

Ordinance No. 2023-58

**AN ORDINANCE AMENDING CHAPTER 40 OF THE CODE OF ORDINANCES OF THE CITY OF HOUSTON BY REPLACING ARTICLE XXII, SIDEWALKS, IN ITS ENTIRETY, TO ESTABLISH REQUIREMENTS FOR THE CONSTRUCTION OF SIDEWALKS, MODIFICATIONS, AND EXCEPTIONS; ESTABLISHING APPLICATION FEES; ESTABLISHING A FEE-IN-LIEU OPTION IN CERTAIN SITUATIONS; PROVIDING FOR THE ADMINISTRATION OF SIDEWALK MODIFICATIONS AND FEES; PROVIDING FOR REFUNDS; PROVIDING FOR OTHER MATTERS RELATED TO THE SUBJECT; ESTABLISHING A PENALTY UNDER SEC. 1-6 OF THE CODE OF ORDINANCES OF THE CITY OF HOUSTON; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, sidewalks are a crucial component of a complete multi-modal transportation network, as well as one part of the City of Houston's compliance with the Americans with Disabilities Act (ADA) and the Texas Accessibility Standards (TAS); and

**WHEREAS**, the City Council adopted the Walkable Places ordinance with an effective date of October 1, 2020, through the implementation of which, certain impractical situations for requiring sidewalks were identified, which this Ordinance seeks to address; and

**WHEREAS**, the City Council finds that it is in the public interest to establish clear requirements for the construction of sidewalks in development and redevelopment, as well as areas where sidewalks have not previously been constructed, while also allowing for modifications and exceptions in certain situations where construction may be impossible or impractical; and

**WHEREAS**, the City Council further finds that it is in the public interest to seek the development of a city-wide sidewalk network, to develop an inventory and plan for sidewalks, and to establish objective criteria for the prioritization of sidewalk construction projects; and

**WHEREAS**, the City Council has determined that these amendments will benefit the public health, safety, and welfare of residents of the City while preserving private property rights; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

**Section 2.** That Article XXII of Chapter 40 of the Code is hereby amended and replaced in its entirety as set forth in **Exhibit A**, attached hereto and incorporated herein.

**Section 3.** That the City Council hereby approves the new fees established by this Ordinance as shown below. The Director of Finance shall incorporate the additions made by this Ordinance in the City Fee Schedule as follows:

Add the following fees:

Description	Statutory Authority	Amount
Sidewalk Standard Modification Application Fee		
<ul style="list-style-type: none"> <li>Single-Family Residential Development (no density increase)</li> </ul>	Ordinance No.2020 – 684 Sec.40-556(c)(2)	\$250
<ul style="list-style-type: none"> <li>Other Developments</li> </ul>	(Ordinance No.2023 – _____ <sup>1</sup> Sec.40-559(c)(2))	\$840
<ul style="list-style-type: none"> <li>Affordable Housing Projects</li> </ul>		\$250
Fee in Lieu of Sidewalk Construction Application Fee		
<ul style="list-style-type: none"> <li>Single-Family Residential Development (no density increase)</li> </ul>	Ordinance No.2023 – _____ Sec.40-561(a)(3)	\$250
<ul style="list-style-type: none"> <li>Other Developments</li> </ul>		\$840

<sup>1</sup> The City Secretary is instructed to insert into the chart the final ordinance number of the adopted ordinance.

• Affordable Housing Projects		\$250
Fee in Lieu of Sidewalk Construction	Ordinance No.2023 – ____ Sec.40-560(d)	\$12/ sq foot

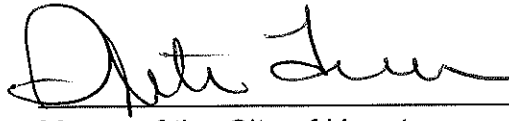
**Section 4.** That the City Attorney is hereby authorized to direct the publisher of the Code to make such non-substantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

**Section 5.** That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

**Section 6.** That a public emergency exists requiring that this ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this ordinance shall be passed finally on that day and shall take effect at 12:01 a.m. on the 1<sup>st</sup> day of March, 2023.

PASSED AND ADOPTED this 25<sup>th</sup> day of January, 2023.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.



Mayor of the City of Houston

Prepared by Legal Dept.

