

ORDINANCE NO. 3985-2-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING SECTION 13-3 OF THE CODE TO PROVIDE FOR SIDEWALK MAINTENANCE RESPONSIBILITY AND LIABILITY IN THE CITY; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen has received from city staff recommendations regarding the revision of the City's Code of Ordinances to address required maintenance of and associated liability regarding sidewalks in the City, including recommended policies, procedures, and forms to be used in association therewith.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City Code of Ordinances is hereby amended by amending Sections 13-3 to read as follows:

“Sec. 13-3. Sidewalk Maintenance Responsibility and Liability.

- (a) Owner(s) of property which is situated within a zoning district of the City other than single-family residential, and which is adjacent to and abutting sidewalks that are in need of repair, maintenance, replacement, and reconstruction are responsible for the needed repair, maintenance, replacement, and/or reconstruction and all of the costs associated therewith and are hereby required to make said needed repairs, maintenance, replacement, and reconstruction. The responsibility to repair, maintain, replace, and reconstruct exists whether or not the City has indicated to the property owner that repair, maintenance, replacement, or reconstruction is required. The abutting property owner is solely liable for the injuries occasioned because of the defective condition of the sidewalks for which they are responsible.
- (b) With regard to sidewalks adjacent to and abutting single-family residential property situated within a single-family residential zoning district of the City, if a formal development plan, maintenance agreement, or platted document assigns maintenance responsibility to a Homeowner's Association (HOA), the HOA is solely responsible for the repair, maintenance, replacement, and reconstruction of such sidewalks and all costs associated therewith. HOAs are also responsible for sidewalk repair, maintenance, replacement, and reconstruction for sidewalks located along common areas and streets where single-family residential properties do not abut the Right of Way. The HOA is hereby required to make said repair, maintenance, replacement, and/or reconstruction. The responsibility to repair, maintain, replace, and reconstruct exists whether or not the City has indicated to the HOA or any property owner that repair, maintenance, replacement, or reconstruction is required. HOA is solely liable for the injuries occasioned because of the defective condition of the sidewalks for which it is responsible.
- (c) With regard to sidewalks adjacent to and abutting single-family residential property situated within a single-family residential zoning district of the City for which no formal development plan, maintenance agreement, or platted document assigns maintenance responsibility to a Homeowner's Association, the property owner is solely responsible for the repair, maintenance, replacement, and reconstruction of such sidewalk and is hereby required to perform the same, subject to the following:

- a. For owner-occupied, single-family residences located in such zoning district, upon proper request and approval by City, the City shall be responsible for payment of fifty percent (50%) of the total repair, maintenance, replacement, and reconstruction costs, including costs of labor, material, equipment, engineering, and inspection services.
 - b. For owner-occupied, single-family residences located in such zoning district, residents that qualify based upon a needs-based assessment using the annual U.S Department of Housing and Urban Development (HUD) Income Guidelines for the Dallas, Texas HUD Metropolitan Fair Market Rental Area by being below the 80 Percent Income Limit by request and approval by City, the City shall be responsible for payment of seventy-five percent (75%) of the total repair, maintenance, replacement, and reconstruction costs, including costs of labor, material, equipment, engineering, and inspection services.
 - c. For owner-occupied, single-family residences located in such zoning districts and also located in a City-designated low-income area, without further qualification by needs-based assessment, the City shall be responsible for payment of seventy-five percent (75%) of the total repair, maintenance, replacement, and reconstruction costs, including costs of labor, material, equipment, engineering, and inspection services. The updated list of these subdivisions that are designated by the Community Enhancement Department is available on the City website (www.cityofallen.org) on the Community Enhancement Department's home page.
 - d. To be eligible for cost participation by the City, the property owner must submit to the City an Owner's Sidewalk Maintenance Request /Agreement, in the form attached hereto as Exhibit "A," must follow the procedures set forth in that Exhibit "A," which is hereby incorporated herein by this reference, and the request must be approved by City staff. The responsibility to repair, maintain, replace, and reconstruct exists whether or not the City has indicated to the property owner that repair, maintenance, replacement or reconstruction is required. Regardless of city participation, the property owner is and remains solely liable for injuries occasioned because of the defective condition of said sidewalks.
- (d) In the event any HOA or property owner in any zoning district in the City fails to repair, maintain, replace, or reconstruct a sidewalk for which that HOA or property owner bears such responsibility and the City Code Compliance Division determines such sidewalk to be a nuisance detrimental to public safety or welfare, the City Staff is authorized, in addition to any other available remedies, to commence involuntary abatement proceedings to affect the necessary repair, maintenance, replacement and reconstruction of such sidewalk in accordance and may, in accordance with the provisions regarding general nuisances, assess the associated expenses to the HOA or property owner and assess a lien against the property until paid.
- (e) Any HOA or property owner that violates any provision of this Section 13-3 shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum not to exceed \$2,000.00 and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. Enforcement shall be the responsibility of the City Code Compliance Division.

