



ST. CHARLES  
SINCE 1834

## AGENDA ITEM EXECUTIVE SUMMARY

Title:	Discussion regarding Maintenance Responsibility for “Sidewalk, Approach Type”
Presenter:	Mark Koenen, Peter Suhr, Richard Gallas, Jim Bernahl

*Please check appropriate box:*

	Government Operations	X	Government Services 02.27.12
	Planning & Development		City Council
	Public Hearing		

Estimated Cost:		Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

**Executive Summary:**

At the October, 2011 meeting, we discussed maintenance responsibility for sidewalk approach type walks. Please recall sidewalk approach type walks are located in the public Right of Way (ROW) and extend between the curb/edge of street pavement and the public sidewalk or ROW. Sidewalk approach type walks are presently considered private. In light of the corresponding private maintenance responsibility, staff was directed to investigate implications of changing the current municipal code. These implications include legal, Americans with Disabilities Act (ADA) and costs associated with this new city responsibility. At the committee meeting, staff will present detailed information regarding the sidewalk approach type walk infrastructure, how other communities handle ownership and maintenance of these walks and the implications as noted above. Additionally, we have attached a memorandum offering information concerning this topic.

**Attachments:** *(please list)*

Minutes, Executive Summary and attachments from the October, 2011 GSC meeting, Memorandum dated Feb. 27, 2012.

**Recommendation / Suggested Action** *(briefly explain)*: Staff recommends that the city continue to follow the ordinance, maintaining sidewalk approach type walks as a private maintenance responsibility of the adjacent property owner. Staff would also recommend that a policy be prepared and referred to in the ordinance stating the city would remove (not install) existing sidewalk approach type walks under the following conditions-

- a) When requested by the adjacent property owner or
- b) When the sidewalk approach type walk is in poor condition or due to city construction damage and the property owner, with notification, chooses not to correct the condition.

The removal of the sidewalk approach type walk and restoration would be paid for by the city. All other practices regarding sidewalk approach type walks maintenance would continue and be documented in the recommended policy.

*For office use only:*

*Agenda Item Number: 6.e*



**Memo**

Date: February 27, 2012

To: Mayor and City Council

From: Mark Koenen

RE: Maintenance Responsibility for "Sidewalk, Approach Type"

The purpose of the memorandum is to offer background on sidewalk approach type infrastructure and related impacts in evaluating public or private maintenance. Staff will also be discussing this at the committee meeting. Please consider the following:

What is the quantity, style and condition of sidewalk approach type walks?

Currently, the City has a total of 989 sidewalk approach type walks (service walks). These sidewalks range in length from 3 feet to 23 feet, but most are about 10 feet long. The service walks range in width from 1 foot to 10 feet, but the majorities of them are about 4 feet wide. 880 of the service walks are concrete, 67 are brick, 16 are stone and the remaining 5 are of other materials including gravel, crushed limestone and clay. 85 of the service walks have steps of which 16 have metal railings. 824 are currently in good condition, 94 are in fair condition and 50 are in bad condition.

What is the estimated value of replacing and maintaining sidewalk approach type walks?

We evaluated cost based on three separate scenarios. First, if all of the service walks were removed in their entirety and restored to turf. Second, if all of the service walks were removed and replaced (in-kind) with a concrete surface. Third, if all the service walks were removed and replaced in concrete and included ADA accessibility ramps at the street curbs. Projected costs for each of the scenarios is as follows: (Please keep in mind that costs are based on average conditions. As noted above, each sidewalk approach is unique and will vary in cost. Costs do NOT consider replacement of stairs or railings. Costs reflect replacement in concrete or turf only; NOT stone, brick or other materials. Costs reflect construction costs for 2012 and as a single (one mobilization) contract. Costs will be significantly higher if individual service walks are bid separately).

- 1. Removed & Restored to Turf - \$ 175,000
- 2. Removed & Replaced in Concrete - \$ 325,000
- 3. Removed & Replaced in Concrete (w/ ADA Ramps) - \$ 900,000

If consideration was made to replace only the service sidewalks with a "Bad" rating (50 Sidewalks), costs would be as follows:

- 1. Removed & Restored to Turf - \$ 6,500
- 2. Removed & Replaced in Concrete - \$ 12,500
- 3. Removed & Replaced in Concrete (w/ ADA Ramps) - \$ 42,000

### What is the city's potential liability?

Illinois Courts have said that although parkways are not constructed with the intention of accommodating pedestrian traffic in the same way sidewalks are, historically they have been used by pedestrians to access cars parked on the street, to retrieve mail, to cross the street, etc.

