

## CHAPTER 905

### Construction, Repair and Replacement of Sidewalks, Integral Approaches/Aprons and Related Areas

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The purpose of this *Ordinance* is to provide a consistent procedure for the construction, repair and replacement of sidewalks, integral approaches/aprons and to keep such areas in a safe condition for use by the public.

#### **905.01: DEFINITIONS**

- (a) **Block or Blocks:** Approximately equally spaced, generally rectangular, blocks on the surface of a sidewalk area, formed by saw cut joints or tooled joints in the concrete (control/contraction joints) and/or by expansion joints.
- (b) **Handicap Access/Approach:** That portion contiguous to an integral approach/apron or sidewalk designed and constructed pursuant to The Americans with Disabilities Act (ADA) as it now exists or may from time to time hereafter be amended.
- (c) **Integral Approach/Apron:** That portion of a driveway between the street and the public right-of-way or easement dedicated to the public use containing a sidewalk crossing through it.
- (d) **Sidewalk:** A hard surface portion of the street system for pedestrian use which lies outside the curb lines (or integral with the curb) or edge of pavement of the roadway. An

area abutting a public right-of-way improved, or intended to be improved, as part of an overall pedestrian travel system within the community.

- (e) **Abutting Owner:** An individual or entity indicated on the most recent tax records of the Delaware County Auditor's office as owners, in whole or in part, whose property frontage confronts, is adjacent to or abuts the sidewalk, integral approach/apron and related areas. The City intends that all owners of a parcel shall be obligated pursuant to the provisions of this *Ordinance* on a joint and several basis as this *Ordinance* affects any parcel. Further, for purposes of this Chapter, any one owner of real estate shall be deemed to be the agent of all other owners of that real estate.
- (f) **Affected Areas:** Those areas requiring sidewalk construction, repair or replacement after inspection including sidewalks and/or integral approach/aprons.

#### **905.02: OBLIGATION OF ABUTTING OWNER**

All sidewalks, integral approaches/aprons within the City of Powell shall be constructed and maintained in a good state of repair at all times, they must be kept reasonably clean of snow and ice during the winter months and free of obstructions at all times by the abutting owner or owners of the property in accordance with the requirements of the City as set forth herein and as such requirements may from time to time be amended.

#### **905.03: INSPECTION PROGRAM**

The City Engineer/Public Service Director or designated representative shall conduct periodically, as determined necessary by such appropriate public official, an inspection program designed to require repair and replacement of sidewalk areas and/or integral approach/apron areas within the City for the purpose of maintaining those areas in a good and orderly state of repair so as to protect the health, safety and welfare of the residents of the City. The inspection program for any property shall occur as frequently, or infrequently, as the City Engineer/Public Service Director or designated representative shall deem appropriate but in any event each property within the City shall be inspected approximately once every five years in accordance with the provisions of this *Ordinance*.

#### **905.04: INSPECTION CRITERIA**

The inspection criteria to be utilized by the City Engineer/Public Service Director or designated representative shall include inspection of any condition deemed by such official to be potentially detrimental to the public health, safety and welfare and shall include, at a minimum, the examination of the following which, if such conditions exist, shall necessitate repair or replacement:

- (a) Any block having a crack or cracks in it more than 1/4 inch wide.
- (b) Adjoining blocks or portions thereof whose edges differ vertically by more than 1/4 inch.
- (c) Blocks that have holes in them 1/4 inch or more in diameter or are broken so that pieces are missing or loose.
- (d) Blocks having depressions, reverse cross-slope (sloping away from the street) or below curb grade so as to impound mud or water.
- (e) Blocks having a cross-slope and/or longitudinal slope that is deemed excessive by the City Engineer/Public Service Director or the designated representative.
- (f) Blocks that cause an abrupt change in the longitudinal grade of the sidewalk.
- (g) Blocks that are raveled; i.e. the surface has spalled, leaving it very rough with the coarse aggregate protruding.
- (h) Any material replaced or repaired without prior approval of the City Engineer/Public Service Director or designated representative unless such official determines such repair or replacement to be in satisfactory condition and in accordance with the standards and specifications for such repairs or replacements adopted by the City.
- (i) The sod area between the sidewalk and the street protrudes above the sidewalk and impounds water or causes it to drain along the sidewalk. In such cases the condition should be corrected by lowering the sod. In cases where the sod area on either side of the sidewalk is below the grade of the sidewalk, a fill should be made and the area either sodded or seeded.
- (j) Stumps, stones, private signposts or any other unauthorized obstruction in the sidewalk space.
- (k) Water-stop boxes, gas stop-boxes, etc., that are not to proper grade.
- (l) The integral approach/apron is required to be repaired or replaced if the repair or replacement of the sidewalk block area crossing through it requires a disturbance to the integral approach/apron.

