



**TO:** Mayor and Members of Troy City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Carolyn F. Glosby, Assistant City Attorney  
**DATE:** February 28, 2005  
**SUBJECT:** Nancy Cook v. City of Troy

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We are pleased to advise you that the Oakland County Circuit Court, Honorable Michael Warren, has dismissed the lawsuit filed by Nancy Cook against the City of Troy.

This case involved an alleged trip-and-fall on a City sidewalk, located at 561 Burtman, where the sidewalk was heaved approximately one inch. The fall occurred on October 18, 2003. In August 2003, just months before the fall, the sidewalk had been marked with a red dot for repair by City staff, after inspection. The repair of this sidewalk was slated for the spring/summer of 2004. Pursuant to our sidewalk program, the sidewalks are inspected in the summer. This inspection process provides the necessary information for our annual sidewalk maintenance bid process. Under this program, the actual sidewalk repair and maintenance occurs during the next spring/summer cycle. This section of the sidewalk was actually replaced in May 2004.

Plaintiff unsuccessfully argued that the City had breached our duty of reasonable repair, since we did not immediately repair the sidewalk, after discovering that it heaved approximately one inch in at least one location. In response, we argued that the City maintained the sidewalk in reasonable repair. This was evidenced by the fact that we had inspected the sidewalk, and had followed our process for repair. In addition, there is a presumption that sidewalks, although not perfect, are in reasonable repair when there are deviations of less than two inches. Upon information and belief, Ms. Cook was the only person to fall at this location, and there were no other injuries or incidents reported with the City.

Judge Warren issued an eleven page written opinion on February 10, 2005, after oral argument the preceding day. We are awaiting entry of a final order closing the case. As always, we would be glad to respond to any questions.