

Memorandum

To: Myersville Mayor and Council
From: Kristin Aleshire
Date: April 29, 2024
RE: Municipal Sidewalk Maintenance

Introduction

In recent discussion the Mayor and Council have directed staff to review the options for consideration of transfer of sidewalk maintenance, upgrade, and improvement from the sole responsibility of the property owner to the Town. As part of that direction staff reached out to nearby municipalities to inquire of how this matter is addressed across various jurisdictions.

Summary

Following is the current Town Code Section 124 regarding curb and sidewalks:

Curbs and gutters required; construction standards; inspection.

[Amended 10-11-2005]

Alongside and in front of all lots or parcels of land in the Town, the owners of said lots or parcels of land shall make and maintain a good curb and gutter of concrete. Said curb and gutter shall be what is known as a "combination concrete curb and gutter," except where curbs have already been made of other or different material and approved by the Mayor and Council at the time of the passage of this article (1922). Every such curb and gutter shall be laid under the direction of the Mayor and Council, to conform to the grade established by the Mayor and Council of Myersville, and according to such plans and specifications as are now or may hereafter be adopted by the Corporation of Myersville, and said curbs shall be subject at all times to the inspection and approval of the Mayor and Council.^[1]

4-3Construction required; construction standards.

A.

It is unlawful for a person to construct a public improvement in conflict with this article or Chapter 130, Subdivision and Land Development.

B.

The owner or owners of every property which fronts on a public street within the corporate boundaries of the Town of Myersville may be required to construct at the expense of said property owner or owners a sidewalk along that part of their property that abuts the street.

C.

Such public improvements shall conform with the grades, levels, and materials approved by the Town and according to plans and specifications filed and approved by the Planning Commission.

§ 124-4Maintenance and repair.

A.

It is the duty and responsibility of all owners of land to keep the sidewalks binding thereon in good and proper repair and at all times free of nuisances.

B.

Whenever it is brought to the attention of the Mayor and Council, and it is their opinion, that a sidewalk or portion thereof is in unsatisfactory condition and should be repaired or relaid, the Town Administrator shall notify the owner(s) in writing to repair or relay the same within 60 days of such notice.

§ 124-5 State Highway Administration projects.

In the event that the State of Maryland or any of its agencies, through state-sponsored programs or otherwise, is willing to install sidewalks, curbing, guttering or other sidewalk improvements or amenities on private property which adjoins a state road or highway at no cost to the property owner, then the Town or the state and its agents and employees shall be permitted to enter the owner's property for the sole and limited purpose of planning, constructing and installing the improvements or amenities under the state program, and the owner shall bear no responsibility for the expense of those improvements under § 124-3B of this article. Nothing in this section shall relieve an owner of such property from his continuing obligations to maintain and to remove snow, ice and nuisances from the sidewalk and improvements as otherwise set forth in this article.

Based on the above information it appears that the Town may require property owners to install curb, gutter and/or sidewalk or have done so on the owners behalf and possible expense at the discretion and direction of the elected body.

Staff contacted all neighboring municipal jurisdictions and was informed that this issue is currently both ripe with discussion in some other municipal jurisdictions and is addressed in various approaches as follows:

Hancock:

Our code is likely very similar to lots of towns:

"...sidewalks, curbs, driveways and any other improvements located along and in the public streets and thoroughfares within the corporate limits of the Town of Hancock shall be maintained and kept in a reasonable state of repair at the expense of the abutting property owner and/or occupant of any lot, lots, or parts of a lot as referred to herein."

We only require residents to repair their sidewalks if they damage them. We basically repair/replace as the need arises. We don't typically budget anything for sidewalk repair, we're not that disciplined. If we received complaints about a stretch of sidewalk, we would likely repair/replace it. We don't actively inspect or enforce.

Keedysville:

The Town handles repairs and replacement as the need arises, but we don't have a lot of sidewalks in Town. Many of our neighborhoods are older and were built without sidewalks. Our Main Street sidewalks were recently replaced by the State when they did the Streetscape project here.

Since the need for repair/replacement is limited, we only add it to the budget as needed and as funds are available. If we have more needs than funds, we prioritize those that are in the worst shape.