**905.05: PROCEDURE FOR CONSTRUCTION, REPAIR OR REPLACEMENT**

When the City Engineer/Public Service Director or designated representative finds deficiencies after such inspection, such official shall:

- (a) Verify the identity of the property owner or owners utilizing the Delaware County Auditor's records.

- (b) Prepare a notice for each property setting forth the deficiencies discovered upon inspection, and other pertinent information as set forth in 905.05(d)
- (c) Serve the notice of deficiency on each property owner. Service shall be made upon the property owner or owners by ordinary U.S. Mail, postage prepaid. The City shall also post a list of such information in the manner it uses for posting legislation so that it is accessible to the public. The City may additionally post such information at its website. The notice will recite that the City will accomplish the construction, repairs or replacements as part of the City-wide or neighborhood program and assess the cost of such improvements benefiting the abutting property based upon the actual unit costs associated with the various improvements and assess the cost of such improvements against the abutting property based upon its unit costs over five (5) years at the rate the City is charged for financing such improvements plus one percent (1%).
- (d) Such notice shall indicate the following:
1. The deficiencies discovered as a result of inspection.
  2. That a property owner(s) has twenty-one (21) days from transmittal of the notice to advise the City that the property owner(s) does not consent to the improvements, repair or replacement by the City and that the property owner(s) "opt out" as otherwise set forth in this *Ordinance*. Such lack of consent and "opt out" must be sent from the property owner(s) to the City in writing at the address stated in the original notice from the City to the property owner(s). The notice from the property owner(s) to the City must be received by the City within twenty-one (21) days of transmittal of the original notice from the City to the property owner(s).
  3. If the property owner(s) fails to advise the City of the property owner's absence of consent, it shall be presumed for all purposes that the property owner(s) has consented.
  4. A property owner(s) may "opt out" in accordance with this *Ordinance*. Such "opt out" shall be accomplished in writing and served upon the City within twenty-one (21) days of the transmittal of the original notice from the City to the property owner(s).
  5. Requirements for permitting/inspection and associated, applicable permitting/inspection fees to be paid by the property owner(s) to the City if the property owner(s) intend to opt out.
  6. If trees within the public right-of-way abutting the owner(s)' property are damaged or lost as a result of such construction in furtherance of this *Ordinance*, the abutting property owner(s) may apply to the City for priority under any City-sponsored tree replacement program then in effect. Such property owner(s) may make the same application to the City if root damage results in the loss of trees on the owner(s) private property.

7. If the property owner(s) chooses to "opt out", the City-approved methods of sidewalk, integral approach/apron construction, repair or replacement consist of: i) concrete leveling (also known as pumping or jacking) for repair of adjoining blocks which have edges differing vertically, and said blocks pass all other inspection criteria as set forth in this *Ordinance*; ii) construction or replacement, to proper line and grade, as determined by the City Engineer/Public Service Director or designated representative, and such work shall be in accordance with specifications as set forth in this *Ordinance*. Other methods are not acceptable unless otherwise approved in writing, and prior to construction, by the City Engineer/Public Service Director or designated representative.
8. That if the property owner(s) disagrees with the findings by the City Engineer/Public Service Director or designated representative, that property owner may attend the hearing(s) by City Council on the Resolution of Necessity. At such hearing(s), the property owner has the burden to present sufficient evidence to overcome the presumption that said findings are appropriate, in order for City Council to modify the Resolution of Necessity with regards to the property owner(s)' property.

**905.06: CONSTRUCTION BY PROPERTY OWNER (OPT OUT)**

Those property owners who notify the City that they wish to opt out of the City program and accomplish the construction, repairs and replacements themselves shall return to the City, within twenty-one (21) days of the date of the notice sent by the City, a request by the property owner to "opt out" of the City program and return to the City those funds set forth in the notice required for inspection and permit fees and:

