

SUBSTITUTE ORDINANCE NO. BL2019-1659

An ordinance amending Sections 17.20.120 and 17.20.125 of Title 17 of the Metropolitan Code pertaining to the provision of sidewalks (Proposal No. 2019Z-013TX-001).

WHEREAS, sidewalks are critical infrastructure, providing a wider variety of safe transportation options in a rapidly growing Nashville; and

WHEREAS, the city's General Plan (2015): NashvilleNext, guides growth and development in our city generally within identified centers and along identified corridors; and

WHEREAS, the city's Strategic Transit Plan (2016): nMotion, builds upon NashvilleNext to connect centers and corridors with a planned mass transit system; and

WHEREAS, the city's Strategic Plan for Sidewalks and Bikeways (2017): WalknBike, builds upon NashvilleNext and nMotion to connect walking and bicycling infrastructure to centers, corridors, and mass transit; and

WHEREAS, the Metropolitan Council enacted amendments to Title 17, the Zoning Code, by the adoption of Ordinance No. BL2016-493 whereby the locational criteria and types of development requiring new sidewalk construction were updated; and

WHEREAS, Mayor David Briley reaffirmed the Complete Streets Executive Order on June 5, 2018, outlining how the city's policy for all public projects, departments, boards and commissions of the Metropolitan Government shall approach every transportation improvement project with the purpose to create greener, safer, and more accessible streets for all users; and

WHEREAS, sidewalks benefit homeowners and neighborhoods by providing a safe and designated path for connecting to schools, parks, libraries, businesses, and transit, and thus homes connected to nearby attractions increase in value; and

WHEREAS, Nashville's population and built environment has grown and continues to grow rapidly. The Metropolitan Planning Organization forecasts that the ten County Cumberland Region in and around Nashville will increase by another million people by the year 2035; and

WHEREAS, according to the 2014 Dangerous by Design Report by Smart Growth America, Nashville ranked as the 15th most dangerous region in the US for people walking, and 23 pedestrians were killed on Nashville's streets in 2018, and as of 2019, the Nashville region had a pedestrian death index of 99.2, well above the national average of 55.3; and

WHEREAS, the WalknBike Strategic Plan documented that there are 1,900 miles of sidewalks lacking in areas of greatest need in Nashville and Davidson County and of the 1,118 miles of existing sidewalks, which represent just 18% of the sidewalk needs, many sidewalks do not meet current safety and design standards established in the Major & Collector Street Plan of the General Plan; and

WHEREAS, the Metropolitan Council has significantly increased and maintained consistent, annual funding of \$30 million for the construction of sidewalks by the Department of Public Works, and at that annual funding level, the WalknBike Strategic Plan (2014) analysis indicated that it would take 20 years to complete 71miles of sidewalks identified as capital funding priorities; and

WHEREAS, the Metropolitan Council finds it necessary and in the public interest to establish reasonable criteria for the most timely and cost-effective provision of sidewalks within the public right-of-way in the

areas of greatest need and where the impact of Nashville's growth is greatest, aligned with the General Plan and related strategic plans in Nashville and Davidson County; and

WHEREAS, staff of the Metropolitan Government have closely tracked the implementation and success of Ordinance BL2016-493 in its first year and a half and have proposed to provide an additional departmental process, similar to that currently undertaken for the staff reports issued for all sidewalk requirement variance requests before the Board of Zoning Appeals, whereby the Zoning Administrator, in direct consultation with engineering experts in the departments of Metro Public Works and Metro Water's Storm Water Division, can create a publicly transparent, documented, noticed, and appealable process for the consideration of hardship waivers, in whole or in part, to the various provisions of Title 17.20.120 of the Code.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That Section 17.20.120 of the Metropolitan Code is hereby amended by deleting it in its entirety and replacing with the following:

17.20.120 – Provision of sidewalks.

Purposes. Nashville's population and built environment has grown and continues to grow rapidly. Sidewalks are required to facilitate safe and convenient pedestrian movements for residents, employees and/or patrons, and to reduce dependency on the automobile, thus reducing traffic congestion on the community's streets and protecting air quality. The designation of an accessible and safe path for walking increases homeowner and community health and social connections.

Sidewalk networks minimize conflicts between vehicular and pedestrian movement along corridors and within and around centers identified in the General Plan (2015). Sidewalks offset a portion of the vehicular traffic consequences of population growth and increased density.

In consideration of these reasons, the sidewalk requirements below are aimed at creating a safe and convenient sidewalk network along the streets, corridors and centers identified in Nashville's General Plan (2015): Nashville Next, Nashville's Strategic Transit Plan (2016): nMotion, and Nashville's Strategic Plan for Sidewalks and Bikeways (2017): WalknBike, where the impact of Nashville's growth is greatest.

