

MEMO

RE: Final recommended amendments to Denver Sidewalk Ordinance 307

TO: Denver City Council

ATTN: Council President Jamie Torres, and Land Use, Transportation & Infrastructure Committee Chair Amanda Sandoval

FROM: Denver Sidewalk Ordinance 307 Stakeholder Committee

DATE: May 22, 2024

CC: Mayor Mike Johnston, Chief Operating Officer Janel Forde, Chief Financial Officer Nicole Doheny, Department of Transportation and Infrastructure Executive Director Amy Ford

Denver Sidewalk Ordinance 307 Stakeholder Committee Members

Jill Locantore (Chair)	Pam Jiner
Mayra Gonzales (Vice Chair)	Gary Johnson
James Warren (Secretary)	Tyler Johnson
Charles Allison-Godfrey	Jaime Lewis
Bruce Baskette	Alex Lyons
Luchia Brown	Rochelle Mitchell-Miller
Jake Cohen	Joel Noble
Allen Cowgill	Wendy Rouder
Tom Dec	Catherine Tsai
Doris Dempsey	Alma Urbano
Susan Fry	Dominic Viana
Steve Holt	Councilmember Paul Kashmann
Mark Holwick	Councilmember Kevin Flynn

Committee Purpose

The Denver Department of Transportation and Infrastructure (DOTI) established the Denver Sidewalk Ordinance 307 Stakeholder Committee composed of representatives from each of the City Council Districts, solicited through an open application process, as well as representatives from the DOTI Advisory Board and proponents of the citizen initiated ordinance. The Committee has been meeting approximately twice a month since August of 2023, with the agreed-upon purpose to make recommendations on refinements to the sidewalk ordinance and details of implementation that honor the will of the voters and are in keeping with the following key pillars of the ordinance as written:

- Funding sidewalks via a property fee
- Minimizing the burden on lower-income households through discounts on the fee and a deferral option
- Ensuring the buildout of a complete sidewalk network in a timely manner
- Ensuring the ongoing maintenance of sidewalks in good condition in perpetuity

On February 29, 2022, the Committee delivered a memo to City Council with initial draft recommendations regarding amendments to the ordinance, as well as community feedback on the draft recommendations (see this previous memo attached below, for reference). One of the primary recommendations included in this previous memo was to establish a flat fee structure for residential properties, while retaining the fee per linear foot of property frontage from the original ordinance for non-residential properties. After further consultation with the City Attorney's Office and Department of Finance, the Committee determined that in order to ensure TABOR compliance, it would be better to apply the same fee structure to both residential and nonresidential properties. The Committee's final recommended amendments to the ordinance, outlined below, incorporate this change.

In addition to ensuring the fee structure complies with TABOR and can be defended if challenged, the Committee's final recommendations reflect careful consideration of both community and agency input, as summarized in the following guiding principles:

- Limit unusually high fees on residential properties (e.g., corner lots)
- Make meaningful low-income rebates easily accessible
- Retain some relationship between characteristics of the property and the fee to reflect both 1) larger lots have more square feet of sidewalk adjacent to them (currently or to be built), and 2) higher density development is more efficient and requires fewer square feet of sidewalk per household
- Ask everyone (e.g., each property) to contribute meaningfully to the fee, because everyone benefits from sidewalks
- Avoid situations where very similar properties pay very different fees for arbitrary reasons
- Make the fee structure as simple and easy for the average person to understand as possible
- Ensure the fee structure and fee collection process is compliant with enterprise fund rules (including the ability to bond against)
- Ensure the data used for billing is available and reliable, so that property owners have a consistent billing experience

Recommended Changes to the Overall Fee Structure

The Committee recommends replacing the annual sidewalk fee per linear foot of property frontage outlined in Section 49-148(a) of the ordinance with **a flat fee of \$150 per account** (defined as a parcel or group of parcels that are considered a single entity for billing purposes), plus an impact fee on accounts with greater than 230 feet of linear property frontage, assessed at \$3.50 per linear foot above the 230-foot threshold.

With this recommended change, 95.7% of accounts will pay just the flat fee and no impact fee. Only 1% of all accounts, those with linear frontage greater than 486 feet, will pay the flat fee **plus** an impact fee that amounts to more than the fee would have been under the original ordinance. For accounts associated specifically with single-family homes, approximately 99% will pay just the flat fee, and less than .05% will pay the flat fee plus an impact fee that amounts to more than the fee would have been under the original ordinance.