Since the service sidewalks in question are within the parkway, in the event of an injury, the City could be held responsible for the condition of these service sidewalks. That said, Courts would have to decide on a case by case basis.

### What is the impact of ADA?

The City follows the guidelines and recommendations outlined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and most recently the addition of the United States Access Board "Proposed Accessibility Guidelines for Pedestrian Facilities in Public Right-of-way" manual. During normal construction activities, should a publicly- owned sidewalk be disturbed or a City construction project cause for modifications to be made to publicly-owned walkways the City would perform repairs to conform to these guidelines. Construction activities would include such items as the installation of depressed curbing, detectable warning surfaces, grade slope improvements, widening where necessary, and in rare cases installation of audible detectable signals. Should these service walks become publicly owned and maintained they would be required to be rehabilitated to these standards such as to assure that they are accessible and traversable by the public.

### What do other communities practice or have documented in policy/ordinance regarding maintenance of sidewalk approach type walks?

#### Peer Communities:

The communities surveyed included: City of Batavia, City of Naperville, City of Geneva, City of Elgin, and the Village of Carpentersville.

#### Key Findings:

1. Of the communities surveyed, most displace ownership and maintenance of the service sidewalks solely to the resident that is served by the service walk, and none of the communities replace service sidewalks at the City's cost.

#### Other Findings:

1. Of the surveyed communities, none of the communities replace service sidewalks at the City's cost.
2. In other communities, if the resident would like the service sidewalk replaced, the municipality will offer the resident the ability to pay the municipality's contract unit prices for the replacement of that walk.
3. If a resident chooses to replace a sidewalk, the resident pays up front for this work to be completed. They are also required to execute the City's Non-Standard sidewalk agreement and record it with the county. This recorded document is put on file for that residence for any future impacts to the service sidewalk.

4. If there is not an existing agreement in place *and* the resident does not want the service sidewalk replaced, the City removes the walk and restores the area at the City's own cost.
5. The homeowners are responsible for the maintenance of the service sidewalks that are replaced.
6. For all new service sidewalks or replacement of existing walks, the homeowner is responsible for the installation costs of these walks and will be required to apply for a right-of-way permit.
7. If there is not already a non-standard sidewalk agreement in place, the homeowner is responsible for submitting an agreement before work begins.



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SINCE 1834

### AGENDA ITEM EXECUTIVE SUMMARY

Title: Discussion Regarding Approach Sidewalk Maintenance Responsibility

Presenter: Mark Koenen

*Please check appropriate box:*

<input checked="" type="checkbox"/>	Government Operations	X	Government Services 10.24.11
<input type="checkbox"/>	Planning & Development		City Council
<input type="checkbox"/>	Public Hearing		

Estimated Cost:		Budgeted:	YES		NO	
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If NO, please explain how item will be funded:

#### Executive Summary:

Recently, a resident contacted staff and elected officials regarding the responsibility for replacing a section of sidewalk approach walk in front of their home. The resident was informed that sidewalk approach walk maintenance is the responsibility of the adjacent property owner. The resident believes the City should be responsible as the walk exists in the public right-of-way. This agenda item was requested by Ald. Stellato to allow for discussion regarding the responsibility for sidewalk approach walk maintenance/repair/replacement.

The Municipal Code refers to the sidewalk approach walk as "sidewalk, approach type". The definition of "sidewalk, approach type" from the Municipal Code is "A parkway structure intended for pedestrian use usually extending from the curbing or edge of pavement right-of-way. This approach sidewalk is intended primarily for the private convenience of the adjacent lot or parcel." Code discusses maintenance of sidewalk, approach type in section 12.04.217-C and it reads "It is the responsibility of the owner of the lot or parcel privately served by a sidewalk, approach type, to maintain and repair such sidewalk, approach type."