These provisions are not intended to and shall not decrease the allowable floor area ratio for development.

A. Applicability.

1. Multi-family or non-residential development or redevelopment. All provisions of this section shall apply to the development or redevelopment of multi-family or nonresidential property when the property is located within the urban services district, or within a center designated in the general plan, or any of the property frontage is within a quarter mile of the boundary of a center designated in the general plan, or the property is on a street in the major and collector street plan. Properties on the opposite side of navigable waterways or controlled access highways from a center designated in the general plan are not subject to this provision. For the purposes of this subsection, there shall be a presumption that the current appraised value of all structures on the lot is that established by the Office of the Metropolitan Tax Assessor. Development or redevelopment of multi-family or nonresidential property shall include one or more of the following:

- a. Construction of a new structure on a vacant lot, including lots on which all structures have been or are planned to be demolished; or
 - b. The cost of any one renovation equal to or greater than fifty ~~person~~ percent of the current appraised value of all structures on the lot, or the value of multiple renovations during any five-year period equal to or greater than seventy-five percent of the current appraised value of all structures on the lot; or
 - c. The cost of any one expansion equal to or greater than twenty-five percent of the current appraised value of all structures on the lot, or the value of multiple expansions during any five-year period equal to or greater than fifty percent of the current appraised value of all structures on the lot; or
 - d. The total building square footage of any one expansion is equal to or greater than twenty-five percent of the total square footage of all structures on the lot, or the total building square footage of multiple expansions during any five-year period is equal to or greater than fifty percent of the total square footage of all the structures on the lot.
2. Single-family or two-family construction. All provisions of this section shall apply to the construction of new single-family or attached or detached two-family structure(s) when the property is within the Urban Zoning Overlay, or within a center designated in the general plan, or any of the property frontage is within a quarter mile of the boundary of a center designated in the general plan, or the property is on a street in the major and collector street plan in the urban services district (arterial and collector streets). Properties on the opposite side of navigable waterways or controlled access highways from a center designated in the general plan are not subject to this provision.
 3. Waiver requests for all development types. Notification of a waiver request shall be sent to the appropriate district Councilmember, by way of the Metropolitan Council Office, by the Metropolitan Department of Codes Administration. Building permit(s) shall not be issued until at least ~~six~~ five business days from the date notification was sent to the Metropolitan Council Office.

The Zoning Administrator may waive, in whole or in part, the requirements of this section upon request by the property owner or its agent under the following circumstances:

- a. Where there is an existing substandard sidewalk, insufficient right-of-way, existing physical features on the property such as utilities, a ditch or drainage ditch, historic wall(s) or stone wall(s), tree(s), steep topography, or other hardship, the Zoning Administrator may approve an alternative design, or eliminate the sidewalk requirement in whole or in part if it is determined that a new sidewalk would not further the goal of extending or completing a sidewalk network. In addition to the Executive Director of the Planning Department, the Zoning Administrator shall consult with the Director of Public Works and the Director of Water Services, or their designees, prior to making any final determination.
- b. In unique situations where a public sidewalk is required by subsection 17.20.120 A.1. or A.2. and installation is required by subsection C of this section, the Zoning Administrator may allow the building permit applicant to make the in-lieu contribution for all or a portion of the street frontage(s) as an alternative to construction. In addition to the Executive Director of the Planning Department, the Zoning Administrator shall consult with the Director of Public Works and the Director of

Water Services, or their designees, prior to making any final determination. This provision shall be limited to unique situations that are not typical.

- c. For properties eligible for public incentives for affordable housing from the Metropolitan Government, where the appropriately designated Metropolitan Government Department has provided the property owner with a letter indicating that said property or properties will be utilizing public funds for land or construction of the structure, the Zoning Administrator may waive the requirements of Section 17.20.120 A., C., and/or D., or, rather than waive the sidewalk requirements, the Zoning Administrator may only require sidewalks at key locations if recommended by the Executive Director of the Planning Department, or his or her designee.
 - d. Where reconstruction is required due to circumstances beyond the control of the property owner, including, but not limited to, natural disaster, fire, or accident, the Zoning Administrator may waive the requirement for new sidewalk construction.
 - e. For properties within Historic Zoning Overlay Districts, where new sidewalks would be detrimental to the historic nature of the street, and the waiver has been recommended by the Executive Director of the Metropolitan Historical Commission, or his or her designee, the Zoning Administrator may waive the requirement for new sidewalk construction.
 - f. Where a greenway exists or is reasonably expected to be constructed within six years that would provide similar connectivity, and the waiver has been recommended by the Executive Director of the Metropolitan Planning Department, or his or her designee, the Zoning Administrator may waive the requirement for new sidewalk construction.
 - g. For properties situated on corner lots in R and RS zoned districts, where new construction of sidewalks is determined to be inappropriate, the Zoning Administrator may permit alternative requirements. The Zoning Administrator shall consider the amount of street frontage and classification of fronting streets when making a determination. In addition to the Executive Director of the Planning Department, the Zoning Administrator shall consult with the Director of Public Works and the Director of Water Services, or their designees, prior to making any final determination.
- B. On-Site Sidewalk Installation For Multi-Family and Nonresidential Development. A continuous, all-weather internal sidewalk network, constructed to a minimum width of five feet, shall connect all pedestrian building entryways to parking areas and all public rights-of-way. Sidewalks shall be designed and constructed to be distinguishable from driving surfaces.
- C. Public Sidewalk Installation. The provisions of this subsection apply to all property frontage, regardless of whether sidewalks are provided in public right-of-way or pedestrian easements.
1. Construction of new sidewalks is required along the entire property frontage under any one or more of the following conditions, unless the property abuts a sidewalk segment that the Department of Public Works has funded and scheduled for construction:
 - a. When there is existing sidewalk in need of repair or replacement.

