

**City Council
Agenda Memo**



**City Council
Meeting Date: March 13, 2014**

TO: Larry D. Gilley, City Manager

FROM: Jon C. James, Director of Planning & Development Services

SUBJECT: First Reading on an ordinance amending the Land Development Code regarding sidewalks; and setting a public hearing for March 27, 2014.

GENERAL INFORMATION

Based on recent decisions on sidewalk waiver requests, the City Council requested that staff initiate discussions with the Planning and Zoning Commission to identify possible amendments to the Sidewalk Ordinance regarding the required locations for sidewalks and when sidewalks should be constructed. The attached amendments represent a portion of those recommendations. Other changes will be discussed at a future meeting. The most substantive changes include:

1. Making sidewalks optional on **local** streets within new single-family residential subdivisions.
2. Exempting sidewalk construction for platting or development in Agricultural-Open Space zoning for developments that do not trigger a site plan.
3. Exempting sidewalk construction for plats where no other street improvements are triggered.
4. Exempting sidewalk construction for plats along rural and TxDOT roadways with drainage ditches.
5. Adding the option for a sidewalk deferral to defer construction to some point in the future, rather than a waiver.

FUNDING/FISCAL IMPACT

While there are no direct fiscal impacts to this change, reducing the sidewalk requirements placed on new development shifts the burden for future sidewalk construction to the public sector, which could place future burdens on taxpayers to construct sidewalks in locations where most cities require the property owner to construct.

STAFF RECOMMENDATION

Staff is supportive of all of these changes, with the exception of #1 listed above, which would make sidewalks optional for local streets in new neighborhoods. Our history shows that giving a developer the option will result in most new neighborhoods being without sidewalks. Every city in the state with over 100,000 population requires sidewalks in these circumstances, along with almost all of our peer cities. Across the state, requiring sidewalks in new development is an accepted part of development. The City of Abilene took a very big step towards making our community more walkable and pedestrian-friendly when we adopted the Sidewalk Ordinance in 2006. This change would represent a big step backward if we are to live up to the goal of the Comprehensive Plan to create a "community wide pedestrian network".

BOARD OR COMMISSION RECOMMENDATION

The Planning and Zoning Commission recommended approval of these amendments by a vote of 4 in favor (Bixby, Todd, Yungblut, and Rosenbaum) and 2 opposed (McClarty, Glenn). The opposition was not necessarily opposed to these changes, but instead preferred to address all changes at once, including the additional changes to be discussed at an upcoming meeting (as noted above).

ATTACHMENTS

Ordinance amendments

Prepared by:

Name: Jon James

Title: Planning Director

Item No. 6.3

Disposition by City Council

- Approved Ord/Res# _____
- Denied _____
- Other _____

City Secretary

AN ORDINANCE AMENDING CHAPTER 23, "LAND DEVELOPMENT CODE," OF THE ABILENE MUNICIPAL CODE, BY AMENDING CERTAIN SECTIONS AS SET OUT BELOW; PROVIDING A SEVERABILITY CLAUSE; DECLARING A PENALTY AND CALLING A PUBLIC HEARING.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS:

PART 1: That Chapter 23, part known as the "Land Development Code," of the Abilene Municipal Code be amended as set out in Exhibit "A," attached hereto and made a part of this ordinance for all purposes.

PART 2: That if any provision or any section of this ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

PART 3: That any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than Five Hundred Dollars (\$500.00). Each day such violation shall continue or be permitted to continue, shall be deemed a separate offense.

PASSED ON FIRST READING this 13th day of March A.D. 2014.

A notice of the time and place, where and when said ordinance would be given a public hearing and considered for final passage, was published in the Abilene Reporter-News, a daily newspaper of general circulation in the City of Abilene, said publication being on the 20th day of December, 2013, the same being more than fifteen (15) days prior to a public hearing to be held in the Council Chamber of the City Hall in Abilene, Texas, at 8:30 a.m., on the 27th day of March, 2014, to permit the public to be heard prior to final consideration of this ordinance. Said ordinance, being a penal ordinance, becomes effective ten (10) days after its publication in the newspaper, as provided by Section 19 of the Charter of the City of Abilene.

PASSED ON SECOND AND FINAL READING THIS 27th day of March, A.D. 2014.

