

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2024

COUNCIL BILL NO. CB24-1076
COMMITTEE OF REFERENCE:
Land Use, Transportation and Infrastructure

A BILL

For an ordinance repealing and reenacting Division 5 Article VI of Chapter 49, Denver Revised Municipal Code concerning Denver sidewalks and sidewalk fund and for conforming amendments to Article XV Chapter 49 and Chapter 20, Denver Revised Municipal Code.

WHEREAS, on November 8, 2022, City and County of Denver voters passed Initiated Ordinance 307, which creates a sidewalk program and sidewalk fund, shifting responsibility from property owners to the City, in certain situations, for the construction, reconstruction and repair of sidewalks and imposing a sidewalk service charge on property owners to fund the sidewalk program; and

WHEREAS, the city charter authorizes City Council to amend or repeal an initiated ordinance six months after final passage by a two-thirds (2/3) vote of City Council; and

WHEREAS, City Council desires to amend Initiated Ordinance 307 by repealing and reenacting the ordinance in order to provide clarity about the sidewalk program and sidewalk service charge, add definitions, align the sidewalk program and its purpose with other ordinances concerning sidewalk maintenance, and to create the sidewalk enterprise fund; and

WHEREAS, Initiated Ordinance 307 intended to set up an enterprise fund for the construction of sidewalks and sidewalk infrastructure; and

WHEREAS, Initiated Ordinance 307 did not include the necessary fund number in the fund plan and information to create the enterprise fund for receipt and expenditure of sidewalk fees for the sidewalk enterprise, which shall be further described herein.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. That Division 5 Article VI of Chapter 49 of the Denver Revised Municipal Code be and the same is hereby repealed and reenacted to read as follows:

Article VI. SIDEWALKS, CURBS, GUTTERS AND DRIVEWAYS

Division 5. Sidewalk program and sidewalk fund.

Sec. 49-145. General provisions; definitions

(a) Sidewalks are basic infrastructure critical to creating and maintaining an equitable and vibrant city. Sidewalks are necessary to guarantee everyone, including adults, children, and people with disabilities, has the independence to move about the city freely and safely. However, many places in the city do not have sidewalks or have sidewalks that are narrow, in disrepair, and/or do not comply with legally mandated accessibility standards. Presently existing sidewalks require frequent reconstruction and repair.

(b) Historically, each owner of a lot or parcel of real property adjacent to the sidewalk within the city was responsible for the construction, reconstruction and repair of the sidewalk abutting their property. To create a comprehensive, integrated, and accessible sidewalk network, while also reducing the burden on individual property owners to construct, reconstruct, and repair sidewalks, this division promulgates and sets forth a sidewalk service charge to be paid by the owners of every lot or parcel of land within the city, the revenues from which shall be dedicated to construction, reconstruction and repair of sidewalks and sidewalk infrastructure to be performed by the city. In furtherance of providing sidewalks and sidewalk infrastructure so that everyone has the independence to move about the city freely and safely, and recognizing that each owner of a lot or parcel of land within the city makes use of, and is served and benefited by, sidewalks, each owner of a lot or parcel of land within the city should pay for the use and availability of use of city sidewalks.

(c) The revenue from the sidewalk service charge promulgated and set forth in this division is required, and shall be used, solely for the following purposes: sidewalks and sidewalk infrastructure construction, reconstruction, and repair; acquisition of interests in land for sidewalks and sidewalks infrastructure; and financing, administrative, and other costs, including payment to settle any claim resulting from an alleged dangerous condition of the sidewalks if agreed to by the city or the city is found liable by a court of competent jurisdiction. The purposes described in this subparagraph (c) shall be collectively referred to in this division as the "sidewalk program". Sidewalks and sidewalk infrastructure shall be constructed, reconstructed and repaired in accordance with the rules and regulations adopted by the manager, unless otherwise approved by the manager in writing.

(d) In addition to the above-stated general purposes, this division is enacted for the following specific purposes:

(1) To promote the general public health, safety and welfare by assuring that sidewalks and sidewalk infrastructure are accessible and safely constructed, reconstructed and repaired for all sidewalk users.

(2) To provide for the establishment of a sidewalk master plan for effectively identifying sidewalks and sidewalk infrastructure in need of construction, reconstruction and repair and developing a comprehensive program for the acquisition of interests in land, construction, reconstruction and repair of sidewalks and sidewalk infrastructure.

(3) To establish a reasonable sidewalk service charge for acquisition of interests in land, construction, reconstruction and repair of sidewalks and sidewalk infrastructure computed on a basis of the need for, and the service provided by, sidewalks in the city.

