

APPROVED

DATE OF TOWN BOARD ACTION: SEP 19 2016

VOTE OF TOWN BOARD: 5-0

~~Town of Newburgh Town Board~~
ANDREW J. ZARUTSKIE, TOWN CLERK

Policies on the Construction of New Sidewalks

Adopted by the Town Board on 9-19, 2016

Section 161-35 of the Town of Newburgh Municipal Code, in reference to proposed Town roads, provides:

"Sidewalks are to be included on roads when required or approved by the Town Board. When included, sidewalks shall conveniently link dwellings to all possible generators of pedestrian traffic both within and outside of the subdivision."

It is the purpose of these policies to comprehensively address the installation of sidewalks in connection with proposed development and redevelopment on all types of roads and highways in the Town of Newburgh, including but not limited to State and County highways and private roads, as well as existing and proposed Town roads. By doing so, the Town Board seeks to have development applications processed more efficiently, to avoid unnecessary referrals and to minimize enforcement issues during the construction process.

For the purposes of these policies the term "sidewalk" is intended to mean "a smooth, paved, stable and slip-resistant, exterior pathway intended for pedestrian use along a vehicular way." "Walkways" are pedestrian facilities designed to facilitate pedestrian movement which are not adjacent to a roadway.

The Town Board adopts the following policies:

1. No approval shall be given for the private installation of a sidewalk on an existing or proposed road of the Town of Newburgh. This applies whether the road is dedicated or proposed to be dedicated to and owned by the Town or is a road by use.
2. The Town Board will only consider exceptions to this prohibition where extraordinary pedestrian safety issues present, such as where a new development is near a school, resident children will not be bused, the school district requests the sidewalk to be installed, and a walkway or other pedestrian accommodation is not feasible.
3. Sidewalks are permitted on private roads and private walkways are permitted as part of approved site plans, provided that, unless the walkway or sidewalk is entirely within the boundaries of a single parcel and outside of a right of way, it shall be subject to an acceptable, recorded maintenance agreement or declaration addressing future maintenance, snow and ice removal, repairs and replacements.
4. Sidewalks are permitted on State and County highways provided that the State or County, as the case may be, has approved the sidewalk's installation and a satisfactory private maintenance agreement or declaration is executed and recorded.

5. The reviewing Board shall require that Notes be added to plans referencing the provisions of Article IV of Chapter 160 of the Municipal Code with regard to the responsibilities of the owners of fronting and abutting properties to repair and maintain sidewalks, to remove snow and ice and to keep sidewalks free and clear of obstructions, and the liability of owners and occupants of non-residential and commercial properties and the owners of residential properties for omission, failure or neglect to do so. A copy of Article IV is attached hereto.
6. New sidewalks must be installed at the approved elevation and it must be practical for the sidewalk to be continued along the frontages of neighboring properties on the highway.
7. New sidewalks must comply with the standards contained in ADA guidelines for accessibility for buildings and facilities (ADAAG).
8. Steps on sidewalks between adjoining properties due to elevation differences shall not be allowed.
9. Proposed sidewalks shall be examined by the reviewing board's consultants to ensure they are feasible and meet the above criteria.

The Town of Newburgh Town Board expects full compliance with this policy in connection with all new development and redevelopment.

**“ARTICLE IV
SIDEWALK MAINTENANCE AND REPAIR**

§ 160-27. Legislative intent.

It is the intention of the Board to protect the health and safety of the community by requiring the owners and occupants of lands utilized for nonresidential or commercial purposes fronting or abutting on any public street, highway or roadway and the owners of lands used for residential purposes to maintain and repair sidewalks and curbing adjacent to their properties in a safe condition for the protection of pedestrians. In order to accomplish this goal, the Town Board is exercising its authority under §10(1)(ii)(a)(6) and (12) and §100(1)(ii)(d)(3) of the Municipal Home Rule Law, §130(15) of the Town Law and any other applicable provision of law now or hereinafter enacted, to supersede and/or expand upon the applicable provision of §130(4) of the Town Law, and any other applicable or successor law, in order to transfer liability for damage or injury to person or property as a result of the failure to repair and maintain sidewalks, and to remove snow, ice and obstructions or defects therefrom to the abutting owners and occupants of land.

§ 160-28. Definitions.

As used in this article, the following terms shall have the meanings indicated:

OCCUPANT – Any person who has lawfully entered upon and is in the possession of real property as a tenant, manager or person having charge of any building or lot of ground or any use thereof or who has an interest in the land which he possesses.

OWNER – Any person having legal interest in real property.

PEDESTRIAN – Any person making use of a sidewalk for foot passage.

PERSON – An individual, partnership, association, corporation, executor, administrator, trustee, guardian, receiver or other person having a legal interest in real property.

SIDEWALK – A walkway along the margin of a street or highway designed and prepared for the use of pedestrians, to the exclusion of motor vehicles.

§ 160-29. Repair, maintenance and removal of snow and ice.

The owner and occupant of a lot utilized for nonresidential or commercial purposes in any zoning district, the owner of any lot used for residential purposes and the owner of any common area of a condominium or clustered development shall maintain and repair the sidewalk adjoining his lands and shall keep such sidewalk free and clear of and from snow and ice. Such owner or occupant, and each of them, shall be liable for any injury or damage to person or property by reason of the omission, failure or neglect to repair or maintain such sidewalk in a safe condition or to remove snow or ice therefrom.

§ 160-30. Icing of sidewalk.