Smithsburg:

We do routine inspections, once an issue is found a (45) day notice is given to make corrections, an extension and second notice can be given for an additional (14) days, and then we can either fine or make the repair and place a lein against the property, however recently there has been some debate over the

validity of making the Public Pay. Our Attorney has found however they we are within our legal bounds to do so.

Brunswick:

Brunswick is also in the midst of changing from residential ownership of sidewalks to City owned sidewalks. Like Walkersville, our sidewalks were in terrible shape in many areas, and they were not being addressed. Also, we found that while we provided guidelines to residents they weren't always followed thus, resulting in non-compliant sidewalks in terms of ADA. Another factor that played into our recent decision on sidewalks was that we were doing lots of water main/storm water replacements using our ARPA funds and it was easier to replace the sidewalks as we moved forward with the infrastructure projects at the same time.

Burkittsville:

In Theory Burkittsville property owners are responsible for keeping their sidewalks in good repair. Enforcement is lacking. If and when we get our street plan done the town may take on responsibility.

New Market:

If it is a town or Mother Nature issue the town pays for all repairs. If it is over 15k it goes to bid. If there is a water leak or a hook up to public water, it is the homeowners responsibility and they have to put up a \$500 performance bond and a \$235+ expenses permit. The plus is for any fees over the \$235 base permit amount if any of the engineering, town planner, or legal fees since we contract out for those.

Thurmont:

Historically, sidewalk repairs, which would include replacement, has fallen to the property owner. Some discussion is being held to consider for the town to take the lead on replacing the sidewalks that are in disrepair, but only if we can get grant funding not operating or capital budget. The Planning & Zoning Commission often ask developers to work with adjoining property owners to install or upgrade existing sidewalks while they are installing new as part of the development project. We recently had some pushback from a property owner where a new sidewalk was installed within the town right of way. So, currently the responsibility still falls on the property owner. That may change in the next few months. Sidewalks that are in disrepair and are considered a safety risk are inspected and enforced by our Code Enforcement Officer. Our code is below:

Article VI Sidewalk Maintenance, Snow and Ice Removal
84-60. Property owner's responsibility.

1. All sidewalks, curbs and/or gutters shall be constructed and kept in a reasonable state of repair by the abutting property owner.

a. Single-family, town house, and row house dwelling property owners will be responsible for the sidewalks, curbs and/or gutters that front their properties.

b. All other property owners (commercial, industrial, apartment, etc.) will be responsible for the sidewalks, curbs and/or gutters that abut their properties.

2. Such construction must be performed in accordance with the Commissioners' specifications and under the inspection and supervision of an agent of the Commissioners, and such construction shall be entirely at the expense of the property owner. If the work is not satisfactorily completed within the designated

time by the property owner, the Commissioners may complete it at the property owner's expense.

3. In the event that a sidewalk, curb and/or gutter within the corporate limits of the Town shall be determined to be in such a condition as to be detrimental to the health, safety, welfare and property of others, such condition shall constitute a nuisance.

4. No person shall place or allow to remain in or upon or over any sidewalk or street within the Town any box, crate, barrel, carton, bricks, logs, lumber, lime, cement or other building material, or anything else, which might obstruct the free passage along and upon the sidewalk or street or which may make the street or sidewalk unsightly or dangerous to the public health or safety without first obtaining from the Town Planner a permit to place and maintain the obstruction, not to exceed 10 business days.

5. Violation of this section is declared a municipal infraction. The penalty for violation of this section shall be a fine of one hundred (\$100.00) for each offense. Failing to address sidewalk maintenance violations within seven (7) days of notice, or obstruction of sidewalk within (2) business days of notice, constitutes a violation of this section.

Walkersville:

Walkersville recently updated the Town Code (Ordinance attached) and took responsibility for the sidewalks unless the homeowner causes the damage (tree, intentional damage, etc.). Previously homeowners were responsible and the Town addressed issues if complaints were made. The Town received very few formal complaints even though there are areas of the Town where the sidewalks are terrible. While there were trip hazards that occurred from trees, much of the damage was simply old sidewalks that needed to be replaced. There has been an ongoing discussion (eight to ten years) of back and forth if the homeowner should be responsible for what amounts to "worn out" sidewalks.