(e) Definitions. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this division only, shall have the meanings hereinafter designated. Definitions

found in other sections of this Revised Municipal Code may be applicable to this section; however, whenever there shall be any inconsistency or variance between such definitions and the definitions contained herein, the following definitions shall take control and precedence over any such conflicting definition for the purposes of this division only:

(1) *Account*. A group of one or more lots or parcels of real property for which sidewalk service charges are billed to a single entity (including but not limited to, a single owner for single lots or parcels, homeowner association, or other responsible party for multiple lots or parcels) due to an agreement or other governing documents (including but not limited to, party wall agreements, or declaration of covenants for a homeowner association) between the owners to pay the fees in a combined bill for all charges.

(2) *Department*. The city's department of transportation and infrastructure, or any such successor department or agency of the city.

(3) *Manager*. The manager of the city's department of transportation and infrastructure.

(4) *Person*. A natural individual person, a firm, a partnership, a co-partnership, a joint venture, a corporation, a company, an estate or trust, a governmental or quasi-governmental entity other than the city and its component departments, offices and agencies, or any other group or combination acting as a unit, or other legal entity, and includes the plural as well as the singular number.

(5) *Repair*. Fixing or restoring a hazardous condition of an existing sidewalk to a state of good repair. For purposes of this division, the term repair does not include cleaning sidewalks and maintenance of improvements in the public right-of-way as detailed in Article XV of Chapter 49, DRMC, as those responsibilities are the obligation of the owner, occupant, agent or lessee of any building or property within the city.

(6) *Real property frontage*. All of the lot or parcel abutting a public right-of-way or public waterway, measured along the public right-of-way or public waterway line.

(7) *Sidewalk*. The paved portion of the roadway section within the right-of-way intended for pedestrian use which includes associated pedestrian curb ramps at intersections and mid-block. For purposes of this division 3, the term sidewalks includes those paved paths intended for pedestrian use within city-owned parks that may be outside of the right-of-way, but are within 75' of the face of the curb, or as close to the curb as allowed by tree protection and planting areas, are connected to the city's sidewalk system, including street crossings and Regional Transportation District stops, run mostly parallel to the curb, and do not significantly hinder the flow of pedestrians, as determined in the manager's sole discretion.

(8) *Sidewalk infrastructure*. Any supporting physical system and appurtenances thereof that may be reasonably required for the construction of a sidewalk depending upon the existing conditions of a site.

(9) *State of good repair*. A condition in which physical assets are functioning as designed and are sustained through regular maintenance and replacement programs.

Sec. 49-146. Sidewalk master plan.

(a) The manager will, as soon as is practicable, formulate and develop a sidewalk master plan of the city setting forth the location, width and state of repair of all sidewalks within the city, as well

as the location of all lots and parcels of real property in the city where there are currently no sidewalks.

(b) The sidewalk master plan will set forth a near-term strategy for implementation of the initial capital investment plan described in subsection 49-146(c), as well as a long-term strategy for a continuing program of construction, reconstruction and repair of city sidewalks and sidewalk infrastructure as needed and over time. These strategies shall initially prioritize sidewalk and sidewalk infrastructure construction, reconstruction, and repair based upon the prioritization tiers assigned in the 2019 Denver Moves: Pedestrians & Trails Plan, or similar plan that prioritizes sidewalk and sidewalk infrastructure construction, reconstruction and repair to maximize pedestrian safety, transit access, and access to other high-priority destinations such as schools, parks, grocery stores, and health care centers.

(c) The sidewalk master plan will include an initial capital investment plan that is to be fully implemented within nine years of the effective date of this division, or as soon thereafter as determined practicable in the sole discretion of the manager. The initial capital investment plan will include, at a minimum: prioritization for the repair or reconstruction of all existing sidewalks and sidewalk infrastructure that are in severe disrepair, that represent a hazardous condition, or do not comply with legally mandated accessibility standards; the construction of sidewalks and sidewalk infrastructure abutting city-owned property adjoining all lots or parcels where no sidewalks currently exist; and the upgrade or reconstruction of all existing sidewalks and sidewalk infrastructure that do not meet the minimum standard sidewalk widths identified in the latest version of the department's transportation standard drawings for the type of street on which the sidewalk is located, unless the manager determines doing so is not practicable .