KM/



Senior Assistant City Attorney III

Requested by Margaret Wallace-Brown

Director, Department of Planning and Development

L.D. File No. 0000000659

Meeting 01/25/2023

Aye	No	
✓		<b>Mayor Turner</b>
....	....	<b>Council Members</b>
Absent on personal business		Peck
✓		Jackson
✓		Kamin
✓		Evans-Shabazz
✓		Martin
✓		Thomas
✓		Huffman
✓		Cisneros
✓		Gallegos
✓		Pollard
✓		Castex-Tatum
✓		Knox
✓		Robinson
✓		Kubosh
✓		Plummer
✓		Alcorn
Caption	Adopted	

Captions Published in DAILY COURT REVIEW

Date: 1/31/2023

# EXHIBIT A

## CHAPTER 40

### ARTICLE XXII. SIDEWALKS

#### DIVISION 1. – SIDEWALK NETWORK REQUIREMENTS

##### **Sec. 40-551. Scope and administration, penalty.**

- (a) This article establishes standards and procedures for creating a connected sidewalk network within the city to achieve the goal of providing a safe, comfortable, and accessible sidewalk network for all residents.
- (b) It shall be the responsibility of the planning official to administer this article in coordination with the city engineer, chief transportation planner, and the MOD official, as defined herein.
- (c) The planning official is authorized to promulgate rules and procedures for the efficient administration of this article.
- (d) The planning official has established fees to be added to the city fee schedule where authorized by this article. All fees are non-refundable.
- (e) An obligation to install sidewalks or the fee assessed in lieu of installing sidewalks is subject to a proportionality review by the city engineer in accordance with Ch. 212, Texas Local Government Code.
- (f) Except as expressly provided, the provisions of this article are cumulative of all other provisions of this Code or regulations of the city, state or federal government.
- (g) This article may be known and cited as the Sidewalk Network Ordinance.

##### **Sec. 40-552. Definitions.**

As used in this article, the following terms and phrases shall have the meanings ascribed in this section unless the context of their usage clearly indicated another meaning:

*Applicant* means a property owner or the property owner's designated agent, landlord, or tenant, holder of certificate of occupancy, or other person or entity who is applying for an approval required by this article.

*Back-of-curb* has the meaning ascribed in section 33-351 of this Code.

*Block* has the meaning ascribed in section 42-1 of this Code.

*Blockface* has the meaning ascribed in section 42-1 of this Code.

*Business day* means any day of the week except for Saturday, Sunday, or any other day on which department offices are closed.

*Central business district* has the meaning ascribed in section 40-361 of this Code.

*Chief transportation planner* means the person designated by the Mayor to lead the city's systems-level transportation planning efforts or their designee.

*Commission* means the planning commission of the city.

*Design manual* has the meaning ascribed in section 42-1 of this Code.

*Department* means the department of planning and development of the city.

*Local street* has the meaning ascribed in section 42-1 of this Code.

*Lot* has the meaning ascribed in section 42-1 of this Code.

*Mobility device* means a motorized or nonmotorized wheelchair, scooter, rollator, crutch, cane, walker or any similar device(s) that functions similarly to allow an injured or disabled person increased mobility for independent travel.

*MOD official* means the person designated by the Mayor to lead the Mayor's Office on Disabilities, as established in section 2-388 of this Code, or such person's designee.

*Project site* means the area under review where a building permit, certificate of occupancy, or other construction permit or approval listed under section 40-553 of this Code is located. This shall include the section of public street between the roadway and corresponding blockface abutting the area, when applicable.

*Public street* means a public right-of-way, however designated, dedicated or acquired, that provides access to adjacent property. An alley, as the term is defined in section 42-1 of this Code, shall not be considered a public street.

*Roadway* has the meaning ascribed in section 42-1 of this Code.

*Safety buffer* is the area between the back-of-curb or the roadway, and the edge of the sidewalk nearest the back-of-curb or the roadway.

*School* has the meaning ascribed in section 28-151 of this Code.

*Sidewalk* means a publicly accessible firm-and-stable-surfaced path that is improved and designed for or is ordinarily used by pedestrians in accordance with the design manual, applicable state and federal disability rights laws, and this article. The sidewalk serves as a continuous and obstacle-free pathway for people to safely and comfortably walk or use a mobility device.

*Sidewalk committee* means the group of licensed or otherwise qualified technical professionals established by section 40-558 of this Code.

