

# PedCo

## Lawrence Pedestrian Coalition



February 22, 2018

Dear Mayor Boley and City Commissioners;

Many of the sidewalks in Lawrence are badly in need of repair. This is especially true in the city core and the older areas of town. In Lawrence and most of Kansas the repair of sidewalks is the responsibility of the adjacent property owner. The neglect that precipitated this state of disrepair resulted primarily from the current complaint-based protocol used to identify sidewalks in need of repair. The city receives relatively few sidewalk complaints, and as a result, repair is not required, and more and more sidewalks fall into dangerous disrepair. One can imagine why residents hesitate to complain about neighborhood sidewalks; they know the property owner and most likely neighbors up and down the block will be saddled with a costly repair, they don't trust the process to guarantee them anonymity, and they just don't want to initiate an unpleasant battle.

Because the sidewalks have been neglected for decades, the cost of repairing them has become significant. The most recent estimate by city staff places the cost of repair at \$6.2 million, with an additional \$3.2 million in ADA ramp installation. A number of advocacy groups (Lawrence Association of Neighborhoods, Lawrence Pedestrian Coalition, LiveWell Healthy Built Environments Workgroup, Sustainability Action Network, etc.) have called on the city to correct this situation in a way that changes how sidewalk ownership and the responsibility for maintaining them are determined.

These groups, and many Lawrence residents, believe the sidewalks to be shared infrastructure, like streets, sewer and water mains, storm sewers, and streetlights. They believe that since all Lawrence residents use the sidewalks, the cost of repair should be the responsibility of the entire community, not just a subgroup of property owners who happen to have a sidewalk running through their property.

The City Manager and City Commission have resisted all attempts to induce them to take over responsibility for repair of sidewalks. They cite the high cost of repair and shifting of legal liability for "trip and fall" lawsuits to the city as the primary reasons for resisting change. PedCo consulted the city attorney on the question of liability. Here was our question and her response:

*QUESTION: If the City of Lawrence were to take over responsibility for sidewalk repair, would it be possible to phase in the shift in legal responsibility from the adjacent property owner to the city as the repairs are made? In other words, as the city repairs the sidewalks, it assumes liability for trip and fall lawsuits only after repairs have been made and the street declared compliant with code.*

*ANSWER: It may be possible for a city to assume responsibility for sidewalk maintenance in a phased approach, and thereby its liability for any injuries resulting from the City's maintenance may also be phased based upon the maintenance activities. I remain concerned that the public may be confused and assume once we undertake some maintenance that we are responsible for ALL sidewalks in the City. As you may know, the cost of defending a lawsuit (even when a party is not liable and the stated claim has no merit) can be time consuming and expensive. The City may be faced with defending claims for which the City has no liability even in a phased approach to sidewalk maintenance.*

The Pedestrian Bicycle Issues Task Force researched sidewalk maintenance funding methods and in their final report listed three towns that have assumed responsibility for sidewalk repair and fund the repairs in three different ways. Ann Arbor, Michigan uses property taxes. Ithaca, New York conducted a referendum and charges an annual maintenance fee to residents based on lot type, determined by the

amount of foot traffic. Madison, Wisconsin has implemented a 50-50% cost share with property owners. The property owner has the option of paying in installments over five years. The report states that "City staff and the transportation commission can create an approach that will work here." We agree.

When the Task Force report suggested that the city implement a plan to fix the sidewalks, staff responded with an inspection-based program that was so riddled with flaws that the Commission refused to take action on it. That was almost a year ago, and in the meantime, our sidewalks continue to deteriorate.

We believe there is a public will to fund sidewalk repair in a way that shares the cost among all residents. In addition to the examples cited above, another method to fund repair would be an increase to the existing 5% utility excise tax on electricity and natural gas. The report of the Public Health Law Center concurs that this is a viable option. This report states:

*Lawrence, Kansas could use a utility charge to raise revenue for the maintenance and repair of sidewalks either under its Home Rule authority, or under one of the exceptions to the Kansas statute that prohibits the implementation of an excise tax. A utility charge would be permissible under the Home Rule so long as the charge imposed is a fee.*

*Additionally, although Kansas law prohibits local governments from implementing an excise tax other than a retailer's sales tax and a compensating use tax, the legislature created five specific exceptions to the law. Four of the exceptions are not relevant to this issue. However, one exception allows a city to contract "with a utility for a fixed charge based upon a percentage of gross receipts derived from the service permitted by grant, right, privilege or franchise to such utility." Based on this exception, the City of Lawrence may be able to impose a utility charge regardless of whether it is a fee or an excise tax.*

Such a fund could be designed to generate approximately \$1 million annually, which, if estimates are accurate, would repair all Lawrence sidewalks in seven years. Once our sidewalks are up to code, we could use the fund to begin closing sidewalk gaps created during the middle of the last century when city staff and commissioners allowed developers to avoid ordinances requiring sidewalk construction in new housing developments. In another ten to fifteen years we could have sidewalks on every street in Lawrence. From that point on the fund could be used to repair and upgrade non-motorized transportation infrastructure city-wide.

The new sidewalks could be bid collectively, installed by the winning contractor, and supervised by city staff, resulting in consistently high-quality, lowest cost, uniform sidewalks and ADA ramps. Once the system is complete and in good repair, costs for maintenance would fall significantly. We believe the residents of Lawrence will support a referendum on this fund if they were provided the costs and benefits.

It should not be the responsibility of community groups to research and suggest viable funding methods. This should be the responsibility of city staff. It is time for our elected representatives to recognize the failure of our current sidewalk maintenance policy, and adopt a sidewalk repair and replacement policy with equity as a key guiding principle, avoiding a disproportionate burden or benefit to groups of citizens.

Sincerely,  
Gary Webber  
Facilitator, Lawrence Pedestrian Coalition