

ORDINANCE NO. 2024-03

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE CITY OF WINDSOR HEIGHTS, IOWA, BY AMENDING CHAPTER 136, GOVERNING SIDEWALK REGULATIONS

WHEREAS, in June of 2015, the City of Windsor Heights adopted a complete streets policy, in which the City pledged its commitment to designing streets for cyclists, pedestrians and public transit users; and

WHEREAS, in furtherance of this policy, city officials have been developing a plan to promote the safety of pedestrian access, movement, and protection within the community; and

WHEREAS, the City Council of the City of Windsor Heights recognize that sidewalks are a necessary component of public transportation and public infrastructure; and

WHEREAS, the City Council of the City of Windsor Heights do hereby find and declare that the revisions to the Sidewalk Regulations ordinance are necessary and will promote the health, safety and general welfare of the citizens of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WINDSOR HEIGHTS, POLK COUNTY, IOWA:

SECTION 1. Purpose. The purpose of this ordinance is to amend and recreate Chapter 136 of the Windsor Heights Code of Ordinances to promote the health, safety and general welfare of the City of Windsor Heights, and to ensure compliance with the City's policy with regard to complete streets.

SECTION 2. Amended. Chapter 136 of the Windsor Heights Code of Ordinances, Sidewalk Regulations, is amended and replaced with the attached Exhibit A.

SECTION 3. Repealer. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. Severability. If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall be effective after the final passage, approval and publication as provided by law.

Passed and Approved this 20th day of May, 2024.

1st Reading: April 15, 2024

2nd Reading: May 6, 2024

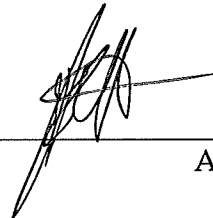
3rd Reading: May 20, 2024

Publish Date: May 24, 2024



ATTEST:


Mike Jones, Mayor


Adam Strait, City Clerk

CHAPTER 136 SIDEWALK REGULATIONS

136.01 PURPOSE

The purpose of this ordinance is to promote the health, safety and general welfare of the City of Windsor Heights, and to ensure compliance with the following goals in accordance with the City of Windsor Heights Complete Street Policy passed on July 6, 2015:

1. Promoting the safety of pedestrian access, movement, and protection for the physically able, physically challenged, children or seniors (or variously-abled) within the community;
2. Ensuring that the ADA guidelines are met for all sidewalk or pathway installations, existing and proposed;
3. Promoting attractive and well-constructed sidewalks or pathways that correspond to the character, aesthetic qualities, natural, environmental, and historical features of developing or existing neighborhoods;
4. Connecting to existing and projected sidewalks or pathways whenever the opportunity arises to insure an interconnected pedestrian system;
5. Ensuring that all development actively implements the building of sidewalks or pathways for new construction, reconstruction, or rehabilitation.

