

521.06 – CONSTRUCTION, REPAIR AND REPLACEMENT OF SIDEWALKS, INTEGRAL APPROACHES/APRONS AND RELATED AREAS

State Law reference— Construction or repair at owner's expense, O.R.C. § 729.01 et seq.; Notice to construct or repair sidewalks, O.R.C. § 729.03 et seq.

A. Definitions

As used in the Codified Ordinances:

- (1) *Block or blocks.* Approximately equally spaced, generally rectangular, blocks as visible on the surface of a sidewalk area, or blocks as visible on the surface of an integral approach/apron area, formed by saw cut joints or tooled joints in the concrete (control/contraction joints) and/or by expansion joints.
- (2) *Handicap access/approach.* That portion contiguous to an integral approach/apron or sidewalk designed and constructed pursuant to the Americans with Disabilities Act (ADA) as it now exists or may from time to time hereafter be amended.
- (3) *Integral approach/apron.* That portion of a driveway between the street and the public right-of-way or easement dedicated to the public use containing a sidewalk crossing through it.
- (4) *Sidewalk.* A hard surface portion of the street system for pedestrian use which lies outside the curb lines (or integral with the curb) or edge of pavement of the roadway. An area abutting a public right-of-way improved, or intended to be improved, as part of an overall pedestrian travel system within the community.
- (5) *Abutting owner.* An individual or entity indicated on the most recent tax records of the Franklin County Auditor's office as owners, in whole or in part, of property which frontage confronts, is adjacent to, or abuts the sidewalk, integral approach/apron and related areas. The City intends that all owners of a parcel shall be obligated pursuant to the provisions of this Chapter on a joint and several basis as this Chapter affects any parcel. Further, for purposes of this Chapter, any one owner of real estate shall be deemed to be the agent of all other owners of that real estate.
- (6) *Affected areas.* Those areas requiring sidewalk construction, repair or replacement after inspection including sidewalks and/or integral approach/aprons.
- (7) *Primary inspection area.* The inspection area selected for special attention for a given calendar year, as determined by the Director or designated representative and subsequently approved by Council Resolution, which contains properties which have frontages confronting, adjacent to, or abutting a sidewalk, integral approach/apron and related areas. Such areas are inspected as set forth within Section 521.06(D).
- (8) *Director.* The Director shall refer to the Director of the department responsible for administration of this Section.

B. Obligation of Abutting Owner

No owner or occupant of abutting lands shall fail to keep the sidewalks, integral approaches/aprons, and curbs or gutters within the City in good repair and free from obstructions at all times in accordance with the requirements of the City as set forth herein and as such requirements may from time to time be amended.

In addition to the requirements of Section 913.08, it shall be the duty of any person or persons owning real property bordering on any street upon which property there may be plants, trees or shrubs, to prune, or cause to be pruned, such plants, trees or shrubs in such manner that they will not obstruct the passage of pedestrians across the full width of sidewalks or pathways. Any portion of a tree extending over a sidewalk shall be trimmed to such an extent that no portion of the same shall be less than eight feet above the sidewalks.

C. Inspection Program

The Director or their designee shall conduct, as determined necessary by such appropriate public official, an inspection program designed to require repair and replacement of sidewalk areas and/or walkway areas integral to or monolithic with approach/apron areas within the City for the purpose of maintaining those areas in a good and orderly state of repair so as to protect the health, safety, and welfare of the public. The inspection program shall occur for each property within the City in accordance with the provisions of this Chapter. Specifically, the inspection program shall include the primary inspection area; such inspection being performed as set forth within Section 521.06(D).

D. Inspection Criteria

The primary inspection area criteria to be utilized by the Director or their designee shall include primary conditions deemed by such official to be potentially detrimental to the public health, safety and welfare. The existence of such conditions shall necessitate repair or replacement of sidewalks within the Primary Inspection Area.

