



STAFF REPORT

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To: Chairman, Members of Council, and City Manager
From: Karl Craven, Planning & Development Director
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Subject: Sidewalk Program Discussion

Background

In 1990, the Americans with Disabilities Act (ADA) was signed into law. ADA decrees that any entity -- be it a building, a restaurant, an office, a sidewalk, a restroom, a bus, you name it -- that is open to the public must be accessible to people with disabilities. ADA covers all activities of local governments regardless of the government entity's size or receipt of federal funding. It requires that local governments give people with disabilities an equal opportunity to benefit from all of their programs, services and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting and town meetings).

The City of Westerville was sued in 1997 by the Department of Justice as the result of an ADA-instigated complaint regarding the City's accessibility related to traffic lights, curb cuts, median strips, ramps, sidewalks, and pedestrian crosswalks. As part of the settlement of that law suit the City is obligated to install accessible ramps meeting the ADA-designed requirements at the time that the abutting sidewalks are replaced or the adjacent street is resurfaced.

In response to the City's ADA obligations, City Council authorized a sidewalk repair program to begin in 2002 (Exhibit A - March 27, 2001 Council Work Session minutes). Consistent with the City's Codified Ordinance Section 909.01, which mirrors State Law, the responsibility for sidewalk repairs is placed on the property owner. The original process developed by the City in 2002 was awkward to accomplish. The property owners were obligated to either: 1) make and pay for the repairs themselves; 2) authorize and repay the City to have the repairs completed; or be subject to a lien on their property for any unpaid balance due to the City for completing the repairs. The early program's participants filed numerous complaints related to the lack of payment options, uncertainties as to who was responsible for tree replacement, and how long the owner had to complete the repairs.

City Council re-visited the sidewalk repair program in 2008 (Exhibit B – November 11, 2008 Work Session minutes). As a result the following objectives were stipulated for the process beginning in 2009:

- Eliminate unsafe conditions relative to existing sidewalks within the public rights of way;
- Comply with Federal ADA rules regarding accessible walks and ramps;
- Comply with Westerville Codified Ordinances regarding sidewalk maintenance;
- Provide an alternative payment method for owners via property tax collections;
- Provide multi-media communications for affected property owners to access an annual program's information;
- Provide opportunities for owners to complete repairs on their own during summer construction seasons;
- Maintain and perpetuate the City tree canopy;

- Remove and replace City trees in October and November of the program year;
- Place unpaid assessments on County property tax rolls in time for collections to begin the first January following the completion of each annual program.

Beginning with the 2009 program the City of Westerville took responsibility to make repairs to the sidewalks that had been damaged due to a street tree. The revision reduced the property owner's costs by transferring the repair of the sidewalks damaged by street trees to the City. The City also began following the prescriptive procedure outlined in the Ohio Revised Code for sidewalk assessments. The assessment program allows for the City to complete the repairs and for the property owner to repay the City over a five-year period via property tax assessment. This was considered a great improvement over the one-year payback period previously required in the earlier program. One complete sweep through the City of all 5 sections was completed using the new process in 2009-2013. Beginning in 2014, as per Council's request, the size of each of the City's annual areas was reduced. Ten zones were created and the next complete sweep of all properties will conclude with the 2023 program year.

How the Current Program Works

Each year the sidewalk within an area of the City is evaluated by the engineering department representatives. All property owners within the targeted zone receive a post card notifying them of the upcoming inspections. The inspectors review the sidewalks in the targeted area and mark the sections (also known as panels) that must be replaced or repaired. The criteria for repair (Exhibit C) were established by City Council and have been used for several years. If the damaged walk is the result of a city tree or is part of an accessible ramp, then the inspectors will mark the sidewalk panels with an "O" using white paint and the City is responsible for both the repairs and the cost of repairs.

If the inspectors determine that the cost of the repair is the property owner's responsibility, then the damaged sidewalk panels will be marked with an "X" using white paint. Following the completion of the inspection, a Resolution of Necessity is prepared for City Council's consideration.

The Resolution of Necessity memorializes Council's desire of City staff to perform the duties necessary to complete the repairs to the sidewalks identified. It informs the property owners of the City's good faith effort to follow Ohio Law and defines the good faith effort responsibilities of the property owners to make the repairs. Finally, the Resolution of Necessity completes notice requirements under Ohio law of the City's intent to assess the property owner the costs of any improvements incurred by the City in making repairs to the sidewalk not performed by the property owner.