- (a) Notify the City Engineer/Public Service Director or designated representative in writing of the identity of the contractor so the City may register the contractor and examine the contractor's licensing.
- (b) Identify the proposed method of construction, repair or replacement so the City Engineer/Public Service Director or designated representative may determine appropriateness. The City-approved methods of sidewalk, integral approach/apron construction, repair or replacement consist of: i) concrete leveling (also known as pumping or jacking) for repair of adjoining blocks which have edges differing vertically, and said blocks pass all other inspection criteria as set forth in this *Ordinance*; ii) construction or replacement, to proper line and grade, as determined by the City Engineer/Public Service Director or designated representative, and such work shall be in accordance with specifications as set forth in this *Ordinance*. Other methods are not acceptable unless otherwise approved in writing, and prior to construction, by the City Engineer/Public Service Director or designated representative.
- (c) Acknowledge on the notice to the City that the improvement will be completed within sixty (60) days (from the date the City receives the opt-out notice from the property owner(s)) in a fashion satisfactory to the City Engineer/Public Service

Director or designated representative or that the property owner will be subject to a fine at the rate of fifty-dollars (\$50.00) per day until such improvements are constructed in a satisfactory manner as determined by such public official, each day being a separate offense, and that the City may, at the City's option, accomplish such construction and place a lien on the landowner's property for the cost of such construction.

The City Engineer/Public Service Director or designated representative may extend, in such public official's sole discretion, the time for performance by the property owner for any reason deemed appropriate by such public official including delays occasioned by natural disaster, weather or other unforeseen circumstances.

#### **905.07: CONSENT**

Every owner of real property in the City of Powell is:

- (a) Deemed to have consented to the entry upon private property as considered appropriate by the City Engineer/Public Service Director or designated representative for any of the purposes set forth in this *Ordinance*.
- (b) Deemed to have consented to the grinding, cutting or removing of roots and trees within the public right-of-way abutting the owner(s)' property or the grinding, cutting or removing of roots in the public right-of-way for trees located on the owner(s)' private property if such grinding, cutting or removing of roots occurs in furtherance of this *Ordinance*.
- (c) Any public official is immune from civil or criminal liability for entry upon real property in furtherance of the purposes set forth in this *Ordinance* and the City and its agents and employees shall have no liability for the damage or destruction to any trees or tree roots for activity conducted in furtherance of the purposes of this *Ordinance*.

#### **905.071: MANDATORY DISCLOSURE**

Any property owner who receives the notice set forth in Section 905.05 or who elects to opt out pursuant to those provisions in Section 905.06 and, who thereafter transfers all or any portion of the title to the property before concluding such repairs and having them accepted by the City is under an affirmative duty to disclose in writing to the transferee of such property of the contents of the notice or the election to opt out. The failure of the property owner to disclose such information to the transferee shall result in the property owner being liable to the transferee for all costs associated with the repair or improvements to such property required to be completed by the transferee including reasonable attorneys fees incurred by the transferee for the purpose of collecting such sums from the transferor (property owner). Nothing contained within this section shall be construed to alter or diminish the City's rights under Section 905.09(b) to collect all amounts due from the transferee or any subsequent transferee.

**905.08: RESOLUTION OF NECESSITY**

The City Engineer/Public Service Director or designated representative shall from time to time prepare a list of all properties in need of construction, repair or replacement of sidewalks, integral approaches/aprons. Such list shall be submitted to Council and at a time it deems appropriate, Council may adopt a Resolution of Necessity reciting the necessity to repair or replace or construct those sidewalks, integral approaches/aprons as indicated by the public official. Upon adoption of such Resolution of Necessity:

- (a) The City Engineer/Public Service Director or designated representative may proceed to prepare solicitations for bids including all costs and administrative costs associated with the completing of the public improvements and/or repairs and,
- (b) Council shall appropriate such funds as are necessary from time to time to accomplish such improvements and defray the costs including administrative costs of such improvements upon such terms as Council deems appropriate and,
- (c) Council may at its discretion borrow such funds as Council deems appropriate for the cost of such construction, repair and replacement and the defraying of all costs associated therewith.

**905.09: ASSESSMENT**

- (a) Upon completion of such construction, repair or replacement, all owners affected thereby shall be notified of a public hearing to determine any mistake of fact regarding allocation of such assessments and:
  - 1. Notice of such public hearing shall be served upon all property owners in accordance by ordinary U.S. Mail, postage prepaid. The City shall also post a list of such information in the manner it uses for posting legislation so that it is accessible to the public. The City may additionally post such information at its website, and,
  - 2. After such public hearing, Council shall determine the unit cost of such construction, repair or replacement including administrative costs associated with the various improvements performed and,
  - 3. Council shall assess the costs, as determined pursuant to item (2) above, of such improvement against each abutting, benefited property based upon the actual unit cost associated with such improvements and,
  - 4. The clerk shall certify the amount of such assessment, its effective date, and its rate of interest to the County Auditor for addition to the tax duplicate of the properties affected by such assessment.