- b. To extend the existing sidewalk, or sidewalk required as part of an existing Final Development Plan for a Specific Plan zoning district or issued permit within any other zoning district, on an abutting development.
 - c. Existing sidewalk present on the same block face.
 - d. Multi-family or nonresidential properties within the Urban Zoning Overlay.
 - e. Multi-family or nonresidential properties along a street in the major and collector street plan.
2. Sidewalk Design Standards.
- a. Sidewalk dimensions and required elements shall comply with the major and collector street plan or, for a street not in the major and collector street plan, the adopted standards of the metropolitan government. Design of sidewalks shall comply with approved standards established by the Department of Public Works.
 - b. Obstructions are prohibited within the required pedestrian travelway, but may be located within a grass strip/green zone or frontage zone. Prior to the issuance of use and occupancy permits, existing obstructions shall be relocated outside of the required pedestrian travelway.
- D. Contribution to the fund for the pedestrian benefit zone as an alternative to sidewalk installation.
- 1. When a public sidewalk is required by subsection A, but installation is not required by subsection C of this section, the building permit applicant may make a financial contribution to the fund for the pedestrian benefit zone in lieu of construction. The value of the contribution shall be the average linear foot sidewalk project cost, including new and repair projects, determined by July 1 of each year by the Department of Public Works' review of sidewalk projects contracted for or constructed by the Metropolitan Government. The contribution in-lieu of construction shall be no more than ~~two~~ three percent of the total construction value of the permit.
 - 2. Any such contributions received by the Metropolitan Government shall be assigned and designated for implementation of the strategic plan for sidewalks and bikeways, as approved by the Planning Commission. The applicant's payment shall be allocated within ten years of receipt of the payment within the same pedestrian benefit zone as the property to be developed; otherwise, the payment shall be refunded to the building permit applicant.
 - 3. Contribution to the pedestrian network as an alternative to sidewalk installation required under this section shall be received by the Department of Public Works, and written confirmation of the contribution shall be sent to the Department of Codes Administration prior to the issuance of a building permit.
- E. Dedication of Right-of-Way and Easements Required. Dedication of right-of-way and/or public pedestrian easement is required to permit present or future installation of a public sidewalk built to the current standards of the Metropolitan Government.
- F. Improvements required or elected on public rights-of-way and/or public pedestrian easements under subsection C of this section shall be reviewed for compliance by the

Department of Public Works. No building permit shall be issued by the Department of Codes Administration until the Department of Public Works has released the building permit. Prior to the Department of Codes Administration authorizing final use and occupancy, the Department of Public Works shall inspect and approve the sidewalk improvements in the public rights-of-way and/or public pedestrian easements.

Section 2. That Section 17.20.125 of the Metropolitan Code is hereby amended by deleting it in its entirety and replacing it with the following:

17.20.125 – Right to appeal and seek variances.

The provisions of Section 17.20.120 may be varied or interpretations appealed in conformance with Chapter 17.40, Administration and Procedures. The Board of Zoning Appeals may require a contribution to the pedestrian network consistent with subsection 17.20.120.D., an alternative sidewalk design, or other appropriate mitigation for the loss of the public improvement as a condition to a variance. The Board of Zoning Appeals shall not accept an application until the Zoning Administrator has made a determination on the requirement as set forth in this chapter.

~~Section 3. That this Ordinance shall take effect five (5) days from and after its passage and such change be published in a newspaper of general circulation, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it. Be it further enacted that this ordinance take effect September 1, 2019, and such change be published in a newspaper of general circulation, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.~~

INTRODUCED BY:

Angie Henderson

Member(s) of Council