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ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA, TO
AMEND MUNICIPAL CODE CHAPTER 12.08.**

WHEREAS, the City Council directed staff to develop a policy that comprehensively addresses repair of existing sidewalks, construction of new sidewalks and compliance with American with Disabilities Act (ADA) requirements;

WHEREAS, the City Council reviewed and discussed a draft comprehensive sidewalk policy at its meeting of September 4, 2012; and

WHEREAS, the City Council approved and adopted a comprehensive sidewalk policy at its meeting of October 16, 2012; and

WHEREAS, amendments to San Clemente Municipal Code Chapters 12.08 and 12.24 were needed to ensure consistency between the approved comprehensive sidewalk policy and the City's Municipal Code; and

WHEREAS, at its meeting of October 16, 2012 the City Council introduced Ordinance No. 1560 to amend San Clemente Municipal Code Chapters 12.08 and 12.24, and at its meeting of November 8, 2012 the City Council conducted and approved a second reading of Ordinance No. 1560; and

WHEREAS, additional clarifying amendments are needed to San Clemente Municipal Code Chapter 12.08 to ensure consistency between the approved comprehensive sidewalk policy and the City's Municipal Code.

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

Section 1: Chapter 12.08 of the Code of the City of San Clemente is hereby replaced in its entirety to read as follows:

Chapter 12.08 - CURB, GUTTER AND SIDEWALK CONSTRUCTION

12.08.010 - In conjunction with building construction—Required.

A. All property owners who are constructing or causing to be constructed a new building or dwelling, or adding improvements totaling fifty thousand dollars (\$50,000) or more to an existing building or dwelling, which dollar amount includes the total cost of value for all construction work for which a building permit is issued, as well as all finish work (including without limitation kitchen remodels, cabinets and flooring, painting, roofing, electrical,

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plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment), shall:

1. For any areas of the City which do not currently have curbs, gutters and/or sidewalks constructed to existing City specifications, construct or cause to be constructed along the entire length of the lot frontage, sidewalks and monolithic curbs and gutters meeting current City standards when such sidewalks and monolithic curbs and gutters do not exist. Existing non-monolithic curbs and gutters shall only be replaced if deemed deficient by the Public Works Director/City Engineer.

2. For any areas of the City which currently have sidewalks:

a. Repair or replace sidewalk to eliminate any existing trip hazards or defects in accordance with approved City policy.

b. Address and correct any existing obstructions within the property owner's control including but not limited to mailboxes, walls, steps, planters, landscape/hardscape and driveway approaches to improve accessibility and comply with ADA requirements.

3. Repair or replace any existing curb ramps that do not meet current ADA standards or, where no curb ramps exist, install new curb ramps if deemed appropriate by the Public Works Director/City Engineer.

B. The City Building Official shall deny final public utility connections and, if applicable, any certificate of occupancy to any building or dwelling until such concrete curbs, gutters and sidewalks exist or have been constructed to existing City standards.

12.08.020 - In conjunction with building construction—Variance from requirements.

A. Upon receipt of written waiver application, the City Manager may waive the requirements of Section 12.08.010 of this chapter when the City Manager finds that any of the following exists:

1. Due to location of the property, the terrain or condition of the property or other similar reason, the construction of the curb, gutter and sidewalk would be impractical and/or unnecessary;

2. Due to the lack of adequate data regarding grades, plans or surveys, the construction of the curb, gutter and/or sidewalk should be waived;

3. The construction of the curb, gutter and sidewalk is included in a budgeted City project or an approved assessment district;

4. In slope areas, the construction of the sidewalk would require a retaining wall greater than three (3) feet high relative to the surface of the sidewalk;

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5. For neighborhoods with single-loaded streets and where the only sidewalks are along the property frontage, construction of sidewalk is required only along the portion of the property fronting the street except for corner properties which may also require sidewalk construction on the secondary property frontage;

6. The cost to address existing sidewalk obstructions shall be limited to the cost that would be required to construct a four (4) foot wide standard concrete sidewalk along the property frontage;

7. There is insufficient right-of-way to construct an ADA-compliant driveway approach or to provide an ADA-compliant sidewalk behind the existing driveway approach, or other site conditions would render construction of sidewalk through or behind a driveway approach infeasible;

8. When the construction of new sidewalk conflicts with existing trees, and criteria in the City's tree policy support a waiver of the sidewalk construction requirement;

9. When construction of continuous sidewalk on a street block is highly improbable due to major structures, massive retaining walls or major topographic issues.