Rationale

Under the original ordinance, fees charged to residential properties varied widely from \$0 (for properties that do not have any frontage on the public right-of-way) to more than \$500, raising concerns about fairness and the burden to property owners at the higher end of this range. The recommended change eliminates this variability by charging a flat fee that is roughly equivalent to the **average** fee that would have been charged based on the linear foot of property frontage under the original ordinance. The basic rationale for a flat fee is that every property in Denver benefits from having access to a complete, well-maintained sidewalk network, regardless of how many linear feet of sidewalk are directly adjacent to the property, and therefore every property should contribute to the cost of building and maintaining this network.

The impact fee recognizes that significantly more linear feet of sidewalk must be built and maintained adjacent to particularly large properties. At \$3.50 per linear foot, the impact fee is equivalent to the mid-range of fees per linear foot specified in the original ordinance, which varied by street type (because preferred sidewalk width varies by street type). The recommended combination of a flat fee plus an impact fee is similar to the Statewide Bridge and Tunnel Enterprise established in 2009, funded by a vehicle registration fee. A flat fee is assessed to vehicles below a threshold weight, with higher fees assessed to heavier vehicles that create more wear and tear on transportation infrastructure.

Charging the flat fee by account, rather than parcel, helps ensure that properties with similar physical characteristics are charged similar fees. For example, a 10-unit apartment building located on a single parcel with less than 230 feet of linear frontage and 10-unit condo building divided into multiple parcels that collectively have less than 230 feet of linear frontage would both pay the \$150 flat fee. In both of these cases, the effective fee per housing unit is \$15, reflecting the cost efficiencies associated with higher density development, compared to lower density development where the cost per housing unit is higher.

The recommended change is also revenue neutral, helping to ensure that the fees generate sufficient revenues to build out the sidewalk network in a reasonable timeframe, and to maintain that network in good condition.

Recommended Changes to Fee Discounts *(No change from recommendations in the February 29 memo)*

The Committee recommends replacing the 20% discount on the fee for properties located in neighborhoods identified through the city’s Neighborhood Equity & Stabilization (NEST) program outlined in Section 49-148(b) of the ordinance, with the following:

- A 20% instant rebate on the fee for properties with income-restricted housing, where at least 25% of the residential units are available only to households meeting certain low income criteria; and
- An instant rebate program for income-qualified property owners that is aligned with [Denver’s Solid Waste Service Rebate program](#). Currently under this program, property owners that receive trash and recycling collection services from Denver’s Solid Waste division (a single family home, townhome, duplex or apartment in a complex with 7 or fewer units), are eligible to apply for the following-income based rebates:

Income	Instant rebate
<60% of the Area Median Income (AMI)	50%
<50% of the AMI	75%
<30% of the AMI	100%

Rationale

While the automatic 20% discount on the fee for properties located in NEST neighborhoods was intended to reduce the fee burden on low-income households with minimal administrative burden for both the City and property owners, community members raised two primary concerns regarding this approach: 1) the discount is too indiscriminate, because it applies to all properties within NEST neighborhoods, regardless of the income level of the property owner, and 2) the discount is too limited, because it is not available to low-income households residing in non-NEST neighborhoods. The recommended change addresses these concerns by targeting an instant rebate more narrowly to properties with income-restricted units, and by making an instant rebate available to income-qualified property owners throughout the city.

Recommended Changes to the Timeline for Implementation

(No change from recommendations in the February 29 memo)

The Committee recommends revising the timeline for implementation of an initial capital investment plan, as outlined in Sec. 49-146(b) of the ordinance, from “within nine years of the effective date of this section,” to “within nine years of the effective date of this section, *or as soon thereafter as determined feasible by the manager of transportation and infrastructure.*” The Committee further recommends revising this section of the ordinance to state that the initial capital investment plan should “*prioritize the repair or reconstruction of all existing sidewalks that are in severe disrepair, that represent a safety hazard, or which do not minimally comply with legally mandated accessibility standards.*”

Rationale

The amount of time required to build out a complete sidewalk network with the revenues that will be generated by the sidewalk fee directly relates to how much it will cost to construct, reconstruct, and repair sidewalks, as well as the costs to administer the sidewalk program. The Department of Transportation and Infrastructure is currently conducting a study to understand in greater detail what the high and low end of what these costs might be. Where the costs actually fall within this range depend on a number of factors including how the program is financed and delivered, and trade-offs that may be considered to reduce costs by deviating from the City's current design guidelines in certain circumstances (for example, by allowing for attached sidewalks in some circumstances where the design guidelines call for detached sidewalks).

