

Shall be amended to read as follows: (New language in bold print)

660.05 DUTY TO KEEP SIDEWALKS IN REPAIR AND CLEAN.

(a) No owner or occupant of lots or lands abutting any sidewalk, curb or gutter shall fail to keep the sidewalks, curbs and gutters in repair and free from snow, ice or any nuisance, and to remove from such sidewalks, curbs or gutters all snow and ice accumulated thereon within a reasonable time, which will ordinarily not exceed 12 hours after any storm during which the snow and ice has accumulated. (ORC 723.011; Adopting Ordinance)

(b) No owner or occupant of lots or lands abutting any city installed or publicly funded walking path/trail, as defined in §1246.05 of these Codified Ordinances, shall fail to keep a five (5) foot section of said walking path/trail across the frontage of said lots or lands free from snow or ice and to remove from said five (5) foot area all snow and ice accumulated thereon within a reasonable time, which will ordinarily not exceed 12 hours after any storm during which the snow and ice has accumulated. (ORC 723.011; Adopting Ordinance.) Said owner or occupant shall have no other responsibility for the maintenance or repair of any city installed or publicly funded walking trail/path.

(c) No owner of any lot or land abutting upon any street shall refuse, fail or neglect to repair or keep in repair and free from nuisance and obstruction the concrete sidewalk in front of such lot or land. The Director of Public Services may order the repair of such concrete sidewalk within thirty days from the date of written notice, or the immediate removal of such obstruction or the abatement of such nuisance.

(d) If the owner or person having charge of such land fails to comply with such written notice, the Director shall cause the sidewalks to be maintained and repaired. All expenses and labor costs incurred shall, when approved by Council, be paid out of Municipal funds not otherwise appropriated. Council shall make a written return to the County Auditor of its action, with a statement of the charges for its services, the amount paid for labor, the fees of the officers serving such notices and a proper description of the premises. Such amounts, when allowed, shall be entered upon the tax duplicate and be a lien upon such lands from and after the date of the entry, and shall be collected as other taxes and returned to the Municipality by the County with other regular tax settlements. The County Auditor shall be requested to segregate such miscellaneous receipts as to source. (Ord. 117-63. Passed 4-10-63.)

(e) On any claim presented for bodily injury or property damage on the sidewalk, the adjoining or abutting property owner shall be held liable in tort for such damages to another. Ultimately, should the City be called upon to make such payment to a third party, the City will look to the adjoining/abutting landowner for contribution and indemnity. **“Sidewalk” as referenced herein, does not include the walking path/trail referenced in subsection (b). In the case of a walking path/trail, Ohio Revised Code Section 1519.07 governing “recreational trails” shall apply.** (Ord. 163-04. Passed 9-13-04.)

(f) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor and shall be subject to the penalty provided in Section 698.02. (Ord. 304-66. Passed 12-14-66.)

Section 2 - That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3 - That this Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and welfare of the citizens of the City of Avon, the immediate emergency being the necessity to amend Section 660.05 of the Avon Codified Ordinances as it pertains to walking paths/trails; therefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor

PASSED: _____

DATE SIGNED: _____

By: _____
Brian Fischer, Council President

DATE APPROVED BY THE MAYOR: _____

Bryan K. Jensen, Mayor

APPROVED AS TO FORM:

John A. Gasior, Law Director

ATTEST:

Barbara Brooks, Clerk of Council

POSTED: _____
Electronically and at City Hall as
Provided by Council

Prepared By:

John A. Gasior, Esq.
Law Director