*Sidewalk easement* means a recorded easement that grants to the public a perpetual, non-exclusive easement on, over, and across private land for the construction, maintenance, and use of a sidewalk.



*Sidewalk fund* means the fund established in accordance with section 40-581 of this Code.

*Sidewalk plan* means a detailed, graphical representation of the arrangement of sidewalks, buildings, driveways, plantings, and other improvements or above-ground existing and planned physical features for the project site for which a permit or approval is sought in accordance with this article.

*Single-family residential use* has the meaning ascribed in section 42-1 of this Code.

*Subdivision plat* has the meaning ascribed in section 42-1 of this Code.

### **Sec. 40-553. Applicability.**

- (a) Except as provided in subsection (b) of this section, any person or entity seeking approval for a building permit, certificate of occupancy, or other construction permit or approval required by this Code for any of the following activities must first obtain approval of a sidewalk plan in accordance with this article:
- (1) Construction of a new sidewalk within a public street or sidewalk easement;
  - (2) Repair, reconstruction or replacement of 20 linear feet or more of an existing sidewalk within a public street or sidewalk easement;
  - (3) Construction of a new single-family residential use other than a secondary dwelling unit;
  - (4) Development of property for non-single-family residential use that requires a development plat under to section 42-22;
  - (5) Construction of a new parking lot;
  - (6) Construction of a parking lot addition greater than ten parking spaces to an existing parking facility, as those terms are defined in section 26-472;
  - (7) Reconstruction of more than ten parking spaces or 25% of the total area, whichever is greater, of an existing permitted parking lot. Restriping parking spaces, asphalt resurfacing and other cosmetic, decorative or surface level enhancements shall not be considered reconstruction;
  - (8) To establish the pedestrian route for off-site parking facilities as required by section 26-499;
  - (9) Alterations to any non-single-family residential building or improvement within 15 feet of the minimum pedestrian realm along a transit-oriented development street or walkable places street that increases the building or improvement by 250 square feet or more;
  - (10) Alterations to any non-single-family residential building or improvement that increases the exterior square footage of the building or the footprint of the improvement by more than 25%;

- (11) Construction of a new roadway within a public street;
  - (12) Expansion or reconstruction of an existing roadway within a public street. Repair and rehabilitation work performed as described in subsection (b) of this section shall not be considered reconstruction or expansion; and
  - (13) Removal of an existing sidewalk within a public street or existing sidewalk easement.
- (b) This article shall not apply to repair and rehabilitation work performed by governmental entities, political subdivisions, transit authorities, or local government corporations provided that:
- (1) Following the repair or maintenance of public infrastructure, any sidewalk that is disturbed is replaced in the same or better condition than existed before the repair or maintenance work; or
  - (2) The width and location of a sidewalk is not fundamentally altered after rehabilitation improvements to extend the life and effectiveness of existing public infrastructure. Rehabilitation improvements may include, but are not limited to: pavement overlays, street panel replacements, resizing stormwater inlets, replacing or reestablishing curbs, regrading ditches, or the restoration of erosion or flood damage.

**Sec. 40-554. Options for compliance.**

An applicant for a permit required to comply with this article shall file a sidewalk plan for the project site with the department for review. Upon approval of the sidewalk plan by the planning official, the applicant shall:

- (1) Construct the sidewalk(s) in accordance with the approved sidewalk plan; or
- (2) Pay the fee-in-lieu of sidewalk construction in the amount stated in the current fee schedule if authorized by the planning official or sidewalk committee pursuant to section 40-560.

**Sec. 40-555. Sidewalk plan and approval required.**

- (a) An applicant shall submit a sidewalk plan to the department for review and approval in conjunction with a development plat required by chapter 42, or prior to obtaining a building permit, certificate of occupancy, or other construction permit, or for approval of a sidewalk plan required to perform an activity listed under section 40-553. The sidewalk plan for the project site shall:
- (1) Be in the form prescribed by the planning official.
  - (2) Be to scale, provide a north arrow, and contain dimensions and boundaries of all public streets, and sidewalk easements; and
  - (3) Show:
    - a. The location and dimensions of each existing and proposed sidewalk and safety buffer;

