

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 That Division 5 Article VI of Chapter 49 of the Denver Revised Municipal Code be and the same is hereby repealed and reenacted to read as follows: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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 **Sec. 49-146. Sidewalk master plan.**

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

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

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

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

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

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

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

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

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

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

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

17 (2) Except as otherwise provided by section 49-148, for each account with greater than
18 230 linear feet of real property frontage, the sidewalk service charge shall be the base flat fee of
19 \$150 plus an additional excess frontage fee of \$3.50 for each additional linear foot, rounded to the
20 nearest foot.

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

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

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

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

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

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

36 **Sec. 49-148. Sidewalk service charge adjustments.**

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

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

3 **Sec. 49-149. Disputes.**

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

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

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

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

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

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

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

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

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

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

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

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

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

31 **Sec. 49-153. Liability.**

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

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

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

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

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

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

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

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

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

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

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

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

- 18 (1) Wastewater management division of the department of transportation and
19 infrastructure;
- 20 (2) The department of aviation in all operations, maintenance and improvements of the
21 Denver Municipal Airport System;
- 22 (3) Environmental services, an agency of the department of public health and
23 environment;
- 24 (4) Winter Park parks and recreation capital fund and Winter Park trust for parks and
25 recreation, funds for projects of the department of parks and recreation; ~~and~~
- 26 (5) Golf enterprise fund for golf projects of the department of parks and recreation; and
- 27 (6) Sidewalks enterprise fund for construction, reconstruction and repair of sidewalks of
28 the department of transportation and infrastructure.

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

31

32 *Fund Number: 76000*

33 *Name of fund:* Sidewalk enterprise fund.

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

40 *Purpose of expenditures:* Cost of the administration, management, operation, land acquisition,
41 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.

13

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1 COMMITTEE APPROVAL DATE: August 20, 2024
2 MAYOR-COUNCIL DATE: N/A
3 PASSED BY THE COUNCIL: _____
4 _____ - 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