

Updated Memorandum

Revisions to Proposed Sidewalk Ordinance Changes

On July 1, 2013, City Council held a public hearing at the second reading of the ordinance entitled: Ordinance No. ORD-13-15, AN ORDINANCE TO AMEND SECTIONS 4:51 AND 4:58 OF CHAPTER 49 (SIDEWALKS) OF TITLE IV OF THE CODE OF THE CITY OF ANN ARBOR.

Based on resident input received at the public meeting, and following Council discussion of that input and the proposed amendments to Chapter 49, the proposed ordinance was tabled until the October 7, 2013, Council meeting to permit staff to address the issues raised. Residents were particularly concerned about ordinance language that would task them with winter maintenance of connector sidewalks (formerly referred to as "crosslot" sidewalks) adjacent to their properties as well as long-term repair responsibility in the event that the present sidewalk millage is not renewed in the future.

Staff performed benchmark research with surrounding communities. Many did not have a significant enough number of connector sidewalks for the issue to have been addressed. Those municipalities that have addressed it have almost all opted to take on repair and winter maintenance of such sidewalks. The inability to fairly assign such responsibility to multiple adjacent property owners was cited as a key reason for this decision.

Based on this input, staff investigated the costs of the City handling plowing and long-term repair of the 33 connector walks proposed for acceptance by the City in the event that amendment of the sidewalk chapter of Code were implemented in a revised form. On the high end, it was determined that total annual costs for plowing and repair of the 33 connector walks would be approximately \$7,000 (\$5,100 for plowing and \$1,900 for repair).

Staff accordingly prepared a revised ordinance to amend Chapter 49 that removes responsibility for repair and winter maintenance of connector sidewalks from adjacent property owners.

Because this differs from the language originally proposed in Ordinance No. ORD-13-15, staff recommends that the revised ordinance now proposed be considered at first reading.

A copy of the original memo setting forth other background informational is included on the following page for reference.

Previous Memo Per July 1 City Council Consideration of ORD-13-15

Proposed Sidewalk Ordinance Changes Re Crosslot Sidewalks

Background Issue:

Historically, questions have arisen regarding sidewalks, or strips of land platted for pedestrian use, which do not lie along the street frontage of public roads. Rather, these sidewalks most commonly run alongside lot lines between two parcels on strips of land belonging to neither abutting owner (see example within Westaire Terrace subdivision attached at end of memo).

Such sidewalks typically serve as connectors between streets and other public destinations including schools, parks, and other public streets. They have thus been termed “crosslot sidewalks.” However, in the majority of cases, ownership of the land lying under such sidewalks was indeterminate. Responsibility for their repair and maintenance has, therefore, been unclear. Further, such crosslot sidewalks had not formally been accepted for public use by Council action.

The need to address these questions concerning crosslot sidewalks was escalated because of the sidewalk inspection program.

Per City Code, Chapter 49 – *Sidewalks*, Section 4:51. – *Definitions*, **sidewalk** is defined as follows (bold added for emphasis):

*“...shall mean any concrete or bituminous walkway, or walkway of other materials constructed **in the public right of way**, including walks and ramps leading to a crosswalk, and designed particularly for pedestrian, bicycle, or other non-motorized travel.”*

City Code does not define “public right of way” but it is a term commonly used to refer to public street rights of way.

This definition does not, therefore, address crosslot sidewalks, thus leaving the City’s right or duty to repair or maintain the crosslot walks in question.

Committee Research

A staff committee was assembled to inventory the locations of existing crosslot sidewalks or strips of lands platted for pedestrian use. 83 such crosslot walks were identified and data gathered including photographs, walk conditions, related documents, etc. To shed light on ownership status of the strips of land, and to determine if such crosslot sidewalks appeared to have been intended for public use, copies of the subdivision or condominium plats upon which the walk strips lay were located and reviewed as applicable.

Six of the identified locations were determined to lie on City-owned property where the City's responsibility to maintain and repair the walks is clear.

Another 14 locations are strips of land platted for pedestrian use but which do not physically contain a sidewalk. These locations are not affected by this ordinance recommendation.

One sidewalk was determined to lie within a private road and another was determined to be functioning as an alley or driveway rather than as a sidewalk. Neither thus functioned as a public crosslot sidewalk.

With the determination that no further research was needed on the above referenced 22 crosslot sidewalks, the committee focused on the remaining 61 walks. Issues researched included whether the strips of land upon which the walks lay had been in any way dedicated to the public, whether the City had accepted such walks for public use, and whether there was any evidence that documents such as covenants and restrictions placed the obligation for repair and maintenance upon a private entity such as a homeowners association.

Research Results:

Upon completion of research, the committee determined that 33 of the 61 crosslot walks lay upon land which had either been dedicated for public use via plat or had otherwise been specifically taken as an easement for pedestrian use by the City, that the existing sidewalks in those are serving a public purpose, and that no other potential legal or physical issues related to their proposed acceptance were observed.

The remaining 28 crosslot walks require further study and possible additional actions beyond the scope of this proposed ordinance change before they can be considered for acceptance as public walks. However, the committee felt that it was important to proceed with the proposed ordinance changes to pave the way for acceptance of these 33 and potentially for more of the remaining 28 in the future.

Related City Policies Regarding Crosslot Walks

The City has historically recognized the value of providing crosslot pedestrian connectivity as evidenced by the existence of the platted strips and easements upon which the crosslot walks lie. Provision of such pedestrian connectivity strips were recorded on subdivision plats or site condominium documents duly approved by the City.

Further, in the adopted *City of Ann Arbor Non-Motorized Master Plan*, Section 2.6, *Travel Within Neighborhoods*, clearly states that "Non-motorized connectivity between adjacent residential, commercial, and institutional developments shall be provided."

Recommended Ordinance Change and Related Actions:

In order for the 33 referenced crosslot sidewalks to be accepted as "sidewalks" per City Code Chapter 49, the committee felt that a three-step action would be required as follows:

1. Revise the definition of “sidewalk” per Chapter 49 to include walks that *lie upon an easement or strip of land taken or dedicated and accepted for public use for pedestrian purposes*. That would clear the way for these crosslot sidewalks to be treated the same as sidewalks fronting on streets. Language was also crafted to clarify that in those instances where plat or condominium documents had explicitly tasked its association with repair and maintenance of such walks, such responsibility would be unchanged by the definition revision.
2. Following first reading of the proposed ordinance change, send notice to all property owners abutting the 33 crosslot sidewalks that a resolution to formally accept such walks for public use was upcoming. Such notice would include invitation to a committee work session as well as an invitation to comment upon the proposed ordinance change and resolution of acceptance (see step 3 below).
3. Set second reading of the ordinance change to occur at the second meeting following initial reading (to allow time for comment and public engagement) and simultaneously present a resolution to formally accept the 33 crosslot sidewalks for public use.