136.02 DEFINITIONS. For use in this chapter the following terms are defined:

1. "Pedestrian Friendly" or "walkability" means the presence of facilities and design features that make an environment safe and attractive to pedestrians. These include: walkable distances between uses, (i.e. under ¼ mile); sidewalks, paths and walkways; continuous visual interest (i.e. uninterrupted line of buildings, attractive barrier in front of parking lots, murals on blank walls, infill development, pocket parks, etc.); consumer uses (i.e. restaurants, shops, cinemas, housing); trees for shade; awnings for shelter; buildings and landscaping elements sited to avoid wind tunnel effect, and to provide sheltered areas; visual texture in the streetscape (i.e. interesting storefronts, public art, plantings, pavement patterns, etc.); people presence (i.e. sidewalk cafes, street vendors, late business hours, residents using front porches and yards); good maintenance and inclusion of site amenities; buffers between cars and pedestrians (i.e. planted medians, on- street parking, grade separation); paths connecting adjacent uses; crosswalks and ramps; traffic calming devices; traffic lights.
2. "Crosswalk" means any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing. If there is no marking, a sidewalk crossing is implied at each leg of every intersection by the extension of the lateral lines of the sidewalk on each side, or where the sidewalk would be if there is none.
3. "Broom finish" means a sidewalk finish that is made by sweeping the sidewalk when it is hardening.
4. "Defective sidewalk" means any public sidewalk exhibiting one or more of the following characteristics:
 - a. Sidewalk faulted at joint or crack with 1 inch or more deflection or gap;
 - b. Sidewalk raised more than 2 inches in 8 feet from normal profile line of sidewalk;
 - c. Sidewalk sunken more than 2 inches in 8 feet from normal profile line of sidewalk;
 - d. Sidewalk cracked into 3 or more pieces per panel, or any single crack with ½ inch or greater openings;
 - e. Sidewalk cross slope is incorrect, greater than .5 inch in 1 foot; within the margin of error and,
 - f. Sidewalk cracked and/or spalled (small crater line holes deeper than 3/8 inch with part of sidewalk missing, forming holes deeper than 3/8 inch;
 - g. Sidewalk missing panels.
5. "Established grade" means that grade established by the City in applicable permits for the particular area in which a sidewalk is to be constructed.
6. "Owner" means the person owning the fee title to property abutting any sidewalk and includes any contract purchaser for purposes of notification required herein. For all other purposes, "owner" includes the lessee, if any.

7. "Portland cement" means any type of cement except bituminous cement.
8. "Sidewalk" means all permanent public walks in business, residential or suburban areas. Sidewalks should be a minimum of 4 feet (5 feet recommended) in residential areas.
9. "Sidewalk improvements" means the construction, reconstruction, repair, replacement, or removal, of a public sidewalk and/or the excavating, filling or depositing of material in the public right-of-way in connection therewith.
10. "Shared-use path" means a paved pathway, typically from eight (8) to twelve (12) feet in width, physically separated from motorized vehicular traffic within the roadway right-of-way or within an easement adjacent to the roadway right of way. Primarily used by pedestrians and bicyclists, shared use paths are also used by joggers, skaters, wheelchair users (both nonmotorized and motorized). A shared use path's primary purpose is to provide pedestrians with connections to trails, other neighborhoods, shopping centers, businesses and other venues of interest. In addition, the shared use path may be used for recreational purposes.
11. "Bicycle/recreational trail" means a PCC (Portland Cement Concrete), blacktop or gravel bicycle/recreational route developed primarily for outdoor recreational purposes. Trails are largely designed for pedestrians and other users to "experience" the outdoors and may be used by a variety of users, but they are not primarily designed for transportation purposes. Bicycle trails within the city of Windsor Heights should be constructed at a minimum of ten (10) feet in width with a preferred width of twelve (12) feet whenever possible.
12. "Mature tree" means any tree with a diameter at breast height of 10 inches or greater.

136.03 REMOVAL OF SNOW, ICE, AND ACCUMULATIONS. The abutting property owner shall remove snow, ice, and accumulations promptly from sidewalks. If a property owner does not remove snow, ice, or accumulations within 48-hours following the conclusion of the weather event, the Public Works Director or their designee will provide a 24-hour notice in the door. Following the 24-hour notice the Public Works Director may have the natural accumulations of snow or ice removed and shall give the Council an itemized and verified statement of the costs and a legal description of the property. The costs shall be assessed against the property as taxes. The abutting property owner may be liable for damages caused by failure to remove snow, ice, and accumulations promptly from the sidewalk. Under extreme weather conditions, the Public Works Director may provide additional time for abutting property owners to remove snow, ice, and accumulations from the sidewalk.

(Code of Iowa, Sec. 364.12[2b & e])

136.04 PROPERTY OWNER'S RESPONSIBILITY FOR MAINTENANCE. The abutting property owner shall repair, replace, or reconstruct, or cause to be repaired, replaced, or reconstructed, all broken or defective sidewalks and maintain in a safe and hazard-free condition any sidewalk outside the lot and property lines and inside the curb lines or, in the absence of a curb, any sidewalk between the property line and that portion of the public street used or improved for vehicular purposes; provided, however, that this section shall not be construed to require a property owner to take any action with respect to a public sidewalk or shared use path when said action is made necessary by the excavation or other activity of the city or a public utility. The abutting property owner may be liable for damages caused by failure to maintain the sidewalk.