ATTEST:

CITY SECRETARY

MAYOR

APPROVED:

CITY ATTORNEY

EXHIBIT A

Division 12 – Sidewalks

Section 3.2.13.1 Purpose & Applicability

- (a) **Purpose.** The purpose of this Division is to promote the health, safety, and welfare of the residents, property owners, and visitors to the City of Abilene and to implement objectives and strategies of the Abilene Comprehensive Plan. This Division shall also be known as the “Sidewalk Master Plan of the City of Abilene”.
- (b) **The Sidewalk Master Plan will:**
- (1) Improve the safety of walking by providing separation from motorized transportation and improving travel surfaces for pedestrians in high priority locations.
 - (2) Improve public welfare by providing an alternative means of access to transportation and social interaction, especially for children, other citizens without personal vehicles, or those with disabilities, in areas with higher pedestrian activity or potential activity.
 - (3) Facilitate walking as a means of physical activity recognized as an important provider of health benefits in areas where such activity is most likely to occur.
 - (4) Establish minimum criteria for the development of sidewalks as a part of the pedestrian element of the transportation system within the City and its extraterritorial jurisdiction (ETJ).

Section 3.2.13.2 Policy Statements

- (a) Walking is a primary form of transportation that should be accommodated in the design of public roadways and transportation systems only on major streets and in areas where pedestrian activity is currently prevalent or in areas where it is most likely to occur in the future. In addition, sidewalks are an integral part of the street system and should not be of secondary consideration.
- (b) A ~~continuous~~ pedestrian system is critical to achieve the benefits of a functional multi-modal transportation system.
- (c) Where this document is silent, the design of pedestrian facilities shall follow the City's Sidewalk Design Standards and applicable State and Federal laws and regulations.
- (d) All sidewalks, sidewalk amenities, and landscaping in the external right-of-way shall be maintained by the adjoining property owner unless otherwise specifically provided for by public policy.

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- (e) These requirements are intended to apply within the City and its ETJ, but are not intended to apply to existing single-family residential neighborhoods where sidewalks are not present and have not historically been provided. These requirements are intended to apply to both public and private streets.

Section 3.2.13.3 General Requirements

- (a) Unless noted otherwise, sidewalks shall have a minimum clear path width of four feet on local streets in a district zoned for primarily single-family residential purposes and a minimum clear path width of five feet in all other locations.
- (b) The timing of sidewalk construction shall be as required by this Master Plan, unless a development agreement between the property owner and the City provides for alternative timing for construction.
- (c) In addition to sidewalks within the right-of-way, internal pedestrian circulation shall be provided in new development or redevelopment serving any multi-family, commercial, retail, office, service, or similar use and at any governmental facility, school, church, or other place of public assembly. Sidewalks, or other accessible pedestrian routes, shall be installed to connect all buildings to one another and to parking areas and to connect the development to the public street system. All such sidewalks or routes shall be protected from encroachment by parked vehicles.

Section 3.2.13.4 Sidewalk Requirements for New Streets

- (a) Sidewalks shall be required on both sides of all new streets except local streets in a single-family residential subdivision ~~where all lots are 1 acre or greater or expressways where frontage roads are not provided.~~
- (b) Sidewalks shall be provided at the time of road construction on all new expressway frontage roads, arterial streets, or collector streets.
- (c) Sidewalks shall be installed concurrently with other street improvements on local streets where streets abut non-development areas such as common areas, drainage features, utility rights-of-way, or publicly owned areas.
- (d) A developer of a new subdivision may contribute the projected cost of the sidewalk construction into an escrow fund or through other form of financial guarantee to delay the time of construction of the sidewalk according to procedures that may be promulgated by the City.
- (e) All required sidewalks in new subdivisions must be constructed within 5 years of plat approval unless a different schedule is specifically authorized in writing by the City Engineer for the purpose of coordination with other capital improvement activities.

Comment [JCJ1]: Staff is opposed to this change, which has the effect of exempting all new local streets in new single-family neighborhoods, thus making sidewalks in new residential neighborhoods "optional".