(d) The sidewalk master plan will include strategies, and the manager may make such additional studies as may be necessary, for ensuring the efficiency and creation of functional sidewalk networks, including by consolidating new construction, upgrades and repairs geographically. The sidewalk master plan will also consider the implementation of strategies to preserve flagstone sidewalks, at the sole discretion of the manager, where feasible and the existing materials are substantially intact and it is possible to do so while still satisfying all current construction or reconstruction requirements.

(e) The sidewalk master plan will be updated in no less frequent intervals than five (5) years, including new improvements and developing problem areas and will be submitted to the transportation and infrastructure advisory board for review and comment. Such sidewalk master plan may be transmitted by the manager to the mayor and the city council after the above-referenced process of the transportation and infrastructure advisory board is complete.

(f) No later than February 28 of each year, the manager will prepare a report and action plan detailing progress made in the prior year toward the goals of the sidewalk master plan, progress made in the implementation of the initial capital investment plan, and a detailed plan for proposed sidewalk and sidewalk infrastructure construction, reconstruction, and repair to be undertaken in the next fiscal year. The annual report and action plan will be submitted to the transportation and infrastructure advisory board for its review and comment.

Sec. 49-147. Sidewalk construction, reconstruction and repair service charge.

(a) Except as otherwise provided by ordinance or pursuant to an agreement with the city, there

is hereby imposed on each and every lot or parcel of land within the city, and the owners thereof, a sidewalk construction, reconstruction and repair service charge (referred to in this division as the "sidewalk service charge"). This charge is deemed reasonable and is necessary to pay for the purposes of the sidewalk program. All of the proceeds of the sidewalk service charge are imposed for the privilege and benefit of using and accessing a complete network of city sidewalks and is deemed to be in payment for construction, reconstruction, and repair of city sidewalks and sidewalk infrastructure. Real property owned by the city pursuant to the Charter authority of the department of aviation shall not be subject to payment of such sidewalk service charge as the department of aviation performs all necessary and appropriate maintenance, repair, replacement and future construction relating to sidewalks located on such real property. The sidewalk service charge shall be payable in advance, twice annually or at some other billing frequency that the manager shall determine is necessary and appropriate, and shall be paid to the city, as billed by the city, by the owner or owners of each and every lot or parcel of real property located within the political jurisdiction of the city.

(1) Except as otherwise provided by section 49-148, for each account with less than 230 linear feet of real property frontage, the sidewalk service charge shall be the base flat fee of \$150.

(2) Except as otherwise provided by section 49-148, for each account with greater than 230 linear feet of real property frontage, the sidewalk service charge shall be the base flat fee of \$150 plus an additional excess frontage fee of \$3.50 for each additional linear foot, rounded to the nearest foot.

(3) For accounts that are billed more frequently than on a twice annual basis, the sidewalk service charge under this subsection (a) of this section 49-147 will be prorated for each billing period.

(b) For purposes of calculating the sidewalk service charge, the manager shall determine the linear footage of the real property frontage for the lot or parcel of real property by any of the following methods:

(1) On-site measurements of the linear footage of the real property frontage for the lot or parcel of real property made by the city or on its behalf;

(2) Computation of the linear footage of the real property frontage for the lot or parcel of real property using the dimensions of the real property frontage for the lot or parcel of real property which are set forth and contained in the records of the office of the assessor of the city; or

(3) Estimation, calculation and computation of the real property frontage using aerial photography, photogrammetry, or equivalent technology.

(c) The manager will adopt rules and regulations establishing a rebate program for income-restricted housing and income qualified persons.

Sec. 49-148. Sidewalk service charge adjustments.

Not later than one year after the manager commences billing and collection of the sidewalk service charge, and on an annual basis thereafter, the department shall review the sidewalk service charge and, in accordance with the rules and regulations adopted by the manager, may adjust the sidewalk service charge as necessary to fund the sidewalk program accounting for inflationary pressures on operational and construction costs based upon a blended rate of various price and cost indices, which may include the then-current United States Department of Labor's Consumer

Price Index and the then-current Colorado Department of Transportation's Colorado Construction Cost Index.

Sec. 49-149. Disputes.

Any person who disputes the amount of the sidewalk service charge assessed against their property under this division or otherwise billed to or alleged to be owing from such person may request a revision or modification of such fee or charge of the department following the procedures set forth in DRMC section 56-106. Compliance with the provisions of DRMC section 56-106 shall be a jurisdictional prerequisite to any action brought under the provisions of this division, and failure of compliance shall forever bar any such action.

Sec. 49-150. Administration of division by the manager of transportation and infrastructure.

