

Charles G. Thomas
Attorney at Law
Post Office Box 380249
Cambridge, Massachusetts 02238-0249

Tel.: (617) 492-8831
Fax: (617) 497-6286
Internet: thomas@world.std.com

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CAMBRIDGE MA.

February 19, 1994

Ms. Kathleen L. Born
City Councilor
Cambridge City Council
City Hall
Cambridge, MA 02139

Dear Councilor Born:

Ms. Maureen Spofford of the Mayor's Office telephoned yesterday about the enclosed letter complaining to Ralph Dunphy of the Department of Public Works that his office appears to have done nothing over the past two years about one property owner on our block who almost never clears his sidewalk of snow and ice (29 Ware Street, a/k/a 460 Broadway). Ms. Spofford told me that you especially were interested in the issue of pedestrian safety on the city's sidewalks and in fact will be bringing the matter before the City Council on February 28th. Since I have scheduling conflicts that evening, I would like to share with you a few of my thoughts on the snow-and-ice issue in the hope that you will bring them to the attention of the City Council.

The light penalty provided for in City Ordinance 12.16.110 (together with its apparent utter lack of enforcement by the Department of Public Works) is all the more insidious in the context of Massachusetts case law affecting property-owner liability for injuries suffered by pedestrians falling on snow and ice on sidewalks. As a practical matter, such case law shields property owners from successful negligence suits by injured plaintiffs in many circumstances where any reasonable person would find negligence. Therefore, Cambridge property owners can inflict severe injuries on Cambridge residents and visitors with virtual impunity, and there is no incentive on the part of Cambridge property owners to clear their sidewalks.

In the recent case of *Sullivan v. Town of Brookline*, 416 Mass. 825 (1994), following *Aylward v. McCloskey*, 412 Mass. 77 (1992), the Massachusetts Supreme Judicial Court held that a property owner was not liable for injuries sustained as a result of a slip and fall on ice because the ice was a so-called "natural accumulation":

In our most recent decision addressing an owner's duty with regard to snow and ice, we made clear that this duty is not violated by a failure to remove a natural accumulation of snow or ice. *Aylward v. McCloskey*, 412 Mass. 77, 80 (1992). We indicated in *Aylward* that "under Massachusetts law, landowners are liable only for injuries caused by defects existing on their property and . . . the law does not regard the natural accumulation of snow and ice as an actionable property defect, if it regards such weather conditions as a defect at all." *Id.* at 79. Liability is possible only "in circumstances where some act or failure to act has changed the condition of naturally accumulated snow and ice, and the elements alone or in connection with the land become a hazard to lawful visitors." *Id.* at 80 n.3.

Id. at 827. The Court also observed in a footnote that a "statute or ordinance requiring that property owners remove snow and ice is for the benefit of [the] community at large, not persons injured by fall[s] . . . [and that] any duty runs to [the] municipality." *Id.* at 29 n.3 (citing *Gamere v. 236 Commonwealth Ave. Condominium Ass'n*, 19 Mass.App.Ct. 359, 361-362 (1985)). Therefore, the Cambridge snow-and-ice ordinance cannot serve as an independent basis for holding property owners liable.

Plaintiffs must prove that the offending snow or ice had somehow become denatured, and such a requirement presents a serious burden for plaintiffs. Now, it would be reasonable to shield property owners from liability for fresh accumulations of snow or ice, but only during a limited period after the weather conditions causing such accumulations had stopped. Given the state of Massachusetts case law, however, it would take an act of the legislature to make landowners more accountable through such a provision.

In the meantime, as for revising the Cambridge ordinance, here are my suggestions, which you and others may have already considered:

First, and most obviously, the penalty in the ordinance should be much higher than \$25.

Second, the warning provision should be eliminated, since it is more important to prevent injuries at the outset than to pay courtesies to property owners.

Third, a second penalty should be imposed on property owners who fail to clear their sidewalks of snow or ice within twenty-four hours of the first citation.

Fourth, the amount of the second penalty should be reimposed for each day on which the property owner fails to clear the sidewalk thereafter.

Fifth, the ordinance should provide that anyone may make a formal charge against a property owner with the Department of Public Works, which upon receiving the charge must investigate it within twenty-four hours and, if the sidewalk is found not cleared, *must* cite the property owner.

Sixth, the ordinance should provide that the City of Cambridge may clear the sidewalk of a property owner who has failed to comply with the ordinance and that the property owner shall be billed and held liable for the cost of clearing the sidewalk. (I believe that this provision would serve as an especially effective inducement to property owners to comply with the ordinance, since the cost of clearing sidewalks by city employees could be heavy.)

Seventh, the ordinance should require the City of Cambridge to seek injunctions against repeat offenders whose sidewalks bear heavy pedestrian traffic.

Eighth, the ordinance should state that it is being enacted not merely for the benefit of the community at large, but for each individual who uses the sidewalks of

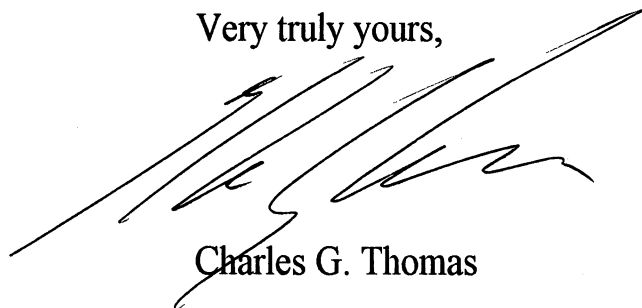
the City of Cambridge. (Due to issues concerning state and local powers, such language may not be effective in influencing the results in personal injury actions, but I suggest that it be added anyway.)

