

# Department of Public Works

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15-00544

## MEMO

**TO:** Mayor Dickert and Common Council

**FROM:** Mark Yehlen, Commissioner of Public Works

**DATE:** June 12, 2015

**SUBJECT:** Proposal to Establish Special Revenue Fund for Pedestrian Facilities Maintenance

I'm submitting the attached Proposal for a Special Revenue Fund for Pedestrian Facilities Maintenance for consideration by the Common Council to establish an equitable system of financing the maintenance of sidewalks along streets and in parks; and the Pathway System through an annual Pedestrian Facilities Maintenance Fee charged to all property owners.

MHY:mhy

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# PROPOSAL FOR A SPECIAL REVENUE FUND FOR PEDESTRIAN FACILITIES MAINTENANCE

## OBJECTIVE

To create an equitable system of financing the maintenance of sidewalks along streets and in parks; and the Pathway System through an annual Pedestrian Facilities Maintenance Fee charged to all property owners.

## BACKGROUND

- Section 66.0907 of State Statute (attached) gives municipalities the option of maintaining sidewalks at city expense, or through repair orders/assessments to abutting property owners (current practice).
- The City Charter of 1891 established the Special Assessment process, and the cost to install, repair and replace sidewalks in the right-of-way has been borne totally by abutting property owners since then.
- The city implemented its current, proactive sidewalk inspection and maintenance program in response to a personal injury lawsuit in 1997. We issue an average of 2,000 Sidewalk Orders annually and collect about \$50,000 in Sidewalk Permit Fees and mark-ups to assessments to cover the cost of administering this "front-end" portion of the program. Sidewalks are currently inspected on a five to seven year cycle.
- About half of the property owners receiving Sidewalk Orders opt to have the damaged sidewalk squares abutting their properties replaced by city contract. The city assesses property owners about \$325,000 annually for this work. The average assessment is \$320, with individual assessments against residential properties ranging from \$100 to \$2,600.
- It's impossible to estimate the total annual sidewalk repair and replacement costs borne by property owners who choose to do their own repairs or hire a private contractor, but a range of \$175,000 to \$275,000 for direct costs to property owners is within reason.
- The Engineering Department spends about \$80,000 annually in CIP funds (G.O. debt) for crosswalk ramp construction/replacement and for sidewalk replacements abutting city properties.
- The Parks, Recreation and Cultural Services Department spends about \$35,000 annually in CIP funds (G.O. Debt) for sidewalk and pathway repairs and replacements.
- The total citywide annual cost of sidewalk and pathway replacements and repairs is estimated from \$665,000 to \$765,000, the vast majority of which is paid directly by abutting property owners.

## DISCUSSION

- Sidewalks and the Pathway System are public amenities that benefit all city residents.
- The cost to maintain these portions of the city's infrastructure is currently spread unevenly among the city's property owners: properties without abutting sidewalks pay next to nothing; owners of corner lots and parcels with long frontages are at risk of high repair and replacement costs; properties with street trees and/or poor soils are subject to repeated sidewalk failures and repair/replacement expenses.
- The Engineering and Finance Departments expend significant manpower to administer the inspections, notifications, permits, cost allocations, and assessment billings associated with the current system.

## RECOMMENDATIONS

- Replace the current system of holding property owners responsible for the maintenance of abutting sidewalks with an infrastructure management program administered by the Engineering Department financed through an annual Pedestrian Facilities Maintenance Fee charged to all property owners, beginning in 2016.
- Recommended annual fee, \$25 per residential property (24,150 total) and \$50 per commercial/industrial property (2,400 total), with the following stipulations:
  - Properties receiving Sidewalk Orders or pulling Sidewalk Permits before 2016 will be exempted from the annual fee for five years after the year of the order or permit was issued.
  - City properties (about 300) will be exempted from the annual fee.
  - Properties without sidewalks pay the full annual fee.
- Projected 2016 revenue of \$485,000, increasing to \$720,000 in 2021 after the five year exemption for orders and assessments expires.
- Provide a process for property owners to request the construction of sidewalks abutting their property, with the Pedestrian Facilities Maintenance Fund paying one half of the construction cost.

**CHAPTER 66**  
**GENERAL MUNICIPALITY LAW**

SUBCHAPTER IX  
PUBLIC WORKS AND PROJECTS

**66.0907 Sidewalks.**

(1) PART OF STREET; OBSTRUCTIONS. Streets shall provide a right-of-way for vehicular traffic and, where the council requires, a sidewalk on either or both sides of the street. The sidewalk shall be for the use of persons on foot, and no person may encumber the sidewalk with boxes or other material. The sidewalk shall be kept clear for the use of persons on foot.

(2) GRADE. If the grades of sidewalks are not specially fixed by ordinance, the sidewalks shall be laid to the established grade of the street.

(3) CONSTRUCTION AND REPAIR.