SECTION 2. All provisions of the ordinances of the City of Allen, Texas in conflict with the provisions of this Ordinance be, and the same are hereby, repealed, and all other provisions not in conflict with the provisions of this Ordinance shall remain in full force and effect.

SECTION 3. Should any word, sentence, paragraph, subdivision, clause, phrase, or section of this Ordinance, or the ordinances, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said Ordinance or the ordinances of the City, as amended hereby, which shall remain in full force and effect.

SECTION 4. Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Allen, as heretofore amended, and upon conviction shall be punished by a fine not to exceed the sum of two thousand dollars (\$2,000.00) for each offense.

SECTION 5. This Ordinance shall take effect immediately upon its passage and approval by the City, as the law and charter in such cases provide, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS 28TH DAY OF FEBRUARY 2023.

APPROVED:

Kenneth M. Fulk, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY
(VT:2-16-23:TM 133661)

Shelley B. George, TRMC, CITY SECRETARY



**RESIDENT
ADDRESS
ALLEN, TEXAS**

**EXHIBIT "A"
CITY OF ALLEN
OWNER'S SIDEWALK MAINTENANCE REQUEST/AGREEMENT**

We, the undersigned, by our signature(s) set forth below, hereby certify that (1) we are all of the owner(s) of the real property identified below, (2) we occupy this residence as our home, and it is not used as rental/lease property, and (3) said real property is located within a single-family property district and adjacent to sidewalk(s) in need of repair, maintenance, reconstruction, or replacement of said, sidewalk(s). We respectfully request that the City of Allen authorize and conduct repairs/replacement of the sidewalk(s) identified below, and that the City approve fifty percent (50%) City participation in the total cost of such repair.

TO BE COMPLETED BY THE CITY:

Owner(s) Name(s): _____

Property Address: _____

Cost:

- Linear feet of 4-foot-wide residential sidewalk X current cost per linear foot of 4-foot-wide sidewalk = \$ total cost
- _____ feet X _____ cost = total cost \$_____
- The owner's 50% portion is \$_____
- The cost per liner foot of sidewalk will be adjusted should the residential sidewalk being replaced be greater than 4 feet in width.

The City will not participate in cost-sharing of concrete replacement past the point where the sidewalk meets the home's lead walk and/or driveway and/or driveway approach. The city does not cost share the replacement of lead walks, driveways, and/or driveway approaches under this program.

____ (City will check if appropriate) - City evaluation of the sidewalk indicates that there will be a step-up or a step-down where the repaired or replaced sidewalk meets the home's lead walk and/or driveway or driveway approach. The step-up or step-down may be an estimated ____ inches. By signing below, you acknowledge that you have been advised of this anticipated step-up or step-down and that you consent thereto. You further agree that any repair or reconstruction to alleviate such step-up or step-down will be your sole responsibility and at your sole expense. You also acknowledge and agree that you are solely responsible for any damages or injuries resulting from said step-up or step-down.

