

RISK MANAGEMENT INFORMATION

## **SIDEWALK INSPECTION AND MAINTENANCE POLICIES: THEY ARE ALL THEY'RE CRACKED UP TO BE**

*Cities should develop and adopt sidewalk inspection and maintenance policies if such policies do not already exist. Sidewalk inspection and maintenance policies serve many useful purposes including providing guidelines to city employees, conveying information to city residents, and preventing and/or minimizing lawsuits and exposure.*

*There are five common misconceptions and myths about sidewalk inspection and maintenance policies.*

- 1. The city has no sidewalk maintenance policy.*
- 2. A good written sidewalk maintenance policy need only say, "The city regularly inspects and maintains its sidewalks, and responds to resident complaints."*
- 3. If a city doesn't have any money, it doesn't need to do anything about sidewalk maintenance or worry about the Americans with Disabilities Act or other similar federal or state laws.*
- 4. If a person falls on a sidewalk and city employees determine the sidewalk where the person fell is defective, city employees shouldn't fix the defect because it will look bad if the injured person sues.*
- 5. Documenting problems with sidewalks, including accidents, can come back to hurt the city.*

*This memo addresses these misconceptions and myths, highlighting how to avoid common pitfalls and how to develop effective sidewalk inspection and maintenance policies.*

### **No Sidewalk Maintenance Policy**

If your city regularly inspects and maintains sidewalks, most likely it has a policy for sidewalk maintenance. However, this policy may be unwritten. Most likely, your city has a sidewalk maintenance policy if city employees:

- Periodically inspect and/or rate all city sidewalk segments.
- Prioritize what city sidewalks to repair and/or replace.
- Decide whether to repair and/or replace a sidewalk based on certain criteria (i.e. difference of height between two slabs of concrete of one inch or more).
- Respond to resident complaints and concerns.
  
- Inspect sidewalks when performing other work, such as trimming trees or inspecting streets.

This material is provided as general information and is not a substitute for legal advice.  
Consult your attorney for advice concerning specific situations.

- Balance sidewalk maintenance duties with other public works functions.

While an unwritten policy is better than no policy, a written policy is better than an unwritten policy. A written policy serves to:

- Guide the city’s inspection and maintenance efforts by providing guidance and direction for city employees, providing information for responding to citizen concerns, and serving as a tool for long-term planning and budgeting.
- Preserve the “statutory/discretionary immunity” record. Under Minn. Stat. § 466.03, subd. 6, a city is immune from liability for discretionary policy-level decisions that are based on a balancing of political, social, and economic factors. In other words, a claimant cannot recover where she/he alleges negligent maintenance if the city balanced social, economic, and political factors in formulating its sidewalk maintenance policy. In maintaining sidewalks, a city typically balances political (cost of and resistance to assessment), social (public safety, desire to provide safe sidewalks to residents, desire to encourage downtown shopping), and economic (limited number of employees, limited budget for sidewalk maintenance, cost of repair/replacement) factors.
- Minimize the city’s liability exposure in lawsuits. Even if a city is not entitled to an immunity defense (which provides immunity from suit, not just liability), if a city establishes and follows a sidewalk maintenance policy, the city can prove that it exercised reasonable care in the maintenance of its sidewalks.
- Communicate to the public. Specifically, a written policy (1) informs property owners about how the city treats sidewalks; (2) helps taxpayers understand the economic implications of sidewalk inspection and maintenance; (3) allows the public to comment on and seek modification of the policy; and (4) may assist in decreasing the likelihood of lawsuits resulting from claims resulting from minor, non-defective sidewalk deviations or conditions.

## **A Good Written Sidewalk Maintenance Policy Needs No Detail**

The ideal written sidewalk inspection and maintenance policy contains several critical components, including (1) identification of defective conditions; (2) development of an inspection procedure and schedule; (3) prioritization of replacement and repair; (4) development of cost recovery mechanisms; and (5) response to resident complaints and concerns.

### **Identification of Defective Conditions**

A city should identify defective conditions on its sidewalks by:

- Conducting an initial survey. Typically, the city should conduct an initial survey to inspect and evaluate all its sidewalks and document its findings.
- Conducting follow-up surveys. After the initial survey, the city should periodically conduct follow-up surveys and document its findings. The

#### **Learn More**

Read more about street maintenance in:

[Streets And Sidewalks: Doing The Best With What You Have](#)

frequency of follow-up surveys may depend on the availability of city employees and the city's budget. The frequency of follow-up surveys can also vary for residential and downtown areas.

- Establishing criteria for defective sidewalks. The city should establish criteria for defective sidewalk by considering the location of the sidewalk, the amount of pedestrian traffic, the city resources for repair or replacement, the appropriateness and effectiveness of a temporary repair, and the wishes of the city council. The city must also define when a sidewalk is defective and requires repair or replacement considering deviations in elevations, missing sections, holes, spalling, and other conditions. The city should determine who is responsible for determining that a city sidewalk needs repair or replacement.