- 1- The City has not maintained sidewalk approach walk historically. The City does replace sidewalk approaches due to damage caused by action of the City (e.g., repair on an underground utility). This is not the case with the current request for replacement.
- 2- The City practice for sidewalk approach walk maintenance is considered a private responsibility. This is consistent with City practice regarding driveway apron maintenance/repair and mailbox maintenance/repair. In both cases, but for the adjacent property owner having the need or desire for the driveway apron, mailbox or sidewalk approach walk, this parkway use would not exist.
- 3- Public Works does not have an inventory of sidewalk approach walks and we do not have knowledge of the condition of same. Staff does know that there are a variety of sizes and shapes of sidewalk approach walks throughout the traditional neighborhoods of St. Charles. Additionally, there are many homes that do not have a sidewalk approach walk that may desire one, if it becomes a responsibility of the city. Should the Committee want to pursue this matter, staff would suggest we consider the cost implications on the budget for this new service.

#### Attachments: (please list)

Color Photos

#### Recommendation / Suggested Action (briefly explain):

Committee discussion, feedback and direction

*For office use only:*

*Agenda Item Number: 3.r*





No further discussion.

Motioned by Aldr. Monken, seconded by Aldr. Carrignan. Approved unanimously by voice vote. **Motion carried.**

**3.q. Recommendation to Approve Purchase of Elgin Whirlwind Sweeper**

**Peter Suhr presented.** Staff is asking for approval to purchase a new 2011 Elgin Whirlwind Sweeper to replace the existing 2002 sweeper. This is a budgeted item; Staff is asking to approve the purchase of a 2011 Elgin Whirlwind Sweeper in an amount of \$227,510.00 from Standard Equipment Company.

No further discussion.

Motioned by Aldr. Monken, seconded by Aldr. Turner. Approved unanimously by voice vote. **Motion carried.**

**3.r. Discussion Regarding Approach Sidewalk Maintenance Responsibility**

**Chairman Stellato:** This item was put on the agenda by me and Alderman Rogina because we have a situation at 522 Cedar St. There is a sidewalk that is typical in the downtown area where it is used for public access. It is located on public property but may be owned by the land owner; we aren't really sure. So Alderman Rogina and I decided we need to have a discussion about this. We have the homeowner, Craig Bobowicz here tonight as well, so we will consider him the applicant if you have any questions for Craig. We ran this by Mark Koenen and asked him to do an analysis so we can have a productive conversation this evening.

**Aldr. Krieger:** About 35 years ago when we put our own sidewalk in because the City didn't think it was necessary, we asked about going from the sidewalk to the street and we were told we should not have a walkway on the City parkway.

**Mark Koenen presented:** This is a conversation I have not entertained in my tenure with the City of St. Charles. The code has been as it is, and that is what we have practiced during my tenure with St. Charles. As you know, we do have a sidewalk program in the Community and that deals with public sidewalk. Public sidewalk is generally that which is parallel to the street which it travels. Those intermediate walks which extend between the public sidewalk and the curb or the street are what are defined by the code as the approach walk. The approach walk is considered a private improvement, much as a driveway approach is a private improvement. The culvert under your driveway if you don't have curb and gutter is a private improvement, your mailbox, etc. – they are all private improvements that the City of St. Charles realizes are necessary for property owners, so that has been a permitted activity. The maintenance of those sidewalks in this particular case is done by the property owner. The City of St. Charles does get involved with property owners and those sidewalk approaches from time to time. An example of that is when we are replacing a watermain and it goes through the

parkway. In the process of replacing the watermain, we have to take out the sidewalk approach. That sidewalk approach then can be replaced if that's what the property owner desires. But we do not install them the first time, they are installed by the property owner. We do not maintain them, either. That is done by the property owner. In fact, it's much like the sidewalk that Aldr. Krieger referred to. She put the public sidewalk in front of her house, she inquired about putting the private approach walk in front of her house and at that time, the City said we don't want you to do that. We wouldn't say that today; we may discourage you, but we wouldn't tell you not to do it.

Where are we with private sidewalk approaches? We do not have an inventory of where they are in the City, nor do we have an inventory of what condition they are in today. I would say from my familiarity with the community that private approaches like this are generally in the older part of the community. They are not as common in the community that was built sometime after 1965. That's when traditionally people had garages which fronted on the street and people used the driveway approach as the pedestrian access way from the street to the property. Some of the older neighborhoods either don't have garages or they have garages which load on an alley, so when guests come to their home, having that sidewalk approach makes a lot of practical sense. Through the years, we have tried to be very consistent. That is to say that the Municipal Code directs staff to do certain things administratively and that's what we practice consistently.