E. Procedure for Construction, Repair or Replacement

When the Director or their designee finds deficiencies after such inspection, such official shall:

- (1) Verify the identity of the property owner or owners utilizing the Franklin County Auditor's records.
- (2) Prepare a notice for each property setting forth the deficiencies discovered upon inspection, and other pertinent information as set forth in Section 521.06(E)(4) below.
- (3) Serve the notice of deficiency on each property owner. Service shall be made upon the property owner or owners by ordinary U.S. Mail, postage prepaid. The City shall also post a list of such information in the manner it uses for posting legislation so that it is accessible to the public. The City may additionally post such information on its website. The notice will recite that the City will accomplish the construction, repairs or replacements within the program area and assess the cost of such improvements benefiting the abutting property based upon the actual unit costs associated with the various improvements against the abutting property based upon its unit costs over five years from the date of assessment.
- (4) Such notice shall indicate the following:
 - (a) The deficiencies discovered as a result of inspection.
 - (b) That a property owner(s) has forty-five (45) days from the original notice mail date, or decision on their appeal as set forth in Section 521.06(E)(4)(g) herein to advise the City that the property owner(s) does not consent to the improvements, repair or replacement by the City and that the property owner(s) "opt out" as otherwise set forth in this Chapter. Such lack of consent and "opt out" must be sent from the property owner(s) to the City in writing at the address stated in the original notice from the City to the property owner(s). If the property owner(s) fails to advise the City of the property owner's absence of consent, it shall be presumed for all purposes that the property owner(s) has consented. The notice from the property owner(s) to the City must be received by the City no later than forty-five (45) days after the original notice mail date from the City to the property owner(s).
 - (c) A property owner(s) may "opt out" in accordance with this Chapter. Such "opt out" shall be accomplished in writing and served upon the City no later than (45) days after the original notice mail date from the City to the property owner(s), or decision on appeal of property owner(s).
 - (d) Requirements for permitting and inspection if the property owner(s) intend to "opt out".
 - (e) If, in the opinion of the Director or their designee, trees within the public right-of-way abutting the owner(s)' property have contributed to sidewalk disrepair, the trees will either be identified to be removed or their roots pruned. The City Forester or their designee will determine if each of those trees is to be removed or its roots are to be pruned in accordance with the Sidewalk Maintenance Program Tree Removal and Root Pruning Guidelines. All tree removals will be performed by the City or their designee at no cost to the abutting property owner unless the property owner "opts out". All tree root pruning will

be performed by the City or their designee and assessed to the abutting property owner unless the property owner "opts out".

- (f) If the property owner(s) chooses to "opt out," pursuant to Section 521.06(F), then the methods of sidewalk and integral approach/apron repair shall be consistent with the standards for such work adopted by the Director or their designee. Sidewalk and integral approach/apron replacement shall be performed in accordance with Section 903.01.
- (g) If the property owner(s) disagrees with the findings by the Director or their designee, that property owner may appeal the findings to the Property Appeals Board within 30-days of the original notice mail date. The property owner has the burden to present sufficient evidence to overcome the presumption that said findings are appropriate, in order for City Council to modify the Resolution of Necessity with regards to the property owner(s)' property.

F. Construction by Property Owner ("Opt Out").

Any property owner who desires to "opt out" of the City program and take responsibility for performing the required construction, repairs and replacements shall return to the City, within forty-five (45) days from the mail date of the original notice from the City to the property owner(s), a written request by the property owner to "opt out" of the City's program, which shall comply with the following requirements and specifications:

- (1) Notify the Director or their designee in writing of the identity of the contractor(s) who will perform the work in compliance with any and all applicable licensing and permitting requirement enacted by the City.
- (2) Identify the proposed method(s) of construction, repair or replacement so the Director or their designee representative may determine appropriateness.
- (3) Acknowledge on the notice to the City that the improvement will be completed in a fashion satisfactory to the Director or their designee within one hundred five (105) days from the mail date of the original notice from the City to the property owner(s) or that the property owner will be in violation of this Ordinance and the City may proceed with the process described in Section 521.06(K).

The Director or their designee representative may extend, in such public official's sole discretion, the time for performance by the property owner for any reason deemed appropriate by such public official, including but not limited to delays occasioned by natural disaster, weather or other unforeseen circumstances.