136.05 CITY'S ECONOMIC RESPONSIBILITY In situations where ADA ramps are required at intersections, the portion of the cost associated with the ramp is the economic responsibility of the City.

If a property owner replaces a sidewalk panel deemed defective by the Public Works Director due in part to a tree in the Right Of Way, the City of Windsor Heights shall reimburse the property owner a predetermined per panel dollar amount reflecting approximately 50% of a panel replacement cost.

136.06 SIDEWALK INSPECTION. The City will be responsible for inspecting the public sidewalks on a Five (5) year cycle within the city. These inspections shall be made to determine if any of the public sidewalks within a particular zone of the city are defective as defined. The City will be divided into five zones by the Public Works Director. When a sidewalk defect is found to exist outside of the annual inspection zone, the City will initiate appropriate action as directed by this policy to have the sidewalk reconstructed.

The annual inspections will occur on the following general timeline:

- a) February— designated zone sidewalk inspections completed.
- b) March- Notifications of defective sidewalk mailed to property owners and initiation of 75 day timeframe to complete repairs.
- c) July – deadline for property owners to complete sidewalk repair. Thereafter, the City shall coordinate and schedule uncompleted repairs and assess the property owner the cost of the repair in the manner outlined in Section 136.07

(Code of Iowa, Sec. 364.12[2c])

If, through complaint and voluntary inspection or otherwise, it comes to the attention of a city inspector that an owner of property abutting a sidewalk is not complying with the maintenance requirements imposed above, then the city Public Works Director or their designee may cause to be served upon the property owner, by certified mail at the property owner's last known address as shown by the records of the county auditor, notice of the sidewalk defect and of the requirement to cure said defect and/or reconstruct the defective sidewalk or a portion thereof within 75 days from the date of said notice.

136.07 CITY SHALL ORDER REPAIRS. If the abutting property owner does not maintain sidewalks as required, the Public Works Director or their designee shall serve notice on such owner, by certified mail, requiring the owner to repair, replace or reconstruct sidewalks within seventy-five (75) days from the date the notice is mailed. If, upon expiration of the 75 days as provided in said notice, the required work has not been done or is not in the process of completion, the Public Works Director shall require the work to be done and assess the costs against the abutting property for collection in the same manner as a property tax. No such assessment shall be made for the repair, reconstruction or replacement of a public sidewalk unless the city has served upon the person shown by the records of the Polk County recorder to be the owner of the abutting property, by certified mail, a notice requiring said person to repair, reconstruct or replace the public sidewalk within seventy five (75) days from the date said notice is mailed. All sidewalk improvements shall be performed under the supervision and inspection of a designated city employee.

If work has not commenced following the 75 day notice, the sidewalk will be placed on a list for repair and the City's contractor notified to proceed with the repairs. Upon completion of the repair the property owner will be sent by regular mail an invoice of the actual cost of the repair with no administration fee. The property owner will have 30 days to pay the invoice. If the invoice is not paid within 30 days, the amount will be certified to the County Auditor to be added to the owner's property taxes.

Any unpaid costs for said repairs over \$500 will be assessed and collected in the same manner as property taxes. There shall be returned to the City Council an itemized assessment schedule, verifying expenditures used in doing such work, and the legal description of the lots, or tract of ground abutting the sidewalk on which such work has been performed. Assessments may be spread over a ten-year period at an interest rate of 2% over current bank rates. Any costs less than \$500 will be assessed in one installment. There will also be a \$100 administrative fee if costs are assessed against the property.

The Public Works Director does not have the authority to assess property owners in cases where there is not an existing sidewalk. New sidewalk installation is the sole discretion of the Council.