(a) *Authority of council.* The council may by ordinance or resolution determine where sidewalks shall be constructed and establish the width, determine the material and prescribe the method of construction of standard sidewalks. The standard may be different for different streets. The council may order by ordinance or resolution sidewalks to be laid as provided in this subsection.

(b) *Board of public works.* The board of public works may order any sidewalk which is unsafe, defective or insufficient to be repaired or removed and replaced with a sidewalk in accordance with the standard fixed by the council.

(c) *Notice.* A copy of the ordinance, resolution or order directing the laying, removal, replacement or repair of sidewalks shall be served upon the owner, or an agent, of each lot or parcel of land in front of which the work is ordered. The board of public works, or either the street commissioner or the city engineer if so requested by the council, may serve the notice. Service of the notice may be made by any of the following methods:

1. Personal delivery.

2. Certified or registered mail.

3. Publication in the official newspaper as a class 1 notice, under ch. 985, together with mailing by 1st class mail if the name and mailing address of the owner or an agent can be readily ascertained.

(d) *Default of owner.* If the owner neglects for a period of 20 days after service of notice under par. (c) to lay, remove, replace or repair the sidewalk the city may cause the work to be done at the expense of the owner. All work for the construction of sidewalks shall be let by contract to the lowest responsible bidder except as provided in s. 62.15 (1).

(e) *Minor repairs.* If the cost of repairs of any sidewalk in front of any lot or parcel of land does not exceed the sum of \$100, the board of public works, street commissioner or city engineer, if so required by the council, may immediately repair the sidewalk, without notice, and charge the cost of the repair to the owner of the lot or parcel of land, as provided in this section.

(f) *Expense.* The board of public works shall keep an accurate account of the expenses of laying, removing and repairing sidewalks in front of each lot or parcel of land, whether the work is done by contract or otherwise, and report the expenses to the comptroller. The comptroller shall annually prepare a statement of the expense incurred in front of each lot or parcel of land and report the amount to the city clerk. The amount charged to each lot or parcel of land shall be entered by the clerk in the tax roll as a special tax against the lot or parcel of land and collected like other taxes upon real estate. The council by resolution or ordinance may provide that the expense incurred may be paid in up to 10 annual installments and the comptroller shall prepare the expense statement to reflect the installment payment schedule. If annual installments for sidewalk expenses are authorized, the city clerk shall charge the amount to each lot or parcel of land and enter it on the tax roll as a special tax against the lot or parcel each year until all

installments have been entered, and the amount shall be collected like other taxes upon real estate. The council may provide that the street commissioner or city engineer perform the duties imposed by this section on the board of public works.

**(5) SNOW AND ICE.** The board of public works shall keep the sidewalks of the city clear of snow and ice in all cases where the owners or occupants of abutting lots fail to do so, and the expense of clearing in front of any lot or parcel of land shall be included in the statement to the comptroller required by sub. (3) (f), in the comptroller's statement to the city clerk and in the special tax to be levied. The city may also impose a fine or penalty for neglecting to keep sidewalks clear of snow and ice.

**(6) REPAIR AT CITY EXPENSE.** The council may provide that sidewalks shall be kept in repair by and at the expense of the city or may direct that a certain proportion of the cost of construction, reconstruction or repair be paid by the city and the balance by abutting property owners.

**(7) RULES.** The council may by ordinance implement the provisions of this section, regulate the use of the sidewalks of the city and prevent their obstruction.

**(10) APPLICATION OF SECTION; DEFINITIONS.** The provisions of this section do not apply to 1st class cities but apply to towns and villages, and when applied to towns and villages:

**(a)** "Board of public works" means the committee or officer designated to handle street or sidewalk matters.

**(b)** "City" means town or village.

**(c)** "Comptroller" means clerk.

**(d)** "Council" means town board or village board.

**History:** 1975 c. 172, 356, 421, 422; 1979 c. 32; 1983 a. 189, 532; 1991 a. 316; 1993 a. 490; 1999 a. 150 s. 542; Stats. 1999 s. 66.0907.

A city cannot delegate its primary responsibility to maintain its sidewalks, nor delegate or limit its primary liability by ordinance. *Kobelinski v. Milwaukee & Suburban Transport Corp.* 56 Wis. 2d 504, 202 N.W.2d 415 (1972).

The defendant property owners' failure to remove snow and ice from sidewalks in violation of a municipal ordinance did not constitute negligence per se. *Hagerty v. Village of Bruce*, 82 Wis. 2d 208, 262 N.W.2d 102 (1978).

A city, exercising its police power, can impose a special tax on properties for the cost of installing a sidewalk on an adjacent city right-of-way without showing that the properties would be benefited. *Stehling v. City of Beaver Dam*, 114 Wis. 2d 197, 336 N.W.2d 401 (Ct. App. 1983).