The Town recently conducted a road, sidewalk, and ADA Ramp study to determine what areas need immediate work and it also identified all the "trip hazards". Once we obtain a paving and concrete contract (hopefully voting on it this week), we plan on turning a contractor loose to fix all the immediate trip hazards. From there, we will begin systematically fixing the most traveled sections of sidewalks and roadways. Unfortunately this was something that was neglected and needs attention. I suspect there are going to be some pitfalls, but we took an aggressive approach to deal with the issue and move forward. Hope this helps.

Recommendation

Staff would recommend the information provided against current Town Code to determine if update of current practice is warranted. If so, this may be an appropriate task for the Public Facilities Committee to take on, review how neighboring jurisdictions have changed course over time and present a recommendation on some reasonable change for Mayor and Council to consider.

TOWN OF WALKERSVILLE
ORDINANCE NO. 2023-05

AN ORDINANCE TO AMEND CHAPTER 69 STREETS AND SIDEWALKS,
ARTICLE III, SECTION 69-16, LAYOUT AND CONSTRUCTION OF
SIDEWALKS, CURBS, AND GUTTERS AND SECTION 69-17 MAINTENANCE
AND RESPONSIBILITY OF ABUTTING PROPERTY OWNERS TO PERFORM
CERTAIN WORK.

BE IT ENACTED AND ORDAINED by the Burgess and Commissioners of the
Town of Walkersville that the Town Code shall be amended as follows. New
provisions are indicated by being in **bold font** and the provisions being
eliminated are indicated in *italics*.

ARTICLE III
Construction and Maintenance of Sidewalks, Curbs and Gutters

§ 69-16 Layout and construction of sidewalks, curbs and gutters.

The Burgess and Commissioners shall have the power:

- A. To establish and change from time to time the grade lines, width and construction materials of any sidewalk, curb or gutter, or part thereof.
- B. To grade, lay out, construct, reconstruct, pave, repave, repair, extend or otherwise alter the sidewalks along any public way or part thereof.
- C. To install, repair and maintain **sidewalks**, curbs and/or gutters along any public way or part thereof.

1. The Town will repair a section of sidewalk when it is determined to be in a Hazardous Condition.

- a. **A hazardous condition shall be considered to exist when any of the following conditions exist in any portion of a sidewalk:**

- (1) **A crack resulting in a gap/separation of one inch or greater.**
- (2) **The presence of a tilt in the sidewalk, whether caused by settlement, upheaval or other condition, which creates a differentiation in height of 3/4 inch or greater in any four foot or less length or width of the sidewalk or between sidewalk panels.**
- (3) **Any hole which is greater than three inches in diameter as measured from its widest point.**
- (4) **The presence of spalled or pitted areas where in a six-by-six-inch area the condition of spalling or pitting exhibits a depth of one inch or greater in any section of sidewalk.**
- (5) **Any other condition of the sidewalk which is determined by the Town Manager or her/his designee, after due inspection and**

observation, to constitute a hazard to public health, safety and welfare.

- D. ~~To assess the cost of any projects under this section on the abutting property owners in the manner provided in this chapter.~~ To assess the cost of any projects under this section on the abutting property owners in the event that the damage to the Sidewalks, Curbs and/or Gutters has been determined by the Town Manager and/or Public Works director and/or her/his designee to be due to negligence on the part of the abutting property owner or their representative.

1. Property owners will be notified in writing of damaged sidewalk caused by a tree. The property owners will be given 90 days to mitigate the tree before the sidewalk is repaired. The Town may mitigate the tree and repair the sidewalk if the property owner fails to complete the required work within 90 days of written notification; the property owner shall be billed for the mitigation of the tree and the repair of the sidewalk.

§ 69-17 Maintenance and responsibility of abutting property owners to perform certain work.