- b. The location of above-ground existing and planned physical features within the public street or sidewalk easement such as utility poles and equipment, signposts, traffic signal equipment, parking meters, guywires, fire hydrants, bollards, bus or transit shelters, bicycle racks, planters, stairs or steps, street furniture, and fences or barriers;
  - c. The location and dimension of each driveway that crosses the sidewalk and safety buffer;
  - d. The location and dimension of each pedestrian safety and visibility buffer required by section 40-32;
  - e. The location and dimension of each curb ramp, as the term is used in chapter 17 of the design manual;
  - f. The location, dimension, and vertical clearance of any building or structure constructed over the sidewalk or safety buffer;
  - g. Existing and proposed trees, shrubs, and screening fences required by article V of chapter 33 that are within the public street or sidewalk easement;
  - h. The functional edge furthest from the roadway of an adequate drainage facility, as approved by the city engineer, along any public street that is not curb and gutter; and,
  - i. If requesting an exemption, the location and details of any exemption condition listed under section 40-556; and
  - k. A fee calculation analysis when a fee-in-lieu of sidewalk construction is requested in accordance with this article.
- (b) Upon receipt of a sidewalk plan containing all the information required by subsection (a), the planning official shall review the sidewalk plan to verify compliance with this article. This review shall be completed within 15 business days from the date a complete application is submitted to the planning official. The planning official shall deny in writing all sidewalk plans that do not comply with the requirements of this article.
- (c) The building official or city engineer shall not issue a building permit, certificate of occupancy, or other construction permit unless the planning official approves the sidewalk plan.
- (d) The building official or city engineer shall not issue a certificate of occupancy or otherwise certify satisfactory completion of a construction permit or approval unless the applicant constructs or provides for the sidewalk and related information shown on the approved sidewalk plan or provides payment of the required fee-in-lieu of sidewalk construction.

**Sec. 40-556. Sidewalk required; exceptions.**

- (a) Except as provided in subsection (b) of this section, a sidewalk shall be required along each public street blockface within the city. The sidewalk may be within the public street or a sidewalk easement adjacent to the public street.
- (b) No sidewalk shall be required along a public street blockface when, upon review of written documentation and other relevant information provided by the applicant, the planning official finds that one or more of the following circumstances apply:
  - (1) There is an existing sidewalk in good repair that was built to the minimum width required by this article;
  - (2) There is an existing sidewalk in good repair that was built through a sidewalk construction project completed by a governmental entity, political subdivision, transit authority, or local government corporation not more than five years before the date the sidewalk plan is filed with the department;
  - (3) The public street is within a community with an approved pedestrian plan on file with the department in which alternative publicly accessible pedestrian trails or pathways are provided;
  - (4) The sidewalk is constructed, or will be constructed in accordance with this article, within a sidewalk easement that provides a reasonable alternative alignment for pedestrian accessibility along the general route of the public street;
  - (5) The public street is a grade-separated freeway or other limited access roadway, and the planning official, after consultation with the sidewalk committee, determines one or more of the following conditions exist:
    - a. The public street is a grade-separated freeway that does not have an at-grade frontage road;
    - b. The construction of a sidewalk is technically or otherwise infeasible due to the presence of existing, permitted physical conditions, or
    - c. The characteristics of existing permitted development, land uses, or other physical conditions within the immediate vicinity of the grade-separated or limited access roadway create unsafe conditions related to the practical use of a sidewalk.
  - (6) There is no roadway constructed within the public street and the city engineer confirms:
    - a. The construction of a roadway is not required as part of the action prompting the applicability of this article under section 40-553 of the Code; or
    - b. There are no approved capital improvement plans or plans pending approval by an entity with an interest in planning and development within the right of way such as governmental entities, political

subdivisions, transit authorities, or local government corporations or any other entity as determined by the planning official for improvements or construction of the roadway.

- (7) The cost to meet the standard sidewalk requirement is more than 50% of the total cost of the action prompting the applicability of this article, or is otherwise found to be disproportionate to the development. For a cost waiver, the city engineer shall review the cost estimate provided by the applicant and make a recommendation to the planning official on the reasonableness of the estimate. The following shall not qualify for a waiver under this subsection:
  - a. Items (1), (2), and (8) under section 40-553;
  - b. The requirement to construct a sidewalk within the central business district; or
  - c. The requirement to construct a sidewalk along a walkable places street or transit-oriented development street;
- (8) The street is located within the boundaries of the Fourth Ward Street Streets in Place Ordinance, Ordinance No. 99-1344; or
- (9) The applicant pays a fee-in-lieu of sidewalk construction when authorized in accordance with this article.