(Code of Iowa, Sec. 364.12[2d & e])

136.08 NOTICE OF INABILITY TO REPAIR OR BARRICADE. It is the duty of the owner of the property abutting the sidewalk (or of the contractor or agent of the owner) to notify the City immediately in the event the owner is unable to make necessary sidewalk improvements or to install or erect warnings and barricades as required by this chapter.

136.09 SIDEWALK GRANT PROGRAM. The City Council may annually fund a sidewalk repair grant program to financially assist residents with the repair of their sidewalk. The grant program may also provide financial assistance to residents whose sidewalk has become out of compliance due to a tree planted on City property in compliance with Code Section 151.13. Information on the Sidewalk Grant Program, if available, shall be provided to any resident with sidewalk deemed defective through regular mail and the City's website.

136.10 SIDEWALK CONSTRUCTION ORDERED. Based on Iowa Law, the Council may order the construction of permanent sidewalks upon any street or court in the City and may specially assess the cost of such improvement to abutting property owners

in accordance with the provisions of Chapter 384 of the Code of Iowa.

(Code of Iowa, Sec. 384.38)

136.110 STANDARD SIDEWALK SPECIFICATIONS. The City Engineer shall prepare complete plans and specifications for the construction, reconstruction, and repair of sidewalks and driveway crossings in sidewalks, which, upon approval of the Council, shall be kept on file in the office of the Clerk. The specifications shall include descriptions and location of barricades and warning lights. All sidewalk improvements on public property, whether performed by the owner of the abutting property or by the City, shall be performed under the supervision of and subject to inspection by the Public Works Director, and in accordance with the plans and specifications adopted in accordance with this chapter.

136.12 PERMITS FOR CONSTRUCTION OR REPAIR. No person shall make any sidewalk improvements unless such person shall obtain a permit from the City. The permit shall state that the person will comply with the ordinances of the City and with the specification for sidewalks adopted by the City. The permit also shall state that the work will be done under the direction and approval of the Public Works Director or their designee. All such permits shall be issued upon payment of sidewalk construction or repair fee. A copy of such permit shall be filed and preserved at City Hall. All permits for sidewalk improvements not ordered by resolution of the City Council shall be issued in compliance with this chapter. The Public Works Director may withhold the issuance of any permit for any sidewalk improvements for a sufficient period to determine the necessity for the proposed improvements or when weather conditions will adversely affect the sidewalk improvements. The person who makes a sidewalk construction or repair permit application shall pay a permit fee to the Clerk to cover the cost of issuing the permit and supervising, regulating, and inspecting the work. All permit fees under this chapter shall be fixed and determined by the Council, adopted by resolution, and uniformly enforced. Such permit fees may, from time to time, be amended by the Council by resolution. A copy of the resolution setting forth the currently effective permit fees shall be kept on file in the office of the City Administrator, and be open to inspection during regular business hours.

136.13 FAILURE TO OBTAIN PERMIT; REMEDIES. Whenever any sidewalk improvements are made that do not conform to the provisions of this chapter and with the specifications, or when any sidewalk improvements are made without a permit, the Public Works Director shall serve notice to obtain a permit upon the property owner and upon the contractor doing the work. The notice shall order the work to stop until a permit is obtained and the work is corrected to comply with the specifications. If the sidewalk work has been completed, the owner shall obtain a permit immediately and perform any needed corrections within five days from receipt of the permit. If the owner fails to comply with this notice, the Public Works Director shall have the work completed and the costs assessed to the property owner.

136.14 INSPECTION AND APPROVAL. Upon final completion, the Public Works Director or their designee shall inspect the work. The Public Works Director or their designee may order corrections if the work does not meet specifications. When the work does meet all requirements of this chapter, the specifications, and the permit, the Public Works Director shall indicate this on both copies of the permit.