B. The decision of the City Manager to approve, conditionally approve or deny a waiver application may be appealed by written application to the City Council within fifteen (15) calendar days of the City Manager's decision pursuant to the provisions of Section 12.08.025 of this code. The decision of the City Council shall be final.

C. There shall be no obligation to install a sidewalk in a right-of-way area that is narrower than four (4) feet from the back of the curb and the building construction in question is not subject to discretionary approval. If the building construction is subject to discretionary approval and the valuation of building construction improvements meets the criteria in Section 12.08.010(A), then the discretionary approval shall be conditioned to require dedication of right-of-way or an easement(s) for public sidewalk purposes and be required to install new sidewalk or to address existing sidewalk obstructions per Section 12.08.010, unless such condition to require dedication of sufficient right-of-way or easement(s) is waived by the appropriate City approval body.

D. There shall be no obligation to install new sidewalk or remove obstructions in existing sidewalk for properties located on private streets.

E. The requirement for installation of new sidewalk or repair of existing sidewalk may be partially waived by the City Manager to reduce, but not entirely waive, the amount of new installation or repair required along a property frontage if one or more criteria in 12.08.020(A) are found to apply to a portion of the of property frontage.

12.08.025 - Appeal of Waiver Decision.

A. The decision of the City Manager to approve, conditionally approve or deny a waiver application may be appealed by any person by written application to the City Council, whose decision shall be final.

B. The appeal shall be filed with the Engineering Division within 15 consecutive calendar days following the decision sought to be appealed. For the purpose of calculating the appeal period, the first day of the appeal period shall be the day immediately following the day on which the decision occurred. The final day of the appeal period shall be the fourteenth calendar day following the first day of the appeal period, at 5:00 p.m. If the last day to appeal period falls on a holiday or on a Saturday or Sunday, the following business day shall be deemed the last day to appeal.

C. The appeal shall be in writing on a form obtained from the Engineering Division. The appellant shall state the specific reasons for the appeal. Appeal applications shall include the required fee.

D. Notice of the public hearing on the appeal shall be provided as required in Section 17.12.100.

E. A public hearing on the appeal shall be held within 60 calendar days of the Engineering Division's receipt of a completed appeal application. The City Clerk shall notify the applicant, in writing, of the date established for the public hearing within 10 calendar days of receipt of a completed appeal application. The appellant must provide the City with stamped, addressed envelopes for public hearing notification, by 20 calendar days prior to the scheduled hearing on the appeal, or the appeal shall be taken off the City Council's calendar and the appellant shall have waived any and all rights to such appeal.

F. The City Council shall not be limited to the issues raised on the appeal, but rather shall be entitled to review new evidence and to consider all elements of the appealed action. The City Council may continue the action from time to time as it deems necessary. At the close of the public hearing on the appeal, the City Council may reverse, affirm, revise or modify original action on the decision being appealed.

12.08.030 - Use of historic tile sidewalk materials.

Any property owner who is required or who elects to construct, install, repair, or replace a sidewalk adjacent to his or her property shall utilize historic tile materials meeting City specifications if the sidewalk is located within one of the designated areas identified in Exhibit "A" to Section 12.24.050.C.1. In addition, the owner of any property that is either (1) located between the area west of Interstate 5 with a northerly boundary of Avenida Pico from the I-5 to El Camino Real and then westerly on El Camino Real to the intersection of Avenida Estacion and a southerly boundary of the southern City limits or (2) adjacent to a property deemed "historic" by the Planning Historic Registry and who is required or who elects to construct, install, repair, or replace a sidewalk adjacent to his or her property shall have the right, but not

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the obligation, to use historic tile materials meeting City specifications, excepting only those areas in which the City may specify from time to time that interlocking pavers or other specialized sidewalk pavement materials shall be exclusively used, in which case the property owner shall use interlocking pavers or such other City-specified sidewalk pavement materials.

Section 2: The City Clerk shall certify to the passage of this ordinance and cause the same to be published as required by law, and the same shall take effect as provided by law.

APPROVED AND ADOPTED this _____ day of _____, 2013.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

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STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the _____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY

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