The recommended changes allows the City more flexibility to establish a reasonable timeline for implementation that reflects the findings of the cost study; incorporates community input on potential cost-saving trade-offs; avoids placing the City in jeopardy of violating TABOR requirements by ensuring the City is not forced to incur costs greater than can be covered by the revenues that are generated by the fee (including through financing mechanisms such as bonding); directs the City to prioritize sidewalk repairs and reconstruction in a way that minimizes other liability concerns; and honors the intention of the original ordinance approved by voters to complete the buildout of the sidewalk network in as timely a manner as possible.

Additional Recommended Minor Changes to Address Operational Issues

The Committee recommends modifying the ordinance to clarify that walks within Parks may qualify for the sidewalk enterprise fund if they are built within 75 feet of the curb or as close to the curb as allowed by tree protection and planting areas, are connected to the city's sidewalk system including street crossings and RTD stops, and run mostly parallel to the curb. While the paths can weave to preserve trees and improve the walking experience, they must not substantially disrupt pedestrian traffic. Construction should meet or exceed DOTI sidewalk standards, and while new sidewalk setbacks from the curb can exceed the right-of-way for environmental and experiential enhancements, they should not significantly hinder the flow of pedestrians.

The Committee further recommends modifying the ordinance to allow the fee to be adjusted for inflation on an annual basis, rather than every five years as specified in Sec. 49-147(c) of the original ordinance. This change would make it easier for the City to bond against the fee revenues, simply by enacting smaller fee increases on a more frequent basis rather than larger fee increases on a less frequent basis. Additionally, DOTI staff is recommending utilizing a "blended rate" of the Consumer Price Index (CPI) and the Colorado Construction Cost Index (CCI) blended at a rate commensurate with operational and construction costs, respectively. Note that this is a new recommendation not included in the Committee's February 29 memo.

Attachments

- February 29 memo from the committee, for reference

MEMO

RE: Recommended amendments to Denver Sidewalk Ordinance 307

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- Ensuring the ongoing maintenance of sidewalks in good condition in perpetuity

A top priority of the Committee has been consideration of potential changes to the sidewalk fee structure, so that City Council can enact any changes before the first bills are sent to property owners. After careful consideration of several alternatives, the Committee recommends the following amendments to the ordinance that 1) address concerns that community members have raised regarding fees assessed to residential properties (particularly properties that would be assessed fees substantially higher than the average under the original ordinance) and the potential burden on lower-income households, 2) ensure that the ordinance remains compliant with TABOR requirements, and 3) ensure that DOTI is able to successfully implement a sustainable program for the construction, reconstruction, and ongoing repairs of sidewalks citywide.

Recommended Changes to the Overall Fee Structure

For *residential properties only* (as defined below) the Committee recommends replacing the annual sidewalk fee per linear foot of property frontage outlined in Section 49-148(a) of the ordinance with the following annual fee *per residential unit*:

Residential property type	Fee per residential unit
Low density residential (Defined as properties classified by the Denver Assessor’s Office as “Residential” with exactly 1 residential unit located on the parcel)	\$148.64
Medium density residential (Defined as properties classified by the Denver Assessor’s Office as “Residential” with 2 to 7 residential units located on the parcel)	\$68.51
High density residential (Defined as properties classified by the Denver Assessor’s Office as “Residential” with 8 or more residential units located on the parcel)	\$23.20

The Committee is currently considering similar changes to the fee for *non-residential properties*, and will update City Council regarding these additional recommendations.