5. Any persons affected by this Section may opt to pay the costs as set out herein within thirty (30) days of the date of said public hearing, instead of having said costs assessed against real property.

(b) The obligations hereunder shall run with the land affected by this Chapter.

#### **905.10: SPECIFICATIONS**

Concrete sidewalk specifications shall be in accordance with the most current edition of the *State of Ohio, Department of Transportation, Construction and Material Specifications (ODTS)*, Items 608.01, 608.02, 608.03, 608.08 and 608.09, except as follows (all item numbers refer to the ODTS):

- (a) An aggregate base of 4 inches (thickness) of compacted No. 57 stones (or equivalent approved by the City Engineer / Public Service Director or designated representative) shall be placed on top of the prepared subgrade prior to placing concrete for the sidewalk. The subgrade shall be shaped and uniformly compacted to meet the requirements of Item 203 or as ordered by the City Engineer / Public Service Director or designated representative;
- (b) The finished surface of the sidewalk shall be float-finished, or broom-finished, perpendicular to the direction of travel path, to obtain a sandy texture -- decorative patterns on the finished surface are prohibited;
- (c) Sidewalks shall consist of 4 inches (thickness) of concrete, except where the sidewalk crosses through driveways, in which case the thickness shall be 6 inches and such thickness must extend one (1) foot wider than the driveway on each side of the driveway;
- (d) Transverse control/contraction joints for sidewalks may be sawcut (approximately 1/8-inch width); however, tooled transverse control/contraction joints shall not exceed 1/2-inch width from outside radius to outside radius of tooled joint;
- (e) The surface of sidewalks shall be divided into blocks by joints (transverse control/contraction or expansion) equally spaced at approximately 5-foot intervals, to form rectangular blocks;
- (f) Expansion joint material 1/2-inch thick shall be installed for transverse expansion joints to the full depth and across the full width of the concrete sidewalk at intervals of thirty (30') feet minimum, as well as when the sidewalk thickness changes such as at driveways (see item (c) above), and between the walk and any fixed structures or objects including existing or proposed concrete sidewalks, driveways or driveway aprons. The top of the expansion joint material shall be flush with the finished surface of the sidewalk and shall not protrude above the finished surface of the sidewalk;
- (g) The transverse slope of the surface of the sidewalk shall be 3/16-inch per foot (i.e., 1.6%) preferred; however, the transverse slope shall not exceed 2.0% (i.e., 1:50). Transverse slopes, in accordance with this specification, shall also apply

to sidewalks that cross through driveways. The low side of the sidewalk shall be the side adjacent to the roadway;

- (h) The longitudinal slope of the surface of the sidewalk shall not exceed 5.0% (i.e., 1:20), exclusive of ramps;
- (i) Sidewalks shall be 5 feet in width in residential sections of the City unless otherwise approved, in writing and prior to construction, by the City Engineer / Public Service Director or designated representative and shall have been previously approved by the City Planning and Zoning Commission. The exception to this specification is for sidewalks located within *Golf Village*, which sidewalk widths shall be 4 feet minimum;
- (j) Appurtenances including, but not necessarily limited to, water and gas valve boxes, manholes, sign posts and utility poles shall be located outside of the sidewalk area unless otherwise approved, in writing and prior to construction, by the City Engineer / Public Service Director or designated representative;
- (k) Roof / sump drains shall be extended beneath the concrete sidewalk through to the curb, at which point they shall be day lighted by coring of an appropriately sized hole through the curb. Drain pipes shall not encroach vertically within the concrete of the sidewalk;
- (l) Fills, if required, shall be of clean earth (free of foreign materials), compacted in 2-inch lifts; or of a suitable aggregate base, as approved by the City Engineer / Public Service Director or designated representative, compacted in lifts not exceeding 4 inches;
- (m) All public sidewalks shall be contained within the public right-of-way, or within a recorded easement, approved in writing and prior to construction by the City Engineer / Public Service Director or designated representative, and such easement shall deed rights to the City for the location of the sidewalk and for the public pedestrian use of the sidewalk;
- (n) As soon as the concrete is firmly set, the forms shall be removed and finished grade shall be made to the level of the concrete sidewalk edges;
- (o) Obstructions, such as valuable trees of long standing, may be avoided by aligning the sidewalk around the tree. In such cases, the alignment of the sidewalk shall be approved, in writing and prior to construction, by the City Engineer / Public Service Director or designated representative. In all cases of injury to persons or property caused from any obstruction, the City shall not be liable for damage in any respect;
- (p) All formwork shall be inspected, and receive written approval by the City Engineer / Public Service Director or designated representative, prior to placing of concrete;
- (q) All materials used, and completed work, shall be to the satisfaction of the City Engineer / Public Service Director or designated representative, and shall be free from defects and deficiencies;

- (r) The Contractor, or other party performing the construction, shall be solely responsible for ensuring the sidewalk is compliant with the requirements of the Americans with Disabilities Act (ADA).