The administration of this division is hereby vested in and shall be exercised by the manager who may, in accordance with article VI of chapter 2, prescribe forms and rules and regulations in conformity with this division for the ascertainment, computation and collection of the fees and charges imposed hereunder, and for the proper administration and enforcement hereof. The manager may delegate the administration of this division, or any part thereof, subject to the limitations of the Charter and this Code, to duly qualified deputies and agents of the manager.

Sec. 49-151. Fiscal matters and Sidewalks Fund.

(a) All fees and charges paid and collected pursuant to this division shall be segregated, credited and deposited in the sidewalk enterprise fund as provided in the fund plan (to be referred to as the "sidewalks enterprise fund"), and shall not be transferred therefrom to any other account of the city, except to pay for expenses directly attributable to the sidewalk program.

(b) The fees and charges paid and collected by virtue of this division shall not be used for general or other governmental or proprietary purposes of the city, except to pay for the equitable share of the costs of accounting, management, and government thereof. Instead, the fees and charges shall be used, other than as described above, solely to pay for the costs permitted in the sidewalk enterprise fund attributable to the operation of the sidewalk program.

(c) Except as required to meet City standards for construction or widening of a sidewalk, the fees and charges paid and collected by virtue of this division shall not be used for scope including but not limited to, landscaping (except as needed to restore landscaping disturbed as part of construction or reconstruction), street furniture, structures, roadways, curb and gutter modifications (except as required incidental to construction or reconstruction of a sidewalk), or snow removal. When disputes arise regarding the use of funds for scope related to construction, repair, or reconstruction of sidewalks and sidewalk infrastructure, the manager shall have the authority to determine appropriate use of the sidewalks enterprise fund.

(d) The city may pledge a portion or all fees and charges collected under this division, including those anticipated to be collected, to the payment of principal, interest, premiums (if any), costs of issuance, and other amounts due on any revenue bond, note, certificate, contract, or other obligations issued or entered into for financing the design, construction, construction inspection, reconstruction, improvement, replacement and installation of sidewalks and sidewalk infrastructure under this division and the acquisition of interests in land, or for the payment to settle any claim resulting from an alleged dangerous condition of the sidewalks if agreed to by the city or the city is found liable by a court of competent jurisdiction.

(e) The annual budget of the department shall include a proposed budget for the sidewalks enterprise fund for the construction, reconstruction and repair of sidewalks and sidewalk infrastructure for the ensuing budget year. There shall also be included in the annual budget a statement of all amounts presently in the sidewalks enterprise fund, and an estimate of anticipated revenues for the ensuing budget year.

Sec. 49-152. Billing and collection of charges.

(a) The sidewalk service charge shall be billed and collected from owners of property directly by the manager. While bills for the sidewalk service charge may be sent to the address of the lot or parcel of real property directed to "owner or occupant," the obligation to pay promptly the sidewalk service charges is in no way affected by the failure of the city to furnish or send a bill or of the owner or occupant of the premises served to receive a bill for such services. Bills and notices are sent solely as a convenience to the users.

(b) Where possible, the sidewalk service charge shall be billed and collected with the storm drainage service charge established in Division 4 of Article III of Chapter 56 of the Revised Municipal Code.

(c) If any owner or owners of any lot, parcel of land or any real property within the legal boundaries of the city shall neglect, fail or refuse to pay the charges or fees fixed by this division, the rates, charges or fees due therefor may, by the manager, be periodically certified to the manager of finance who shall record a notice of such lien with the clerk and recorder. Such rates, charges or fees due therefor shall become, from and after the date of such recording of the notice in the office of the clerk and recorder, a continuing lien upon the real property so charged. The manager of finance shall assess and charge the amounts of the charges or fees due against the property involved, and collect the same, plus interest thereon, in the manner as are delinquent real property taxes. The lien created hereby shall be superior and prior to all other liens, regardless of their dates of recordation, except liens for general taxes and special assessments. In addition to the remedies set forth herein, an action or other process provided by law may be maintained by the city to recover or collect any amounts, including interest, owing under this provision. Provided however, that when the failure to pay such rates, charges or fees due is the result of incorrect billing by the manager, the owner shall only be billed, with the related certification and notice, if any, for not more than two (2) years prior to the mailing of a corrected billing.

Sec. 49-153. Liability.

(a) This division does not imply that property liable for the fees and charges established by this division will always have access to a sidewalk or a sidewalk free from any defect. Nor shall this division create a liability on the part of, or cause of action against, the city or any officer or employee thereof for any condition of any sidewalk or any lot or parcel of real property that does not have a sidewalk, or any inaction on the part of the city or any officer or employee therefor. Nor does this division purport to reduce the need or the necessity for obtaining property insurance.