- ~~A. Property owners, occupants, or other persons in control of any lots or lands located in Walkersville shall maintain their sidewalk bordering their parcels of land in a state that is free of hazardous conditions. [Added 9-8-1999 by Ord. No. 99-11; amended 11-13-2019 by Ord. No. 2019-06]~~

~~(1) A hazardous condition shall be considered to exist when any of the following conditions exist in any portion of a sidewalk:~~

~~(a) A crack resulting in a gap/separation of one inch or greater.~~

~~(b) The presence of a tilt in the sidewalk, whether caused by settlement, upheaval or other condition, which creates a differentiation in height of 1 1/2 inches or greater in any four-foot or less length or width of the sidewalk or between sidewalk panels.~~

~~(c) Any hole which is greater than three inches in diameter as measured from its widest point.~~

~~(d) The presence of spalled or pitted areas where in a six-by-six inch area the condition of spalling or pitting exhibits a depth of one inch or greater in any section of sidewalk.~~

~~(e) Any other condition of the sidewalk which is determined by the Town Manager or her/his designee, after due inspection and observation, to constitute a hazard to public health, safety and welfare.~~

~~(2) The owner of any property with a sidewalk deemed by the Town Manager, or their designated official, to meet the definition of a sidewalk with a hazardous condition as defined in § 69-17A(1) shall be issued a code violation notice that shall include the following:~~

~~(a) The location of the hazardous condition.~~

~~(b) A photograph of the hazardous condition with any relevant measurements for scale.~~

~~(c) Time frame for completion.~~

~~(d) Property owner's right to appeal.~~

~~(3) The abutting property owner may file an appeal of the code violation, in writing, to the Burgess and Commissioners.~~

~~(a) The appeal must be submitted either in person or via mail to the Town office no more than 30 days from the issuance of the code violation notice.~~

~~(b) The burden of proof is on the applicant to demonstrate by clear and convincing evidence that the Town Manager or their designated official made an error in issuing the citation.~~

~~(c) Filing of this appeal does not stop the timely completion requirements as defined in Subsection A(2)(c) of this section.~~

~~(d) The appeal will be voted upon by a quorum of the Commissioners and a written notice of decision shall be issued to the applicant within 10 days from the Town.~~

~~(4) The property owner must remedy the hazardous condition within 90 days from the issuance of the citation.~~

~~(a) Exception. The Burgess and Commissioners, by vote, may grant an extension, to be determined by the Burgess and Commissioners, to the property owner if the property owner presents extenuating circumstances in writing. However, the extension shall not exceed 180 calendar days from the date the citation is issued. Upon approval or denial, written notice will be issued to the property owner within 10 calendar days.~~

~~(5) Upon completion of the work, the Town Manager or their designated official will conduct a site visit to the property and will inspect the repair to ensure that the completed work not only remedies the issue presented in the citation, but shall restore the sidewalk to the requirements set forth in the Town's Design Manual. [Amended 8-10-2023 by Ord. No. 2023-03]~~

~~(6) The Town will complete the work if the property owner fails to complete the required work within the time frame designated by the Town; the property owner shall be billed for the work.~~

~~(a) The Town may enter into an agreement with a property owner who shall pay in interest installments over the course of two years.~~

~~(b) Failure to pay the balance of cost to repair the sidewalk will result in a lien on the property.~~

~~B. The Burgess and Commissioners shall have the power to require and order the owner of any property abutting on any public way to perform any projects under~~

~~this chapter, at the owner's expense, according to plans and specifications adopted by resolution of the Burgess and Commissioners and on file in the Town office. If, after due notice and hearing, the owner fails to comply with the order within a reasonable time, the Town may do the work, and the expenses thereof shall be a lien on the property and shall draw interest after 30 days at the rate of 1% per month or fraction thereof.~~

- A. An abutting property owner constructing a new building or substantially improving an old building upon his/her property shall be required, at his/her own expense, to provide sidewalks, curbs and gutters meeting the plans and specifications adopted by the Burgess and Commissioners; provided, however, that exceptions may be granted in special cases wherein the Burgess and Commissioners determine that the public interest will not be served by requiring strict adherence to the requirements of this section. In no case shall any occupancy permit required by this Code be issued if there has not been compliance with this section.

Introduced this 8th day of November 2023.

Burgess & Commissioners of the Town of Walkersville
Chad W. Weddle, President

Passed this 13th day of December _____, 2023.

Burgess & Commissioners of the Town of Walkersville
Chad W. Weddle, President

Approved this 13th day of December _____, 2023.

Chad W. Weddle, Burgess