Concrete approach/apron specifications shall be in accordance with the following (all item numbers refer to the ODOTS):

- (a) Concrete shall be Class C, Items 499 and 511;
- (b) Excavation and Forms shall be in accordance with Items 608.03.A and 608.03.B respectively. The subgrade shall be shaped and uniformly compacted to meet the requirements of Item 203 or as ordered by the City Engineer / Public Service Director or designated representative;
- (c) Concrete Placing and Finishing shall be as follows:
  - 1. An aggregate base of 4 inches (thickness) of compacted No. 57 stones (or equivalent approved by the City Engineer / Public Service Director or designated representative) shall be placed on top of the prepared subgrade prior to placing concrete;
  - 2. Deposit concrete in a single layer, strike it off with a template, and finish the surface by float-finishing, or broom-finishing, perpendicular to the direction of travel path, to obtain a sandy texture – decorative patterns on the finished surface are prohibited. Do not plaster the concrete. Use a ¼-inch radius edging tool to edge all outside edges and joints;
  - 3. Concrete shall be 6 inches thick;
  - 4. Control/contraction joints may be tooled or sawcut (if sawcut, approximately 1/8-inch width). Control/contraction joints shall be appropriately located relative to the size (area) of the approach/apron as approved by the City Engineer / Public Service Director or designated representative;
  - 5. Expansion joint material, meeting the specifications of Item 705.03, ½-inch thick shall be installed at expansion joints to the full depth and across the full length of the concrete approach/apron at the back of concrete curb from limit of approach/apron flare to flare and between the sidewalk and approach/apron. The top of the expansion joint material shall be flush with the finished surface and shall not protrude above the finished surface.
- (d) Concrete curing shall be in accordance with Item 608.03.E;
- (e) The minimum width of the approach/apron shall be 10 feet; however, the maximum width of the approach/apron shall not exceed 20 feet. The aforementioned approach/apron width is that width exclusive of the flares. The approach/apron shall be flared on each side at the interface with the curb. The flares shall be 2 feet, typical;

- (f) Appurtenances including, but not necessarily limited to, water and gas valve boxes and manholes shall be located outside of the approach/apron area unless otherwise approved, in writing and prior to construction, by the City Engineer / Public Service Director or designated representative;
- (g) Fills, if required, shall be of clean earth (free of foreign materials), compacted in 2-inch lifts; or of a suitable aggregate base, as approved by the City Engineer / Public Service Director or designated representative, compacted in lifts not exceeding 4 inches;
- (h) As soon as the concrete is firmly set, the forms shall be removed and finished grade shall be made to the level of the concrete edges;
- (i) All formwork shall be inspected, and receive written approval by the City Engineer / Public Service Director or designated representative, prior to placing of concrete;
- (j) All materials used, and completed work, shall be to the satisfaction of the City Engineer / Public Service Director or designated representative, and shall be free from defects and deficiencies.

**905.11: FAILURE TO COMPLETE CONSTRUCTION, REPAIR, OR REPLACEMENT**

Any property owner who opts out of the City program, and who fails to construct, repair, or replace the affected area in accordance with the provisions of this *Ordinance* shall:

- (a) Be sent a written Notice by the City Engineer/Public Service Director or designated representative of the failure to complete construction, repair or replacement.
- (b) Be advised in the Notice by the City that the City shall proceed to accomplish such construction, repair, or replacement on such basis as the City deems appropriate, including proceeding as though the City had received no notice of "opting out".
- (c) Be advised that a fine may be imposed as the rate of Fifty dollars (\$50.00) per day until such improvements are constructed in such a fashion satisfactory to the City, each day of such violation constituting a separate offense, and that the City may place a lien on the property for nonpayment of construction costs and/or fines.
- (d) Be sent the Notice required by this division in accordance with the provisions and in the manner set forth for Service of Summons in civil proceedings as set forth in the *Ohio Rules of Civil Procedure*.
- (e) Be guilty of a misdemeanor for and fined not less than Fifty dollars (\$50.00) and not more than Three Hundred dollars (\$300.00) for constructing, repairing or replacing without a permit.