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Section 3.2.13.5 Sidewalk Requirements for Existing Streets

- (a) Sidewalks shall be required on both sides of existing collector streets, arterial streets, and the external sides of the frontage roads of expressways, except for property zoned AO, Agricultural – Open Space for uses that do not require a site plan.
- (b) Sidewalks shall be required along block faces of existing local streets in any of the following categories or combinations of categories:
 - (1) The Central Business District designated by the Abilene Comprehensive Plan.
 - (2) Designated pedestrian routes in a neighborhood plan, corridor plan, or other small area plan adopted by the City of Abilene.
 - (3) Locations that would connect existing or otherwise required sidewalks by closing gaps of less than 250 feet.
 - (4) Locations in which an adjacent property has a public sidewalk along the same block face.
 - (5) Street frontages in all land use zones except the following:
 - a. Zones intended primarily for single-family residential purposes and where sidewalks are not present. (Example: RS and MH).
 - b. Zones intended primarily for multi-family residential purposes where the current or proposed use of the property is for single-family residential (Examples: MD, MF).
 - c. Zones intended primarily for warehousing, manufacturing, and industrial uses (Examples: HI, LI).
 - d. Zones intended to preserve agricultural activities and open space (Example: AO).
- (c) No plat or subdivision of land along an existing collector street, arterial street, or expressway frontage road may be approved without provision for the installation of public sidewalks along such streets and roads unless the subdivision is subject to exceptions to requirements for infrastructure improvement. The sidewalks must be provided concurrently with other street improvements except as otherwise provided in this Master Plan.
 - (1) This requirement does not apply along streets where no other street improvements are required.
 - (2) This requirement does not apply along a rural road or a road maintained by the Texas Department of Transportation where drainage ditches are present.
- (d) No new or amended site plan may be approved for development on any property in a location unless applicable provisions for required sidewalks are included in the site plan.
- (e) A certificate of occupancy, or building final approval for residential development that does not require a certificate of occupancy, may not be issued until required sidewalks are installed or brought up to applicable standards when there is development activity requiring:

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- (1) a permit for new construction of a structure other than an accessory structure,
 - (2) a permit for a major addition to a structure other than an accessory structure,
or
 - (3) a permit for major alterations or repairs to a structure other than an accessory structure.
- (f) An existing sidewalk may not be removed unless a replacement sidewalk is constructed to standards current at the time of removal.

Section 3.2.13.6 Exceptions, & Waivers, & Deferrals

- (a) A complete waiver of the requirement for sidewalks should be rare and allowed only where there are unusual factors. The waiver must be approved by both the Planning Director and the City Engineer to be granted and their decision shall be documented with supporting data that states the basis for the decision. However, in the event of a split decision, the City Manager or designee shall also make a determination as to whether or not the waiver should be granted, and document that determination with supporting data that states the basis for the decision. Unusual factors include:
- (1) projects where the cost of establishing sidewalks or walkways would be unreasonably disproportionate to the cost of the associated roadway construction or overall project costs (however a partial waiver may be granted in lieu of a full waiver to reduce the cost of required sidewalks such that the costs will not be unreasonably disproportionate) ,
 - (2) areas with severe topography or other natural constraints that will constrain proper implementation of this plan,
 - (3) situations inherently adverse to pedestrian activity, such as harmful noise, dust creation, and high volume truck traffic, in certain areas, such as agricultural, heavy commercial, and industrial developments, or
 - (4) situations where an applicant can show other factors or circumstances amounting to reasonably justifiable good cause to support such waiver.
- (b) Deviations from these requirements and the City's Sidewalk Design Standards may be allowed when necessary due to the physical circumstance of the street or when necessary to accomplish adopted development goals of the City or in situations where an applicant can show other factors or circumstances amounting to reasonably justifiable good cause to support such a deviation.
- (1) The specific nature and justification for any deviation must be documented and authorized in writing by both the Planning Director and the City Engineer.
 - (2) Deviations should be minimal and consist primarily of changes to required width of clear path or alignment within the right-of-way.
 - (3) Deviations shall not allow a minimum clear path width of less than 3 feet.

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(c) Sidewalk construction may be deferred through a Sidewalk Deferral Agreement, when approved by the Planning Director and City Engineer or by the City Council upon appeal of a denied sidewalk waiver request. Deferrals should be granted only in situations where an applicant can show factors or circumstances amounting to reasonably justifiable good cause to support such deferral.

(d) The applicant must submit sufficient documentation supporting the request for a waiver, deviation, or deferral and the determination shall be based on the information provided.

(e) A denial of a request for a waiver, ~~or deviation,~~ or deferral of these requirements may be appealed to the City Council.

(1) A written appeal must be filed with the Planning Director within 10 days of the denial ~~of the waiver or deviation.~~

(2) The appeal must provide justification for the requested waiver, ~~or deviations,~~ or deferral based on the criteria described in (a), ~~and~~ (b), and (c) above.