**Sec. 40-557. Sidewalk standards.**

- (a) The minimum unobstructed width of a sidewalk required by this article shall be as prescribed by the design manual.
- (b) The minimum width of the safety buffer required by this article shall be as prescribed by the design manual.
- (c) The minimum unobstructed vertical clearance required by this article shall be eight feet as measured from the surface of the sidewalk.
- (d) All sidewalks shall be constructed in a manner consistent with technical standards and design requirements of the design manual and applicable state and federal disability rights laws.

**Sec. 40-558. Establishment of the sidewalk committee.**

There is hereby created a sidewalk committee to evaluate and make technical findings on a modification request, or a fee-in-lieu of sidewalk construction request submitted in accordance with this article. Membership of this committee shall include the planning official, the city engineer, and the MOD official. The sidewalk committee may establish procedures necessary for the conduct of its business and may conduct its review via electronic mail, teleconference, or in-person meetings. The unanimous consent of all members is required for any approval or authorization required by the sidewalk committee under this article. The decision of the sidewalk committee is final.

**Sec. 40-559. Modification of sidewalk standards, process.**

- (a) The sidewalk committee is authorized to approve a sidewalk plan that includes a modification to the standards of section 40-557. Granting a modification for one property does not set a precedent for any other, and each case shall be reviewed on its own merits.
- (b) The sidewalk committee may modify, but not eliminate, the sidewalk width required by subsection (a) in section 40-557. The sidewalk committee may modify or eliminate safety buffer required by subsection (b) in section 40-557 when, upon review of written documentation provided by the applicant requesting the modification, the sidewalk committee concludes that the standards of section 40-557 are technically or otherwise infeasible solely due to the presence of existing permitted physical conditions.
- (c) An applicant requesting modification of the sidewalk width or the safety buffer width, or to eliminate the safety buffer requirement shall:
  - (1) File an application in the form prescribed by the planning official;
  - (2) Pay the application fee set forth for this provision in the city fee schedule and all costs associated with the notice provisions of this section. No fee shall be charged for a request solely for modification of the safety buffer requirement; and
  - (3) Provide documentation to support the required findings in subsection (e) of this section.
- (d) Upon receipt of a complete application filed in accordance with subsection (c) of this section to modify the width of the sidewalk, the planning official shall give notice of the application by electronic mail to:
  - (1) The district council member in whose district the sidewalk is located;
  - (2) Each neighborhood association registered with the department of neighborhoods in whose boundaries the sidewalk is located;
  - (3) The members of the sidewalk committee;
  - (4) The applicant; and
  - (5) Other entities, as determined by the planning official, with an interest in the proposed modification request and mobility, generally those within the sidewalk sector where the request is located.
- (e) The sidewalk committee shall approve the application submitted in accordance with subsection (c) of this section, with or without conditions, if the committee finds that all the following conditions exist:
  - (1) One or more of the following:
    - a. Pedestrian pathways or sidewalks exist within the immediate vicinity of the public street that provide reasonably sufficient access and connectivity for public pedestrian use;

- b. The characteristics of existing permitted development, land uses, or other physical conditions within the immediate vicinity of the public street create unsafe conditions related to the practical use of the sidewalk that is otherwise contrary to sound public policy; or
  - c. The cost of the standard sidewalk requirement is disproportionate to the total cost of the action prompting the applicability of this article under section 40-553 and the development is unlikely to contribute to an increase in pedestrian traffic or otherwise create an adverse impact to existing pedestrian accessibility within the immediate vicinity. Section 40-553, subsections (1), (2), and (8) shall not qualify for a modification under this condition.
- (2) The circumstances supporting the approval are not the result of hardship or condition created or imposed by the applicant; and
  - (3) The granting of the approval will create an alternative that furthers the intent and purposes of this article.
- (f) The sidewalk committee shall conduct a review of an application submitted under subsection (c) of this section and the planning official shall advise the applicant of a decision within 15 business days from the date a complete application is submitted to the planning official.
  - (g) The planning official shall maintain a list of approved sidewalk modifications on the department website.