Resolution 2016-17 (Exhibit D) identified the properties that were to comply as part of the 2017 Sidewalk Repair Program. The resolution is in compliance with Ohio Revised Code Section 729 which prescribes City Council's procedure for determining the necessity to repair the walks; for establishing how the walks are to be repaired; and defining the means notifying the property owners of their obligation to make the repairs.

The copy of Resolution 2016-17 was included with a letter (Exhibit E) notifying the property owner of the work to be completed. The certified letter also included an explanation of the markings; a diagram of the required work (Exhibit F); an estimated cost; and an explanation of the homeowner's options for completing and paying for the repairs. Additional information contained

in the City's Sidewalk Program brochure (Exhibit G) was provided at the time the sidewalks were originally inspected and marked.

Generally, residents have two options for repairing the sidewalks:

First, the property owner can make their own repairs. The homeowners may do the work themselves or hire a contractor to complete the repairs. The City Building Department inspects the work.

The second option for sidewalk repair is to do nothing upon receipt of the notice; and have the City's contractor do the work. The City will prepare bid documents for any uncompleted work and will bring forward to Council a bid award recommendation for the work to be performed. The City pays the contractor for the actual cost of the work. A completion notice will be mailed to the homeowner after the work is completed which will indicate the City's actual cost of completing and inspecting the repairs, as well as restoring the lawn area.

The homeowner reviews the costs in the completion notice and has several choices:

- Make full, partial, or no payment to the City. Any remaining unpaid balance will be forwarded to the appropriate County Auditor's office. The balance will be assessed to the owner's property taxes over the following five years. The City has the option to charge interest to recoup carrying costs during the five year period (to date, City Council has not elected to charge interest on these assessments).
- Or, the owner may file a written objection with the City over the charges. Those objections are reviewed by the City Engineer and may result in adjustments in the assessment for a particular property owner depending on the merits of the objections.

The final step of the process requires City Council, again in accordance with Ohio Revised Code Section 729, to adopt an ordinance levying upon the affected property owners the assessments in the amounts established by the City, including any changes or corrections determined to be proper after consideration of the written objections. Ordinance 2018-12 (Exhibit I) serves as the final step for the 2017 program.

Going Forward

Members of City Council have proposed that the City of Westerville no longer require its property owners to be responsible for making and paying for repairs to certain sidewalks abutting their property. The annual sidewalk repair program will continue, but the City will be financially responsible for all costs associated with completing the annual sidewalk repairs.

Staff believes that there are two options available to accomplish this objective:

- Option 1 – Stop Owner-Participation after the Completion of the 2018 Program

Adopt a new resolution in 2018 citing a cessation of City property owners' responsibility to repair sidewalks abutting their property beginning in FY2019. Resolution 2017-13 was adopted in November 2017 by Council which requires certain owners to make repairs to the

sidewalks abutting their property. That process has started; and some properties have completed the work. The contract for the City to complete the remaining work has been awarded and will be completed before the end of 2018. The assessment ordinance will be presented to Council for consideration in June 2019. A resolution of necessity for the 2019 program will not be considered in November 2018, thus ending owner-participation beginning in 2019.

- Pros
 - Allows adoption of a Resolution establishing the cessation of property owner responsibility
 - Accomplishes objective as quickly as possible
- Cons
 - Requires Ordinance 2018-12 to be reconsidered and adopted by Council, thus completing the 2017 Program Year
 - Requires assessment ordinance to be considered and adopted by Council in June 2019, thus completing the 2018 Program Year
 - Cessation does not coincide with the completion of a city-wide repair cycle
 - May require supplemental appropriation in 2018 to refund prior-year participants in city-wide repair cycle
 - May add approximately \$100,000 per year after 2018 to cover the property owner's former obligations.
- Option 2 – Stop Owner-Participation after the Completion of the 2023 Program

Adopt a new resolution citing a cessation of City property owners' responsibility to repair sidewalks abutting their property beginning in FY2024. Continue assessment process through the adoption of assessment ordinance in 2024 for completing the 2023 program year.

- Pros
 - Allows adoption of a Resolution establishing the cessation of property owner responsibility
 - Cessation coincides with completion of city-wide repair cycle
 - Does not present any inequity with other groups who may have already completed and paid for repairs.
- Cons
 - Requires assessment Ordinance 2018-12 to be reconsidered and adopted by Council, thus completing the 2017 Program Year
 - Requires future assessment Ordinances to be considered and adopted by Council through June 2014, thus completing the 2023 Program Year
 - May add approximately \$100,000 per year after 2023 to cover the property owner's former obligations.

Staff recommends Option 2

Attachments