136.15 BARRICADES AND WARNING LIGHTS. Whenever any material of any kind is deposited on any street, avenue, highway, passageway or alley when sidewalk improvements are being made or when any sidewalk is in a dangerous condition, it shall be the duty of all persons having an interest therein, either as the contractor or the owner, agent, or lessee of the property in front of or along which such material may be deposited, or such dangerous condition exists, to put in conspicuous places at each end of such sidewalk and at each end of any pile of material deposited in the street, a sufficient number of approved warning lights or flares, and to keep them lighted during the entire night and to erect sufficient barricades both at night and in the daytime to secure the same. The party or parties using the street for any of the purposes specified in this chapter shall be liable for all injuries or damage to persons or property arising from any wrongful act or negligence of the party or parties, or their agents or employees or for any misuse of the privileges conferred by this chapter or of any failure to comply with provisions hereof.

136.16 INTERFERENCE WITH SIDEWALK IMPROVEMENTS. No person shall knowingly or willfully drive any vehicle upon any portion of any sidewalk or approach thereto while in the process of being improved or upon any portion of any completed sidewalk or approach thereto, or shall remove or destroy any part or all of any sidewalk or approach thereto, or shall remove,

destroy, mar or deface any sidewalk at any time or destroy, mar, remove or deface any notice provided by this chapter.

136.17 DETERMINING LOCATION OF NEW SIDEWALKS. The decision as to where to place new sidewalks, including the side of the street and placement in relation to the curb, should be made at the recommendation of the city engineer and should be based on a number of factors including environmental constraints and costs considerations. The design of sidewalks, necessary retaining walls, and materials will be subject to discussion at a public meeting prior to council providing final approval.

When constructing new sidewalks every effort should be made to limit the number of mature trees removed during the construction process. If a property owner wishes to save a mature tree that otherwise would need to be removed to allow for the sidewalk, that property owner may choose to have the tree saved by providing an easement for the sidewalk to go around the tree. This easement would be provided at no cost to the city. The city is not responsible for replacing or compensating property owners for any landscaping located within the public right-of-way that is removed to allow for the installation of sidewalks.

136.18 ENCROACHING STEPS. It is unlawful for a person to erect or maintain any stairs or steps to any building upon any part of any sidewalk without permission by resolution of the Council.

136.19 OPENINGS AND ENCLOSURES. It is unlawful for a person to:

1. Stairs and Railings. Construct or build a stairway or passageway to any cellar or basement by occupying any part of the sidewalk, or to enclose any portion of a sidewalk with a railing without permission by resolution of the Council.
2. Openings. Keep open any cellar door, grating, or cover to any vault on any sidewalk except while in actual use with adequate guards to protect the public.
3. Protect Openings. Neglect to properly protect or barricade all openings on or within six (6) feet of any sidewalk.

136.20 FIRES OR FUEL ON SIDEWALKS. It is unlawful for a person to make a fire of any kind on any sidewalk or to place or allow any fuel to remain upon any sidewalk.

136.21 DEFACING. It is unlawful for a person to scatter or place any paste, paint, or writing on any sidewalk.

(Code of Iowa, Sec. 716.1)

136.22 DEBRIS ON SIDEWALKS. It is unlawful for a person to throw or deposit on any sidewalk any glass, nails, glass bottle, tacks, wire, cans, trash, garbage, rubbish, litter, offal, or any other debris, or any substance likely to injure any person, animal, or vehicle.

(Code of Iowa, Sec. 364.12[2])

136.23 VEGETATION OVERGROWTH ON SIDEWALK. It is the responsibility of the abutting property owner to make sure that there is no vegetative overgrowth encroaching on the sidewalk. This includes grass encroaching onto the sidewalk thereby reducing the walkway width as well as keeping bushes and shrubs trimmed so that no part of the plant is encroaching on the sidewalk space. Tree branches should be a minimum of eight (8) feet above the level of the sidewalk.

136.24 MERCHANDISE DISPLAY. It is unlawful for a person to place upon or above any sidewalk, any goods or merchandise for sale or for display in such a manner as to interfere with the free and uninterrupted passage of pedestrians on the sidewalk; in no case shall more than three (3) feet of the sidewalk next to the building be occupied for such purposes.

136.25 SALES STANDS. It is unlawful for a person to erect or keep any vending machine or stand for the sale of fruit, vegetables or other substances or commodities on any sidewalk without first obtaining a written permit from the Council.