As you and your colleagues no doubt know, slip-and-falls can cause devastating injuries, not just temporary discomfort and broken wrists. Slip-and-falls can cause mild to serious brain damage that may result in blindness, profound changes in personality, serious neurological disorders, and death. Even moderate injuries, such as fractures, cause severe hardships on the part of those affected. Additionally, injuries indirectly harm spouses, relatives, and employers, and they raise the cost of insurance and health care.

Clearly, the present situation that encourages landowners by their neglect to cause injury to pedestrians is outrageous and lawmakers should take definitive action. I hope you and your colleagues on the City Council will consider this letter in enacting an effective ordinance for the protection of us all who use sidewalks (and that includes almost all of us).

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Charles G. Thomas', with a long, sweeping horizontal line extending to the left.

Charles G. Thomas

cc: *Cambridge Chronicle*
CT:dp

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Attorney at Law
Post Office Box 380249
Cambridge, Massachusetts 02238-0249

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Internet: thomas@world.std.com

February 14, 1994

Mr. Ralph Dunphy
Department of Public Works
City of Cambridge
147 Hampshire Street
Cambridge, MA 02139

Re: 29 Ware Street (a/k/a 460 Broadway)

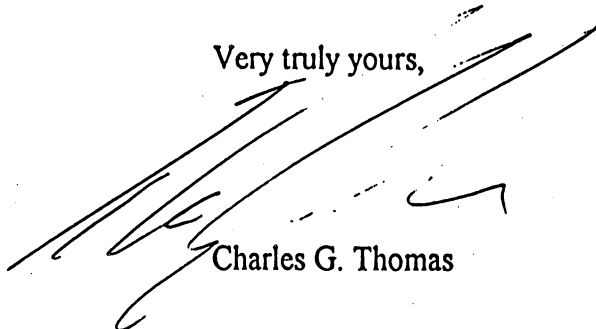
Dear Mr. Dunphy:

What does it take to get your office's attention after two years of writing and telephoning about the persistent failure of the owner of the above property to clear his sidewalk of ice and snow in compliance with City Ordinance 12.16.110? After all my trouble in trying to remedy a serious hazard for me, my wife, and thousands of people who have to walk that stretch of sidewalk, have you ever actually cited the owner of this property? What is the purpose of City Council's enacting ordinances if they are ignored because they are not enforced?

My first letter to you this year concerning the above property was written on January 8th. Obviously it had no effect because as of today the sidewalk is as dangerous as ever. By now your staff should be monitoring the property and taking immediate action as soon as the property owner is out of compliance. All other property owners on the block bounded by Ware, Broadway, Harvard, and Prescott consistently clear their sidewalks. Does the owner of 29 Ware Street have some special privilege or dispensation from the City of Cambridge?

If I do not hear from you within ten days of this letter, I shall assume that you are ignoring it as business as usual and shall bring the matter before City Council.

Very truly yours,

A handwritten signature in black ink, appearing to be 'Charles G. Thomas', written over a horizontal line.

Charles G. Thomas

cc: Mayor Kenneth Reeves

CHARLES G. THOMAS
ATTORNEY AT LAW
POST OFFICE BOX 380249
CAMBRIDGE, MASSACHUSETTS 02238-0249
TELEPHONE (617) 492-8831

January 8, 1994

Mr. Ralph Dunphy
Department of Public Works
City of Cambridge
147 Hampshire Street
Cambridge, MA 02139

Re: 29 Ware Street (a/k/a 460 Broadway)

Dear Mr. Dunphy:

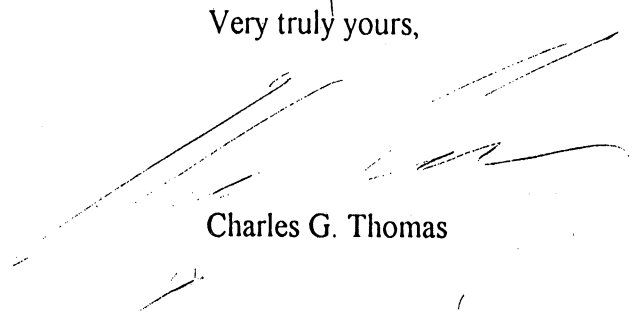
Last year I reported to you on numerous occasions that the owners of 29 Ware Street (also known as 460 Broadway) seldom if ever clear their sidewalk of snow and ice at the corner of Broadway and Ware Street, where many Cambridge residents walk to and from Harvard University and the Broadway Market. This year is no different. More than 24 hours after the huge snow of January 7th and 8th no snow was cleared, making the walkway all but impassable and presenting serious risk of injury. In my letter to you of March 15, 1993 I wrote:

These conditions are absolutely intolerable, and I once again request that your department cite the property owners under the ordinance. [¶] I would also suggest that you consult with the Law Department of the City of Cambridge to review the possibility of obtaining an injunction against the owners.

Once again I ask that your department do everything it can to cause the property owners to remedy their dangerous and outrageously inconsiderate omissions in repeatedly failing to respect the public safety mandates of the ordinance.

I would appreciate your writing or telephoning to let me know what the Department of Public Works is doing about this situation.

Very truly yours,



Charles G. Thomas

CT:dp

Consent Comm. # 17

5-1A

Comm. from Charles G. Thomas, Attorney,
regarding the issue of pedestrian safety
on the City Sidewalks regarding snow
removal and his unavailability to attend the
hearing scheduled for this evening.

In City Council,

February 28, 1994

Referred to 7PM
hearing