G. Consent

Every owner of real property in the City of Gahanna is deemed to have consented:

- (1) That all property owners who do not consent to entry upon private property for the purposes of accomplishing this chapter shall be assessed the additional costs necessary to do work from the right of way.
- (2) To the grinding, cutting or removing of roots and trees within the public right-of-way abutting the owner(s)' property, or the grinding, cutting or removing of roots in the public right-of-way for trees located on the owner(s)' private property if such grinding, cutting or removing of roots occurs in furtherance of this Chapter.
- (3) That any public official is immune from civil or criminal liability for entry upon real property in furtherance of the purposes set forth in this Chapter, and the City and its agents and employees shall have no liability for the damage or destruction to any trees or tree roots for activity conducted in furtherance of the purposes of this Chapter.

H. Mandatory Disclosure

Any property owner who receives the notice set forth in Section 521.06(E)(4) or who elects to "opt out" pursuant to those provisions in Section 521.06(F) and, who thereafter transfers all or any portion of the title to the property before concluding such repairs and having them accepted by the City, is under an

affirmative duty to disclose in writing to the transferee of such property the contents of the notice or the election to "opt out". Nothing contained within this Section shall be construed to alter or diminish the City's rights under Section 521.06(J) to collect all amounts due from the transferee or any subsequent transferee.

I. Resolution of Necessity

The Director or their designee shall from time to time prepare a list of all properties in need of construction, repair or replacement of sidewalks, integral approaches/aprons. Such list shall be submitted to Council who, at a time it deems appropriate, may adopt a Resolution of Necessity reciting the necessity to repair or replace or construct those sidewalks, integral approaches/aprons as indicated by the public official. Upon adoption of such Resolution of Necessity:

- (1) The Director or their designee may proceed to prepare solicitations for bids for completing the public improvements and/or repairs for all properties not opting out of the City program or for any property in which the property owner fails to comply with any of the "opt out" procedures set forth herein and,
- (2) Council shall appropriate such funds as are necessary from time to time to accomplish such improvements and defray the costs of such improvements upon such terms as Council deems appropriate and,
- (3) Council may at its discretion borrow such funds as Council deems appropriate for the cost of such construction, repair and replacement and the defraying of all costs associated therewith.

J. Assessment

Upon completion of such construction, repair or replacement, all owners affected thereby shall be notified of a public hearing to determine any mistake of fact regarding allocation of such assessments and:

- (1) Notice of such public hearing shall be served upon all property owners in accordance by ordinary U.S. Mail, postage prepaid. The City shall also post a list of such information in the manner it uses for posting legislation so that it is accessible to the public. The City may additionally post such information on its website; and,
- (2) After such public hearing, Council shall determine the unit cost of such construction, repair or replacement associated with the various improvements performed; and,
- (3) Council shall assess the costs, as determined pursuant to subparagraph (2) above, of such improvement against each abutting, benefited property based upon the actual unit cost associated with such improvements; and,
- (4) The Clerk shall certify the amount of such assessment, its effective date, and its rate of interest to the County Auditor for addition to the tax duplicate of the properties affected by such assessment.

The obligations hereunder shall run with the land affected by this Chapter.

K. Failure to Complete Construction, Repair or Replacement

Any property owner who opts out of the City program, and who fails to construct, repair, or replace the affected area in accordance with the provisions of this Chapter, shall:

- (1) Be sent a written notice by the Director or their designee of the failure to complete construction, repair or replacement.
- (2) Be advised in the notice by the City that the City shall proceed to accomplish such construction, repair, or replacement on such basis as the City deems appropriate, including proceeding as though the City had received no notice of "opting out."
- (3) Be advised that the property owner is in violation of this Chapter and may be subject to the penalties described in Section 501.06(M).
- (4) Be sent the notice required by this division in accordance with the provisions and in the manner set forth for Service of Summons in civil proceedings as set forth in the Ohio Rules of Civil Procedure.

L. Specifications

All sidewalk repairs, alterations, and replacements shall be in accordance with Section 903.01.

M. Violations

Any person, firm or corporation violating any regulations, provision, amendment or supplement of this Chapter shall be charged with a minor misdemeanor and upon conviction thereof, shall be fined no less than \$50 and not more than \$150. Each and every day during which such violation continues shall be deemed a separate offense.

(ORC 723.011; [0025-2018, § 1\(Exh. A\), 4-2-18](#) ; [Ord. No. 0096-2018, § 1\(Exh. A\), 12-3-18](#))