I must add that Jim Bernahl, our Public Works Engineer, reminded me that there are the ever evolving rules that relate to ADA. As you know, on public sidewalks at intersection corners, we no longer have the step curb; they have all been replaced with ramps. If these approach walks become public, it may be necessary that they be replaced through some process with handicap ramp approach. We need to find out if that is an obligation of the public or the property owner.

We had some great examples of sensitivity to budget increases this evening. This would be considered a new service for the City of St. Charles because we have not replaced sidewalk approaches as a maintenance activity, therefore it is not in our budget. Since it would be a new service, it would be a new budget item. To that affect, you may ask me how much I think we need to budget, and I can't tell you because we don't have an inventory of what we have. If you desire to move forward, that is research staff would need to perform.

**Chairman Stellato:** There was an issue of private vs. public. I know that based on the code, it states the sidewalk is private. Some homeowners may look at it as a lot of public use that sidewalk because downtown is pedestrian friendly. I don't know how to get past that issue, but Mr. Bobowicz brought up a very good point. I also had not thought about the ADA issue. I just wanted to make the comment that the public vs. private issue is where this issue started to heat up.

**Aldr. Rogina:** I spoke with Mr. Bobowicz and viewed the property as well. I concur with you that we don't want to set a precedence of doing something that is in violation of an ordinance. The flipside to that is that I'm looking at this extension here which is on a

parkway, so it's on City property. It was put there at some point by someone, privately, I would assume. In my mind this creates a public hazard and from a liability standpoint, I raise the question of who is responsible to erase that public hazard? Is it the City's responsibility or is it the property owner's responsibility, particularly when it sits on City property? I'd like to have a legal opinion, on that question alone.

**Mr. Koenen:** As a point of reference, we do have a sidewalk inspection program where we inspect on a periodic basis, frequently travelled walks, i.e. in the downtown area and those that are less frequently travelled outside the downtown area. We periodically walk sidewalks where we identify their condition. What we call a "toe catch" - if you can catch your toe on it, and we use a standard of a  $\frac{3}{4}$  inch or greater, it demonstrates there is a repair that is necessary. It goes on a list and we fix it, and you see the repairs being done throughout the year. If it's less than that, we don't consider it to be a problem. In this particular case, the picture in your packet, for example, is a sidewalk that has a very bad surface, but I'm not certain it is necessarily a toe catch which creates a liability for us or anyone. However, could someone fall on it? Certainly. I think if someone were to take us or the property owner to task, they could sue any of us and that's a risk we take on every day that we can defend ourselves against.

**Aldr. Rogina:** If there were a slab there that was sitting on a regular City sidewalk, my suspicion would be that Public Works would investigate and repair it. If he were to let his grass on his parkway grow two feet high, we might cite him for a nuisance, but nobody cited him for a nuisance related to this. My follow-up question is whether or not we are in a position to say he must repair that?

**Mr. Koenen:** We could do that as an organization. We don't have an inspection program for sidewalk approaches, so if it weren't for this complaint we wouldn't be aware of it.

Based on the sidewalk that I see in the photo here, we would not cite him for a nuisance because we would not repair a sidewalk like ourselves if it was on a public walk area.

**Aldr. Rogina:** We would not?

**Mr. Koenen:** Correct; we would not.

**Mr. Bobowicz:** My name is Craig Bobowicz; I live at 508 Cedar which is two doors from the subject location at 522 Cedar. I've owned this property since 1983. The Ordinance that Mark quotes was passed in 1989 so these sidewalks were there way before the City ever opted out of maintaining these sidewalks. I think this damage has been caused by salt. Salt is the only thing I know that will eat the sidewalk away like this. It's not broken, it's not chipped, it's eaten away, which, in the Ordinance itself says that the City has some kind of responsibility to the damage, so that's my first argument. The rest of the sidewalks are very old. I've owned this property since 1983 and the City has never come down 6<sup>th</sup> Street and done any maintenance to these sidewalks or curbs. I've paid taxes for 28 years and I've never asked for anything from this City. The location of this

is one block up from St. Pat's and Lincoln Park. Our neighborhood hosts every City function that the public comes to. We have hundreds, if not thousands of cars and pedestrians from the festivals and events. The Ordinance states that these are put in for the private use of the residents and I don't think any of these service walks can be considered private. This is the most publicly used, residential neighborhood in St. Charles.