**Sec. 40-560. Fee-in-lieu of sidewalk construction eligibility; fee established.**

- (a) The planning official and sidewalk committee may waive the sidewalk construction requirement only in accordance with this section. An applicant must file a sidewalk plan with the department and pay the application fee for the plan review and fee-in-lieu determination.
- (b) An applicant may request approval to pay a fee-in-lieu of sidewalk construction when either:
  - (1) The planning official determines the activity listed under section 40-553 meets the following conditions:
    - a. Construction of a new single-family residential use, other than a secondary dwelling unit;
    - b. The lot was not created by a subdivision plat submitted after October 1, 2020;
    - c. The lot fronts a local street that is not a walkable place street or TOD street;
    - d. The lot is not a corner lot at an intersection of two or more public streets;
    - e. The lot makes up 20% or less of the linear length of the blockface;

- f. The lot is on a blockface where no existing sidewalk is located, or no existing sidewalk is located within 500 feet of the lot along the same blockface; and
  - g. There is no school located on the same block as the project site.
- (2) If the request does not meet the conditions for approval by the planning official, the applicant may request the sidewalk committee to authorize a fee-in-lieu of sidewalk construction pursuant to section 40-561;
- (c) Upon authorization for payment of the fee-in-lieu of sidewalk construction, the applicant shall deposit the funds with the city as part of the permitting process. All fees collected in accordance with this division shall be deposited into the sidewalk fund. The planning official shall:
- (1) Maintain a list of approved fee-in-lieu of sidewalk construction projects along with the name and mailing address of the applicant; and
  - (2) Complete an annual evaluation in coordination with the city engineer on the city's total cost per square footage to construct a typical new sidewalk for a construction project funded by the sidewalk fund.
- (d) The amount of the fee-in-lieu of sidewalk construction shall be included in the city fee schedule, shall be computed on a square foot basis of the cost of materials and labor, and shall be determined by the city engineer on an annual basis to be in place by January 1 of each year, and is not subject to the Annual CPI-U Adjustment under Section 1-13 of this Code. The total fee due for a fee-in-lieu of sidewalk construction shall be determined based on the square footage of the sidewalk the applicant would have otherwise been required to construct under this article.

**Sec. 40-561. Fee-in-lieu of sidewalk construction application process.**

- (a) An applicant requesting approval to pay a fee-in-lieu of sidewalk construction, shall:
- (1) File an application in the form prescribed by the planning official;
  - (2) File a sidewalk plan with the department as part of the application;
  - (3) Pay the non-refundable fee set forth for this provision in the city fee schedule and all costs associated with the notice provisions of this section; and
  - (4) Provide documentation to support the request.
- (b) Upon receipt of a complete application, the planning official shall give notice of the application by electronic mail to:
- (1) The district council member in whose district the request is located;
  - (2) Each neighborhood association registered with the department of neighborhoods in whose boundaries the request is located;
  - (3) the sidewalk committee;



- (4) the applicant; and
  - (5) other entities, including governmental agencies, political subdivisions, transit authorities, or local government corporations, and other entities as determined appropriate by the planning official.
- (c) The sidewalk committee shall review the application, may approve or deny the application, or request additional information from the applicant. On final action by the sidewalk committee, the planning official shall advise the applicant of the decision within 15 business days from the date the complete application is received by the director.
- (d) The sidewalk committee may approve the request to pay a fee-in-lieu of sidewalk construction when one or more of the following conditions exist:
- (1) Construction of the sidewalk is infeasible due to existing physical conditions at the project site;
  - (2) Construction of the sidewalk may create an unsafe condition or be otherwise contrary to sound public policy;
  - (3) There is an approved public street or sidewalk project that includes the project site for which the exception is sought, and which is at 60% or more of the design stage; or
  - (4) The required sidewalk construction at the project site would adversely impact an approved public street project or other construction project by a governmental entity, political subdivision, transit authority, or local government corporation.
- (e) The amount of the non-refundable fee established by item (3) of subsection (a) shall be credited to the fee-in-lieu of sidewalk construction upon approval by the sidewalk committee.

**Sec. 40-562. Violations.**

- (a) The violation of any provision of this article within the territorial limits of the city, including the failure to do any act or perform any duty that is required herein, shall be punishable as provided by section 1-6. Each day a violation continues constitutes a separate offense. Prosecution or conviction under this provision shall never be a bar to any other remedy or relief for violation of this Code.
- (b) The planning official and city engineer shall have the authority to administratively enforce violations of this article.