(b) Nothing in this section shall limit the authority of the manager to require the owner of a land area to be developed or redeveloped to provide sidewalks in accordance with section 49-84(b), DRMC.

Sec. 49-154. Violations; evasion of collection or payment.

It shall be a violation of this division for any person to fail or refuse to make payment to the manager

of any fees or charges due the city, or in any manner to evade the collection and payment to such fees and charges, or any part or parts thereof, imposed by this division or for any person to fail or refuse to pay such fees or charges or evade the payment thereof, or to aid or abet another in any attempt to evade the payments of the fees and charges imposed by this division.

Sec. 49-155. Authority to adopt rules and regulations.

The manager shall have the authority to adopt rules and regulations for the implementation and administration of this Division 5.

Section 2. Sections 49-116 through 49-120, 49-122, 49-131(a), and 49-132 through 49-134 of the Revised Municipal Code are hereby repealed.

Section 3. The following subsection shall be added to section 49-551.1 to read:

(g) For purposes of this Section 49-551.1, the term "improvements" does not include "sidewalk" as that term is defined in subsection 49-145(e)(7), DRMC.

Section 4. Subsection 20-17(b) of the Revised Municipal Code is amended by adding the language underlined to read as follows:

(b) The following sections, divisions, agencies, funds or departments of the city are designated as "subsection (2)(d) enterprises" within the definition of Section 20, Article X, of the Colorado Constitution:

(1) Wastewater management division of the department of transportation and infrastructure;

(2) The department of aviation in all operations, maintenance and improvements of the Denver Municipal Airport System;

(3) Environmental services, an agency of the department of public health and environment;

(4) Winter Park parks and recreation capital fund and Winter Park trust for parks and recreation, funds for projects of the department of parks and recreation; ~~and~~

(5) Golf enterprise fund for golf projects of the department of parks and recreation; and

(6) Sidewalks enterprise fund for construction, reconstruction and repair of sidewalks of the department of transportation and infrastructure.

Section 5. A new Fund Number 76000 in Section 20-18, Fund Plan, of the Denver Revised Municipal Code shall be added and read as follows:

Fund Number: 76000

Name of fund: Sidewalk enterprise fund.

Source of funds: Proceeds from charges imposed to defray all costs of Denver's sidewalk system proceeds; from fees charged for services furnished by the sidewalks division of the department of transportation and infrastructure; grants from federal government and state; reimbursements and repayment from other sources; transfers from other funds; gifts or donations; interest; receipts or proceeds from such sources as may be designated by ordinance; and proceeds from the sale of bonds, including revenue bonds.

Purpose of expenditures: Cost of the administration, management, operation, land acquisition, construction, reconstruction, repair, planning and engineering of sidewalks and sidewalk-related

1 infrastructure; for the payment of the principal of, interest and premiums due upon, and related
2 expenses of issuing and servicing bonds, or other obligations, including without limitation
3 revenue bonds, issued for such sidewalks; for the acquisition of land for such purposes; for the
4 acquisition of chattels, used or to be used for the management, construction, operation and
5 control of sidewalks; for the acquisition of real property or any interest therein, the construction,
6 reconstruction, enlargement and replacement of sidewalks, or other acquisition of buildings or
7 other structures; the acquisition of equipment that is or will become permanently attached to or a
8 functional part of real property or any interest therein or of any building or structure, and for other
9 related operational expenditures.

10 *Expending authority:* Manager of transportation and infrastructure.
11

12 **Section 6.** The effective date of this ordinance shall be January 1, 2025.
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1 COMMITTEE APPROVAL DATE: August 20, 2024
2 MAYOR-COUNCIL DATE: N/A
3 PASSED BY THE COUNCIL: September 16, 2024
4 *Amursh P. Sandoval* - PRESIDENT
5 APPROVED: _____ - MAYOR _____
6 ATTEST: _____ - CLERK AND RECORDER,
7 EX-OFFICIO CLERK OF THE
8 CITY AND COUNTY OF DENVER
9 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____;
10 PREPARED BY: Nathan J. Lucero, Assistant City Attorney DATE: September 5, 2024
11 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
12 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
13 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
14 § 3.2.6 of the Charter.
15 Kerry Tipper, Denver City Attorney
16 BY: *Anshul Bagga*, Assistant City Attorney DATE: Sep 5, 2024