Information About the Cost-Shared Sidewalk Program:

1. Evaluation criteria for sidewalk replacement/repair will be as follows:
 - a. The residence is an owner-occupied Single-Family residence, and the location meets the other criteria listed above;
 - b. The sidewalk is located within the City of Allen street right-of-way;
 - c. The sidewalk is aligned parallel to the street;
 - d. Sidewalk sections to be replaced shall total to at least eight (8) linear feet in length;
 - e. Sidewalk has surface spalling with a depth of one quarter (1/4) inch or greater, and covers 50% or more of the sidewalk section being evaluated;
 - f. Sidewalk sections are upheaved or depressed, causing an abrupt change in grade of two (2) inches or more vertically; or creates an unsafe condition as determined by the City of Allen;
 - g. Sidewalk sections are broken with pieces missing and/or rebar exposed; either issue creates an unsafe condition as determined by the City of Allen.
2. After receiving a communication expressing citizen interest in the residential cost-shared sidewalk program, the City shall establish a work order for the Streets and Drainage Division to evaluate the sidewalk using the criteria provided in Paragraph 1. After inspection, non-qualifying locations will be notified by the Streets and Drainage Division concerning the reason their situation does not qualify, and the work order will be closed out.
3. For qualifying locations, this Request/Agreement shall be completed by the City and mailed to the residential property owner(s) by the City. Those who wish to proceed with the program should return the signed agreement to the Community Services Department accompanied with cost-share payment of check or money order. The agreement and payment must be received before scheduling of repair, maintenance, reconstruction, or replacement of the sidewalk. Work is scheduled on a first-come, first-serve basis. The 50% cost-share includes the cost of labor, material, equipment, engineering, restoration, and inspection service. The 50% cost-share is based on the actual contract cost with no markup when the City Agreement is prepared.
4. The Request/Agreement remains effective for a period of ninety (90) days. At ninety (90) days, the work order will be cancelled. If, after the ninety (90) days, the resident wishes to pursue replacement, the area must be re-inspected for qualification. The then determined qualifying area and the charge will be at the then-prevailing replacement cost.

5. Work will be scheduled and performed as expeditiously as possible after payment is received by the City. Depending on the volume of requests, it may take one (1) to three (3) months or more for work to be scheduled.
6. If the problem with the sidewalk is being caused by tree roots, and it will be necessary to remove the tree roots to repair/replace the sidewalk, the property owner(s), by signature on this request, agree not to hold the City responsible for damage to or replacement of the tree if the tree is damaged or dies after sidewalk is repaired/replaced.
7. A sidewalk that is repaired, maintained, reconstructed, or replaced shall be placed on proper grade and/or match the elevation, as close as possible, of the adjacent sidewalks. This is because the sidewalk must support lot-to-lot drainage.
8. Matching the grade between lots and promoting drainage without water puddling may result in a grade differential between the sidewalk and the home's "lead walk" that runs from the sidewalk up to the home's front door.
9. The property owner shall be solely responsible for the repair, maintenance, reconstruction and/or replacement of any of the sidewalk and entry to the house, which does not match the grade of new sidewalk.
10. Residents who qualify for a sidewalk repair may call either 972-984-8784 or 214-509-3131 to request an estimate of when their repair or replacement will be completed.
11. Citizens contracting with the City for sidewalk repair under this Agreement may have either a city crew or private concrete crew (contractor working for the City) perform the tear out and replacement of the sidewalk. As landscape irrigation systems are typically located close to sidewalks, sometimes, during the course of this work, landscape irrigation lines, sprinkler heads and even irrigation controllers can be damaged. If the resident finds after construction is completed that there is damage to the irrigation system that may be associated with the sidewalk replacement/repair, they must contact the City at 214-509-4500 to immediately report the issue. Either the City or the sidewalk contractor will make the required repairs. The City will not reimburse the property owner for having a private irrigation contractor make the repairs on the resident's behalf. **The resident will have thirty (30) days following the sidewalk completion date to report any subsequent issues pertaining to the repair.**
12. Shortly after the sidewalk repair, maintenance, reconstruction and/or replacement, as necessary, new sod will be placed in the affected areas (this may occur a few weeks following the sidewalk repair). It is the homeowner's responsibility to irrigate the new sod to ensure the sod's viability.
13. The area repaired and specified on this Owner's Sidewalk Maintenance Agreement will be covered under a one (1) year warranty from installation date on all repairs.