On 5<sup>th</sup> Street, there are access staircases in the parkway and the City has gone, at their expense (I assume) and put new railing systems on property that is supposed to be privately maintained by the residents. So the City does, in selected areas put City improvements on there, so I feel like certain people get stuff and certain people don't. Who is going to maintain these railings for these property owners now? It seems there are two sides of this argument. Over on 3<sup>rd</sup> Avenue and State I found another house with steps and if you look at the picture at the base of those steps, you can see that the concrete has been replaced by somebody, I assume the City, and that's fresh new concrete, so the City does at times selectively repair these. They've repaired the one in front of my house at 522 Cedar and they didn't do it because they replaced the curb; the curbing is still old curbing. The neighbor next to me, they've replaced his curbing on the south side of Cedar Street because that whole block got new curbs about 10 years ago, they maintained those access walks, but for some reason, across the street they haven't addressed this issue.

Kiddie corner from this property there is another City step access where the City chose to not install a railing for this property owner, but certain people get them, certain people don't. I don't think Mr. Koenen's department is adhering to the letter of this ordinance. There has obviously been selective improvements made. I don't think it's unreasonable to ask the City to bend a little here and replace this sidewalk because I think the City salt trucks did it.

**Aldr. Carrignan:** On your last page of pictures; the house on the top, is that the Dunham Hunt House?

**Mr. Bobowicz:** No, it isn't. It's a private residence that is a landmark home. My property that I'm asking for the consideration is also a St. Charles Landmarked home. Chairman Stellato went and looked at it and he even e-mailed me and complimented me on how well I take care of my property and the condition of it. I'm not a slum lord asking for a free ride here.

**Aldr. Carrignan:** All I asked was the location.

**Aldr. Turner:** Mark, did we replace these railings?

**Mr. Koenen:** Yes; those railings were installed by the City.

**Chairman Stellato:** This comes down to the issue that we've been struggling with - is this public vs. private because of the walkability downtown. Mark, it sounds to me that

we need to do some research. How many of these walks exist, what condition are they in, and also your ADA accessibility issue. We don't want to replace something and find out we didn't do it per code, then we're liable, so we need to check into all that. I wouldn't mind hearing what other communities are doing about something like this as well. There is not going to be any time before the end of the year to get this done so maybe we can use this time with winter approaching to research this and figure out what to do when spring breaks. In my neighborhood on the southeast side of town, we don't have these sidewalks, so the condition seems to be more specific to downtown.

**Aldr. Carrigan:** Two things before thinking about doing this; where is the money going to come from? That's the first thing I want to know. Secondly, as these deteriorate, why don't we consider just taking them out and put grass down? Just get rid of the problem as an ongoing process as they get to the point of deterioration.

**Mr. Bernahl:** I've had experience with this; many times these were installed prior to permitting requirements. In many towns, since these don't conform to ADA requirements, they will actually remove them. If the homeowner wants to reinstall them, they have to install them so that they meet these requirements and the city will have the homeowner sign a Hold Harmless Agreement, just like any other specialty items.

**Aldr. Rogina:** Based upon everything that's been said, I'll repeat my statement. I would not want to violate any City ordinance here, but at the same token, I don't believe the homeowner should have to repair that at his own expense. Furthermore, I think it should be repaired, or as Aldr. Carrigan said, eliminate it and remove the problem.

**Aldr. Carrigan:** That's still an expense that we are going to have to absorb.

**Aldr. Krieger:** We've existed for many years without that access. I think the idea of taking it out is best.

**Chairman Stellato:** If there are no other questions, is it okay to direct staff to move forward to do some research on this in the meantime? Try to understand the conditions, how much it would cost, and where the money comes from as well? We probably need a legal opinion on the ADA liability.

**Mr. Bobowicz:** I'd be happy to have it taken out and grassed over. My garage is behind the house.

No further discussion.

~~4.a. **Recommendation to approve an Ordinance Amending Chapter 5.44 Secondhand and Junk Stores and an Ordinance Amending Chapter 10, Section 10.11.2360 Dealers – Report of Sales to Police (Savers Secondhand Store)**~~

~~**Chris Aiston presented.** You will recall when we presented to the Planning & Development Committee earlier this month, the Committee asked me to come back to~~