In case snow and ice on any sidewalk shall be frozen so hard that it cannot be removed without injury to the adjoining sidewalk, it shall be strewn and kept strewn by the owner and occupant responsible for snow and ice removal pursuant to §131-14 with sand, ashes sawdust or other suitable material so as to be no longer dangerous to life and limb. As soon as practical thereafter, the sidewalks shall be completely cleared of snow, ice and other material strewn thereon, as provided in this Article.

§ 160-31. Obstructions prohibited.

It shall be unlawful for the owner and occupant of any parcel of real property identified in §131-14 to permit any obstruction of any abutting or adjacent sidewalk, except as authorized by permit from the Superintendent of Highways, and such sidewalks shall be kept free and clear from dirt, rubbish, garbage and any vegetation, including but not limited to growth of hedges, trees or other plants, and any other obstruction. Such owner or occupant, and each of them, shall be liable for any injury or damage to person or property by reason of the omission, failure or neglect to remove obstructions and/or defects therefrom.

§ 160-32. Removal by Town authorized; costs a lien.

Upon failure of such owner or occupant to comply with the provisions of §131-14, 131-15 and/or §131-16 of this article, the Superintendent of Highways may cause such snow, ice, dirt or other materials and obstructions to be removed or covered with suitable material and shall, in such event, forthwith file a report of the cost of expenses thereof with the Town Clerk. Said cost and expense, as the same shall appear from said report, shall be a lien upon the premises abutting said sidewalk so reported to have been cleaned or covered as a foresaid until paid, as provided in §160-36.

§ 160-33. Town Board may require repairs.

The Town Board may, from time to time, by order, require the repair of sidewalks along streets, roads, highways and parkways in the Town and, with the consent of the County Superintendent of Highways or the State Commissioner of Transportation, as the case may be, abutting on a county or state highway, at the expense of the abutting owners or otherwise, upon such notice and pursuant to the authority of the requirements of §130, Subdivision 4, and §200-a of the Town Law of the State of New York.

§ 160-34. Notice of order to repair.

- A. Whenever the Town Board adopts an order directing the abutting owners of the respective lots or parcels of land in front of which it is desired that sidewalks be relaid or repaired in accordance with this article, the Town Board shall specify the place, manner and time within which the repair shall be completed, which time shall not be less than 30 days from the adoption of the Town Board's order.

- B. The Town Clerk shall publish a notice of the Town Board's orders pursuant to Subsection A of this section in the official newspaper at least twice, the first publication of which shall be at least 15 days before the time specified for the completion of the work, or the Clerk may serve a copy of the notice by certified mail within five days of adoption of order upon the owner or owners and by first class mail upon the occupant or occupants of the land in front of which it is desired that such repair shall be done.

§ 160-35. Noncompliance by owner; cost.

- A. Whenever a notice to repair or relay a sidewalk pursuant to an order of the Town Board has been served upon an owner of a lot or parcel of land in front of which it is desired that sidewalks be relaid or repaired and the owner shall not cause the repair to be made to the sidewalk as required by the notice, the Highway Superintendent is hereby authorized and directed to cause the repair to be made as required by notice.
- B. The Highway Superintendent is hereby authorized to perform such work or repair with his own forces or cause a contract to be let therefor and to pay for the work out of the funds to be appropriated by the Town Board for such purposes.

§ 160-36. Assessment of cost; notice; collection.

- A. The Town shall be reimbursed for the cost of relaying or repairing any sidewalk when made by the Highway Superintendent pursuant to this article by the owner of the respective lot or parcel of land in front of which the repair was made, by assessment upon and collection from the lot or parcel of land determined benefited by the repair; so much of the actual and complete cost upon and from each lot as shall be in just proportion to the amount of the benefit which the improvement shall confer upon the property, as determined by the Town Board, and collected in the same manner and at the same time as other special assessment and ad valorem Town charges.
- B. Whenever expenditures are made by the Town for repairing sidewalks or removing from sidewalks ice, snow or other accumulations thereon, which under this article are assessable upon the land affected or improved thereby, the Board shall serve a notice of a least 10 days upon the owner or owners of such property, stating that such expenditure has been made, its purpose and amount and that a specified time and place it will meet to make an assessment of the expenditures upon such land. The Board shall meet at the time and place in such notice specified. It shall hear and determine all objections that may be made to such assessment, including the amount thereof, and shall assess upon the land the amount which it may deem just and reasonable, not exceeding, in case of default, the amount stated in the notice. All the provisions of law relating to the enforcement and collection of unpaid taxes and assessments, not inconsistent herewith, shall apply to the collection of such unpaid cost or expense. In addition to the levy of the assessment, an action to recover the amount may be maintained by the Town against the owner or occupant liable therefor.

§ 160-37. Permit required for temporary obstructions.

Any person desirous of obtaining a permit to temporarily obstruct a sidewalk shall obtain a permit from the Superintendent of Highways upon payment of a fee to be established and amended from time to time by resolution of the Town Board. It shall be the duty of such person to barricade the area and to provide warning lights, as required by the Superintendent of Highways, from one hour before sunset to ½ hour after sunrise.

§ 160-38. Penalties for offenses.

A violation of this article is hereby declared to be a violation, and any person violating the same shall, upon conviction, be punished by a fine of not less than one hundred dollars (\$100.) nor more than two hundred fifty dollars (\$250.) for each offense. Each day or part thereof such violation continues after notification by the town shall be deemed a separate offense punishable in like manner. The town may also bring an action or proceeding to enjoin the violation and/or to recover the costs incurred by the town for cleaning up or otherwise remedying the conditions brought about by the violation of this article.”