(3) The Council must make findings based on these criteria in order to approve a waiver or deviation. If substantial new information, not provided as part of the original request, is provided by the applicant within 14 days of the City Council meeting, or during the City Council meeting, the item shall be referred back to the Planning Director and City Engineer for reconsideration prior to a decision by the City Council.

(f) Sidewalks shall not be required when specifically exempted in a neighborhood plan, corridor plan, or other small area plan adopted by the City Council.

Section 3.2.13.7 Definitions

(a) "Alley" means a minor public right-of-way not intended for general traffic circulation that is primarily used for secondary access to the rear or side entrances of abutting property.

(b) "Arterial street" shall mean any route designated as arterial, minor arterial, planned arterial, or planned expressway by the Thoroughfare Plan.

(c) "Block face" refers to one side of a street between major intersecting features.

(d) "Change in use" means any change of occupancy as defined by the building code adopted by the City of Abilene.

(e) "Clear path" means an unobstructed way free from obstacles or overhanging projections to a height of 8 feet above the ground, sidewalk, or surface.

(f) "Collector street" shall mean all routes designated as collectors or planned collectors by the Thoroughfare Plan.

(g) "Common area" means a portion of a real estate development that is held for the common use or benefit of multiple owners or tenants: such as parking lots, malls, common recreational areas, landscaping lots, group detention facilities, etc.

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- (h) "Drainage feature" means a natural or man-made feature that collects, conveys, or stores surface water or storm water runoff: such as a channel, stream, detention area, wetland, or lake.
- (i) "Existing street" means a street existing at the time that a sidewalk requirement is triggered, including, but not limited to, all streets existing on the ground on August 10, 2006.
- (j) "Expressway" means an arterial street where access from abutting land is not permitted adjacent to the main travel lanes of the roadway except along a separate frontage road.
- (k) "External right-of-way" means the area located within the public right-of-way between the curb line of a street, or edge of roadway, and the property line at the edge of right-of-way; sidewalk easements shall be considered a part of the external right-of-way.
- (l) "Frontage road" means a roadway within the right-of-way of an expressway corridor that provides access to abutting land.
- (m) "Local street" shall mean a minor street or subcollector street as defined by the City's Subdivision Ordinance.
- (n) "Major addition" shall mean:
 - (1) Any addition to a structure in excess of fifty percent of the existing floor area or 10,000 square feet, whichever is less; or
 - (2) Any addition that increases the value of the structure in excess of fifty percent or \$1,000,000, whichever is less.
- (o) "Major alterations or repairs" shall mean any alterations, repairs, or combination thereof to a structure in excess of fifty percent of the value of said structure.
- (p) "Obstacles" means fixed or portable obstructions to the safe passage of pedestrians including, but not limited to: signs, street lights, mailboxes, landscaping, utility poles, trashcans, parked vehicles, merchandise, furniture, junk, and debris.
- (q) "Project costs" means the following:
 - (1) If a sidewalk is triggered by the subdivision process, project costs include the other infrastructure improvements required in the platting process, such as road construction, water lines, sewer lines, drainage facilities, etc.
 - (2) If a sidewalk is triggered by the site plan process or any process other than through subdivision, project costs include all development costs associated with the site plan or building project, including site development, buildings, parking lots, etc.
- (r) "Property" means any platted lot or other parcel of land.
- (s) "Road construction" as used in the context of this Master Plan shall mean any new construction, widening of roadways, or adding curb and gutter.

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- (t) "Roadway" means that portion of a street or highway between the regularly established curb lines or that part, exclusive of shoulders, improved and intended to be used for vehicular traffic.
- (u) "Sidewalk" means an improved facility intended to provide for pedestrian movement; often located in the public right-of-way adjacent to a roadway.
- (v) "Sidewalk amenities" means accessory features such as sidewalk furniture, planters, railings, bicycle racks, canopies, and specialized lighting.
- (w) "Street" means the entire width between property lines of every way open to the use of the public for purposes of travel with the exception of alleys.
- (x) "Unreasonably Disproportionate" means exceeding twenty percent of the project costs or exceeding three times the cost of a standard sidewalk with no topographic constraints or other unique issues that would raise the cost of a sidewalk. For transportation projects, right-of-way acquisition costs shall not be included in the calculation.