### **Development of an Inspection Procedure & Schedule**

A city should establish a sidewalk inspection procedure and schedule. In formulating an inspection procedure and schedule, the city should consider:

- Conducting an initial survey if the city has not conducted a survey in the past five years.
- Whether city employees will survey the whole city at once or survey the city area by area.
- Frequency of sidewalk re-inspecting, considering the location of the sidewalk, the amount of pedestrian traffic, and available city resources.
- City employees' informal inspections when performing other work. A city needs to determine how a city employee can report a sidewalk problem even if she/he is not formally inspecting the sidewalk and the city's response to such reports.

### **Prioritization of Repair and Replacement**

A city should prioritize sidewalk repair and replacement by:

- Establishing priority criteria, considering location of sidewalk, amount of pedestrian traffic, overall condition of sidewalks in the area, cost versus effect, and resident complaints.
- Establishing a repair and replacement schedule. The schedule should be realistic, within budget, and take into consideration the resources needed, the length of the construction season, and the amount of work to be done. The schedule should indicate whether sidewalks are to be replaced area by area and whether they are to be replaced based on severity of condition regardless of location.

#### **Sample Policies**

The following maintenance policies were designed to help public works departments develop their own policies:

- [LMCIT Model Pothole Repair Policy](#)
- [LMCIT Model Street Sweeping Policy](#)
- [LMCIT Model Snowplowing And Ice Control Policy](#)

- Establishing a mechanism for modifying the repair and replacement schedule, considering budget, time, resource limitations, and changed priorities.
- Determining whether city employees or contractors will perform the repair and replacement work.
- Providing information to property owners, including work schedule and contact information for complaints and concerns.

### **Development of Cost-Recovery Mechanisms**

A city can pay for sidewalk repairs and replacements or assess the costs to benefited property owners. If a city decides to assess the cost of sidewalk repair or replacement to benefited property owners, it needs to formulate clear policies and procedures for assessing costs to property owners. A city can follow various procedures including (1) notifying property owners that they need to repair/replace sidewalk by a specified date or the city will perform the work and assess the property owner; or (2) providing that city employees perform the work in all cases and assess the property owner.

### **Response to Resident Complaints and Concerns**

A city's sidewalk inspection and maintenance policy should contain a component for responding to resident complaints and concerns. A city should consider taking the following actions in responding to citizen complaints:

- Complete an accident/incident report.
- Inspect the sidewalk after the accident or complaint and document the inspection. A city should describe the condition of the sidewalk before repair, take photographs, take measurements, and compare the post-accident sidewalk condition with the condition at the last inspection.
- Determine if post-accident sidewalk condition constitutes a defective condition or warrants repair or replacement under the city's policy.
- Determine whether to repair, replace, take temporary action, or do nothing. If the city decides to do nothing, the city should state its reasons for doing nothing.
- Communicate with the injured party. The city can acknowledge the accident, but should not admit fault or liability. The city should inform the injured party what the city has done in the past (inspection and maintenance policy) and what it will do in the future in response to his/her complaint. Before undertaking repair, the city should consult its city attorney and/or the League of Minnesota Cities Insurance Trust and notify in writing the injured person (or his/her attorney).

### **Adoption of the Policy**

After the city or city employees formulate a sidewalk inspection and maintenance policy (1) the city council should adopt the policy via a resolution; and (2) city employees should follow the policy.

### **Limited Resources & Federal and State Laws (Americans with Disabilities Act)**

If a city has limited resources, the city cannot simply ignore sidewalk maintenance. Instead, the city needs to formulate a policy that effectively utilizes the resources it does possess. For instance, if budget issues require that the city trim its sidewalk budget, the city should alter its inspection and maintenance schedule accordingly; it should not completely eliminate the schedule. Moreover, the city should document its decision. For instance, the city should show that it balanced social, political, and economic factors in formulating or modifying its sidewalk inspection and maintenance policy.

Nor can a city avoid compliance with state and federal accessibility laws on the sole grounds that it possesses limited funds. Instead, the city must prioritize sidewalk projects and other public works projects to ensure compliance with state and federal accessibility laws. Moreover, because state and federal accessibility laws frequently change (because of amendments or court decisions), a city should consult with its city attorney to ensure compliance.

### **Fixing Defects**

This myth contains some truth. City employees should not repair a sidewalk where an individual fell until the city consults with its city attorney and/or the League of Minnesota Cities Insurance Trust. Typically, it is a good practice to allow time for the city's agents and representatives to investigate the incident and take photographs of the sidewalk in question.

However, assuming that the city's agents have already conducted an investigation, if a city determines that a sidewalk where an individual fell is defective, the city need not wait until the end of litigation to repair the defect for fear the claimant will use the information against the city. In general, the Rules of Evidence prohibit a claimant from introducing evidence that a city repaired a sidewalk to prove that the city was negligent in not repairing the sidewalk beforehand. *Minn. R. Evid. 407*.