All residents who meet the qualifications above will be approved for a cost share that is 50% city cost and 50% owner-occupied resident cost (50% / 50%). For residents who meet the qualifications above, the City

will also consider a 75% city cost share and a 25% owner-occupied resident cost (75% / 25%) for qualified applicants. There are two ways to qualify for this 75% / 25% program.

1. The first basis of qualification is based on evidence of family earnings that are less than eighty percent (80%) of the Median Family Income as designated by U. S. Department of Housing and Urban Development (HUD) Income Guidelines for the Dallas, Texas, HUD Metropolitan Fair Market Rental (FMR) Program. The HUD Table attached to this letter is the HUD guidelines used by the City at the current time. It provides for an income adjustment based on family size. If you believe that your family income is less than the dollar figure on the 80% limits line, you may request consideration for approval of the 75% / 25% program.
2. The second basis of qualification is based upon evidence that the applicant resides in an owner-occupied residence in one of the City-designated low-moderate income neighborhoods. The neighborhoods currently included in this program are [list of subdivisions will be annotated here] If you live in one of these neighborhoods, you may request consideration for approval of the 75% / 25% program without needing to qualify under the HUD Income Guidelines.

If you desire to be considered for the 75% / 25% cost share program, please contact the Community Services Department at 214-509-4510 (aschneck@cityofallen.org). Community Services will provide the Community Enhancement Department a copy of this contract. Community Enhancement will contact you about qualifying for the 75% / 25% cost share program. Should you wish to contact the Community Enhancement Department, you may call 214-509-4180. They will review and qualify applicants for the 75% / 25% cost shared program. Applicants must provide documentation and certifications as required to process their requests. Community Enhancement will contact both you and the Community Services Department after they decide on your qualification.

If you qualify for 75% / 25%, Community Services (214-509-4510) will contact you with your new cost-shared payment amount. This contract and the 25% payment must both be returned to the City in accordance with information below to get your repairs scheduled.

If you do not qualify to 75% / 25%, you may still process your sidewalk request under the 50% / 50% cost shared program. Your 50% / 50% cost is the amount shown on the first page of this letter. This contract and the 50% payment must be returned to the City in accordance with information below to get your repairs scheduled.

By the signature(s) on this application, the property owner(s):

1. **Shall accept full and sole responsibility and liability for failure to take corrective action to eliminate trip hazards between the new sidewalk and the lead sidewalk and shall indemnify and hold the City harmless from any claim for injury or damage that may result from such failure.**
2. **Understand that if this cost-shared sidewalk work is not completed because the resident property owner(s) decide to either not sign the agreement and/or make cost-shared payment for the repairs, the resident remains expressly liable for injuries occasioned because of the defective conditions of the sidewalks for which they are responsible.**

- 3. Understand that by City Ordinance, residential property owners are solely liable for injuries occasioned because of the defective condition of the sidewalks for which they are responsible and that any agreement by City to participate in sharing the cost of repair, reconstruction, or maintenance of such sidewalk(s) does not alter that sole liability of the property owners.

(Estimate is only good for 90 days.)

Date: [Click here to enter text.](#)

Please mail completed form and enclosed **check/money order payment to:**

**City of Allen
Attn: Community Services
305 Century Pkwy
Allen, TX 75013-8042
Office: 214.509.3100**

***If you need to pay with a credit card, please visit Utility Billing at City Hall and provide this agreement.**

Property Owner(s) ' Name (Print)

Property Owner(s) ' Signature

Mailing Address

Home / Work Telephone Number

«Name»
«Address»
Allen, TX «ZIP»