**Secs. 40-563—40-580. Reserved.**

**DIVISION 2. – THE SIDEWALK FUND**

**Sec. 40-581. Sidewalk fund, deposits, use and refunds.**

- (a) There is hereby established a special fund which shall be known as the "Sidewalk Fund", for the deposit of all fees paid in lieu of sidewalk construction under this article. Distribution of moneys from this account shall on appropriation by city council. A minimum of seventy percent of the fee collected shall be allocated for use on sidewalk project(s) within the corresponding sidewalk service area. The remaining funds may be allocated for priority projects in accordance with section 40-582.
- (b) The planning official shall account for all fees paid in lieu of sidewalk construction under this article with reference to the individual developments that generate the fee payment requirement. Any funds paid for such purpose must be obligated by the city within ten years after the date of deposit. If the funds are not obligated within the initial ten years, the planning official may request from the city council a time extension for a period not to exceed an additional five years for the expenditure of funds. Each extension request shall be submitted in writing by the planning official at least 60 days prior to the expiration date for the funds to be committed by the city and shall include a detailed justification for the extension request.
- (c) Funds in the sidewalk fund shall be used for the construction of sidewalks and shall not be used for general sidewalk maintenance or to pay for city staff overhead expenses. Indirect costs reasonably incurred in connection with the sidewalk construction may be covered by the fund. These indirect costs may include but are not limited to legal expenses, engineering and design costs, surveys, and sidewalk easement acquisition.
- (d) The planning official shall identify and record the sidewalk service area where each project site is located for any fee-in-lieu of sidewalk construction.
- (e) Other sources of funding may be allocated or deposited to the sidewalk fund to support the sidewalk construction projects paid for by the fund and will be separately accounted for.
- (f) Within 30 days of the final expiration of the period detailed in subsection (b), the planning official shall provide a "notice of eligibility for refund" to the current property owner indicating they are entitled to a refund in the amount equal the total sum of fee in lieu of sidewalk construction paid. Notice shall be given by letter via the United States Postal Service, postage paid to the applicant's name and address provided in subsection (c) of section 40-560. Notice shall be deemed given on the date the notice is mailed. The applicant must respond in writing to the planning official requesting the refund within one year of the notice or such claim to the refund shall be barred.

**Sec. 40-582. Sidewalk fund administration.**

- (a) It shall be the responsibility of the chief transportation planner to plan and prioritize the sidewalk projects to be funded from the sidewalk fund in coordination with the city engineer, the city traffic engineer, the MOD official,

and the planning official. The chief transportation planner shall also coordinate with other governmental entities, political subdivisions, transit authorities, or local government corporations with an interest in the specific public street where a particular sidewalk project is located.

- (b) The chief transportation planner shall develop and maintain:
  - (1) A Sidewalk Service Area Map, that subdivides the city geographically into Sidewalk Service Areas for the purposes of prioritizing investment of moneys from the sidewalk fund within the general area where the fee-in-lieu of sidewalk construction was collected. Each area in the Sidewalk Service Area Map shall be known as "Sidewalk Service Area" and numbered accordingly for identification purposes; and
  - (2) A Sidewalk Prioritization Scoring Matrix to objectively score and prioritize potential sidewalk construction projects to advance the intent of this article and the plans it implements.
- (c) The chief transportation planner shall present any proposed updates to the sidewalk service area map or prioritization scoring matrix to the commission. The commission shall hold at least one public hearing on the proposed update. Upon the close of the public hearing, the commission shall consider public comments and the recommendation of the chief transportation planner then determine whether the proposed update furthers the objectives and intent of this article. The commission shall vote to:
  - (1) Approve the proposed update, with or without modifications;
  - (2) Refer the proposed update back to the chief transportation planner for further study and evaluation;
  - (3) Defer consideration of the proposed update to a future meeting; or
  - (4) Disapprove the proposed update. If the updated is disapproved by the commission, then the last map or matrix approved by city council or the commission, as applicable, shall remain in effect.
- (d) The chief transportation planner shall provide an annual report to the commission on the utilization of the sidewalk fund and related sidewalk projects completed during the previous fiscal year of the city.

**Secs. 40-584—40-600. Reserved.**