### **Documentation**

It is very helpful if a city documents its sidewalk inspection and maintenance policy and sidewalk problems. In the event of a lawsuit, the city's attorneys can use these documents to prove the existence of city policies and the city's adherence to the policies. They can also show that the city exercised reasonable care in inspecting and maintaining its sidewalks. Sometimes, individuals believe that if they do not document policies or problems, there will be no paper trail to hurt them later on. However, what they fail to understand is that judges and juries can draw negative inferences from a lack of documentation. Documentation shows that a city deliberately and conscientiously made decisions.

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# LMCIT MODEL SIDEWALK INSPECTION AND MAINTENANCE POLICY

## 1. Introduction

The city of \_\_\_\_\_, Minnesota has \_\_\_\_ miles of public sidewalks. Public sidewalks vary in age and in quality of condition. Not every mere inequality or irregularity in the surface of the sidewalk rises to the level of a defect. The city recognizes that some sidewalk conditions create unreasonable hazards for pedestrians and other sidewalk users.

The city has limited employee and financial resources and cannot reasonably replace all sidewalks needing replacement or repair in the same year the sidewalk is identified as needing replacement and repair. Sidewalk replacement and repair can be costly. Comprehensive sidewalk surveys are expensive and require the use of limited city personnel and other resources. Under appropriate circumstances, some or all of the cost of sidewalk replacement may be passed to the adjacent property owner.

Accordingly, the city and its Public Works Department must exercise both discretion and professional judgment in determining whether and when sidewalks need to be replaced or repaired. The city expects that its agents, employees, and city officials will exercise discretion in identifying conditions requiring replacement and repair, in the scheduling of replacement and repair and in establishing priorities for replacement and repair.

## 2. Sidewalk inspection procedures

The \_\_\_\_\_ (Street Superintendent/Director of Public Works/City Engineer) shall establish procedures for regular sidewalk inspection. Those procedures will include:

- A. An initial city wide sidewalk survey to be completed by \_\_\_\_\_ (date)
- B. A schedule for routine sidewalk inspections on a regular basis
- C. Criteria for determining whether a particular sidewalk condition is in need of replacement or repair. Those criteria will include, but not necessarily be limited to, a deviation or difference in elevation greater than \_\_\_\_\_ ( $\frac{1}{2}$ ,  $\frac{3}{4}$ , 1) inch, as determined at the time of inspection.

## 3. Sidewalk replacement and repair policy

Upon completion of the initial sidewalk survey, the \_\_\_\_\_ (Street Superintendent/Director of Public Works/City Engineer) shall establish a replacement and repair schedule. This schedule is subject to modification based both on sidewalk conditions and the availability of resources for sidewalk replacement and repair.

The sidewalk replacement and repair schedule will:

- A. Divide the city into sections or otherwise prioritize replacement of the sidewalks identified as needing replacement or repair so all sidewalks identified in the initial sidewalk survey as needing replacement or repair are replaced or repaired by \_\_\_\_\_ (date).
- B. Take into consideration and weigh the following factors:

1. Sidewalk location and amount of pedestrian traffic
2. Proximity of sidewalk identified as needing replacement or repair to other sidewalks also needing replacement or repair
3. The nature and severity of the condition needing replacement or repair
4. The city's budget for replacement or repair of sidewalks
5. Whether, or to what extent, the cost of repair can be recovered from adjacent property owners
6. Availability of employees, equipment, and other resources for sidewalk replacement or repair
7. Public safety
8. History of prior accidents or complaints
9. Schedules of independent contractors and work necessary to prepare bids and bid specifications if work is to be performed by independent contractors

**4. Sidewalk maintenance policy**

City employees will be responsible for removing snow from sidewalks that abut city-owned buildings or parking lots. Adjacent property owners, including other public entities, are responsible for removing snow and ice from sidewalks that abut their property (see City Ordinance No. \_\_\_\_\_). The city may, as a public service and for reasons of public safety, remove snow and ice from sidewalks. The \_\_\_\_\_ (Street Superintendent/Director of Public Works/City Engineer) will identify sidewalks from which the city will remove ice and snow.

**5. Review and modification of policy**

The City Council may modify or clarify this policy at any time. Where the city council has delegated responsibility or authority to any city employee or official for development or implementation of any portion of this policy, that employee or official shall have full authority to modify that portion of the policy at any time.

**6. Review of policy**

The \_\_\_\_\_ (Street Superintendent/Director of Public Works/City Engineer) will keep on file comments and complaints received regarding this policy. The policy will be reviewed periodically. Any review will consider comments and complaints since the last review and any other factors affecting the policy or its implementation.

**7. Effective date of policy**

This policy shall be effective as of \_\_\_\_\_ (date). Modifications of the policy shall be effective on the date said modifications are approved by city council resolution or the date city employee or official (with authority granted by the city council) has approved the policy modification or change.