Rationale

Under the original ordinance, fees charged to residential properties varied widely from \$0 (for properties that do not have any frontage on the public right-of-way) to more than \$500, raising concerns about fairness and the burden to property owners at the higher end of this range. The recommended change eliminates this variability by charging residential properties owners the *average* fee per unit that would have been charged based on the linear foot of property frontage under the original ordinance, calculated separately for low, medium, and high density properties. The lower fee per unit for higher density properties reflects the fact that these properties are generally more compact, and therefore the linear frontage of these properties (and in turn, the linear feet of sidewalk to be constructed, reconstructed, and/or repaired adjacent to these properties) is lower per unit. Setting the fee separately for low, medium, and high density residential thereby acknowledges that higher-density development allows for more efficient provision of basic infrastructure such as sidewalks.

This recommended change is also revenue neutral, and retains the mathematical relationship between the fee charged to residential properties owners and the linear feet of sidewalk to be constructed, reconstructed, and/or repaired adjacent to residential properties. This clearly defined relationship between the property fee that is charged, and the purpose for which the fee is to be used, in turn helps ensure compliance with TABOR requirements.

Note that under the original ordinance, residential parcels that do not have any frontage on the public right-of way are not charged a fee. With the recommended change, these residential properties would be charged a fee, with the rationale that these properties benefit from the better pedestrian access provided by complete sidewalk networks in residential areas.

Recommended Changes to Fee Discounts

The Committee recommends replacing the 20% discount on the fee for properties located in neighborhoods identified through the city's Neighborhood Equity & Stabilization (NEST) program outlined in Section 49-148(b) of the ordinance, with the following:

- A 20% instant rebate on the fee for properties with income-restricted housing, where at least 25% of the residential units are available only to households meeting certain low income criteria; and
- An instant rebate program for income-qualified property owners that is aligned with [Denver's Solid Waste Service Rebate program](#). Currently under this program, property owners that receive trash and recycling collection services from Denver's Solid Waste division (a single family home, townhome, duplex or apartment in a complex with 7 or fewer units), are eligible to apply for the following-income based rebates:

Income	Instant rebate
<60% of the Area Median Income (AMI)	50%
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Rationale

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Recommended Changes to the Timeline for Implementation

The Committee recommends revising the timeline for implementation of an initial capital investment plan, as outlined in Sec. 49-146(b) of the ordinance, from “within nine years of the effective date of this section,” to “within nine years of the effective date of this section, *or as soon thereafter as determined feasible by the manager of transportation and infrastructure.*” The Committee further recommends revising this section of the ordinance to state that the initial capital investment plan should “*prioritize the repair or reconstruction of all existing sidewalks that are in severe disrepair, that represent a safety hazard, or which do not minimally comply with legally mandated accessibility standards.*”

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potential cost-saving trade-offs; avoids placing the City in jeopardy of violating TABOR requirements by ensuring the City is not forced to incur costs greater than can be covered by the revenues that are generated by the fee (including through financing mechanisms such as bonding); directs the City to prioritize sidewalk repairs and reconstruction in a way that minimizes other liability concerns; and honors the intention of the original ordinance approved by voters to complete the buildout of the sidewalk network in as timely a manner as possible.

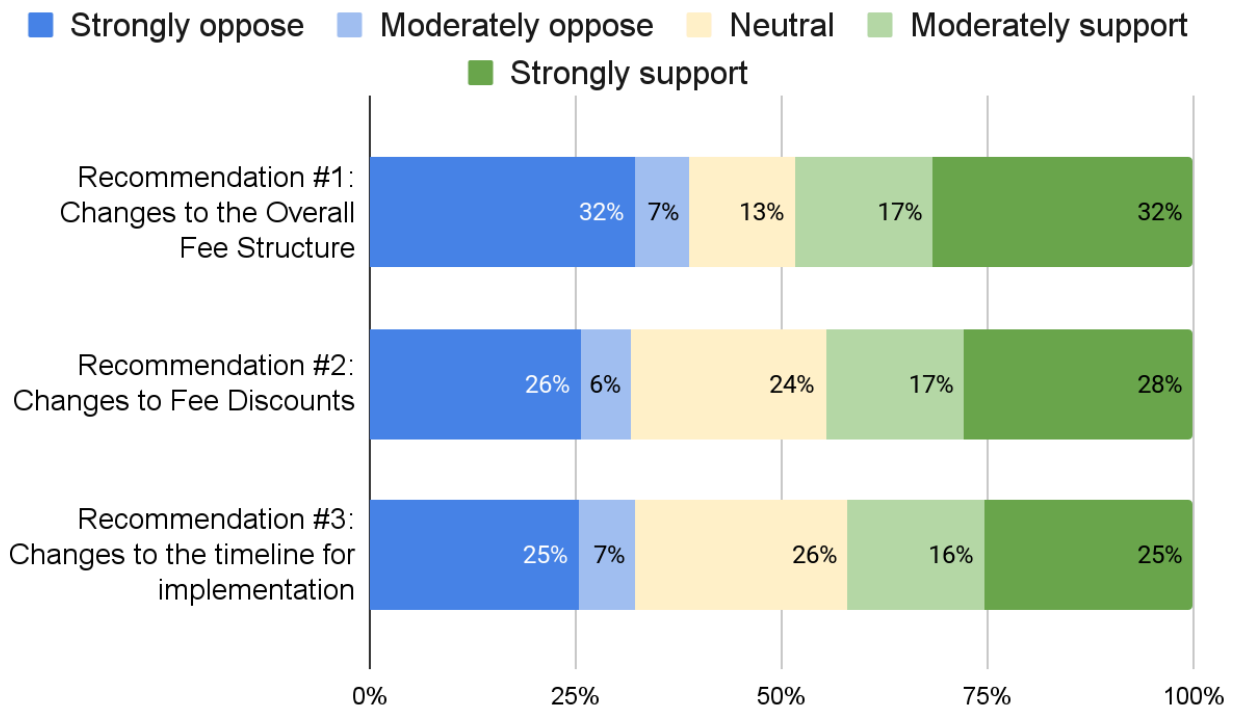
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Appendix A: Results of Public Survey on Recommended Changes

The Committee released a survey to solicit public feedback on the draft recommendations before delivering the recommendations to City Council. A total of 2,050 survey responses were received between February 15 and 27, 2024. Below is a summary of the survey results.

Overall Results



Recommendation #1: Changes to the overall fee structure

Respondents who moderately or strongly **support** this recommendation provided the following comments on what they like about the recommendation:

- More fair than the original fee structure - about 41% of comments
- Reduced fee burden on corner lots - about 36% of comments
- Everyone chips in - about 8% of comments
- Flat fee seems reasonable - about 8% of comments
- More simple - about 5% of comments

Respondents who moderately or strongly **oppose** this recommendation provided the following comments on their concerns about the recommendation:

- General opposition to fees and/or the sidewalk program - about 46% of comments
- The fee per linear foot of property frontage is more fair; flat fees are regressive; and/or too far from what voters approved - about 28% of comments
- The fee for single family is too high relative to multifamily, especially for duplexes and triplexes - about 12% of comments
- Flat fee is too high - about 5% of comments
- There should be an exemption who previously paid to repair their sidewalks - about 5% of comments

Recommendation #2: Changes to fee discounts

Respondents who moderately or strongly **support** this recommendation provided the following comments on what they like about the recommendation:

- Provides relief to people who need it - about 62% of comments
- Seems fair - about 28% of comments
- Aligned with Denver's Solid Waste Service Rebate program - about 9% of comments

Respondents who moderately or strongly **oppose** this recommendation provided the following comments on their concerns about the recommendation:

- Respondent doesn't support providing income-related discounts - about 35% of comments
- General opposition to fees and/or the sidewalk program - about 27% of comments
- Discounts aren't deep enough - about 11% of comments
- Too far from the original ordinance - about 5% of comments
- Too complicated - about 4% of comments
- (Seem to be commenting on original NEST discount, rather than recommended change) - about 5% of comments

Recommendation #3: Changes to the timeline for implementation

Respondents who moderately or strongly **support** this recommendation provided the following comments on what they like about the recommendation:

- The prioritization of repairs and reconstruction - 100% of comments

Respondents who moderately or strongly **oppose** this recommendation provided the following comments on their concerns about the recommendation:

- Too much leeway on the timeline - about 30% of comments
- General opposition to fees and/or the sidewalk program - about 27% of comments
- Respondent wants to see implementation within sooner than 9 years - about 25% of comments
- Not what voters approved - about 9% of comments
- Concerns about what will get prioritized - about 7% of comments

Survey Responses by Zip Code

Note: this was an optional question; 76% of respondents provided their zip code.

