
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: March 27, 2006

SUBJECT: Comprehensive Overview of the City's Programs for Concrete Replacement

AFFECTED COUNCIL DISTRICTS: City-wide

STAFF REPORT BY: Jan Aramaki

ADMINISTRATIVE DEPT. AND CONTACT PERSON: Rick Graham, Max Peterson, and Lynn Jarman

NOTICE REQUIREMENTS: Not applicable at this time

KEY ELEMENTS: (no ordinance or resolution involved at this time)

At the request of the City Council, the Administration has prepared a comprehensive report on the various concrete replacement programs for repairing and replacing defective areas in the public way.

According to the Administration, although current sections of City Code "place the responsibility for replacement of defective public way concrete on the adjacent property owner, the ultimate responsibility falls on the City . . ."

Although the Administration emphasizes defective sidewalk replacement in their report, other concrete related problems also pertain to defective curb, gutter and driveway approaches, as well as the need to complete public way accessibility ramp construction.

The Administration has defined "defective concrete" according to Salt Lake City Code on page one of their report. The following current options have been established and are being utilized to accomplish the installation, replacement or repair of defective public way concrete within the City.

Permit to Work in the Public Way	Adjacent property owner hires a contractor and is responsible for construction costs with a requirement to obtain a "no fee" permit to work in the public way if for replacement of defective concrete. Prior to permit being issued, Engineering staff will check the location and identify any potential conflicts with upcoming scheduled proposed construction or asphalt overlay projects within the next two years.
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Sidewalk Horizontal Sawcutting	Sidewalk horizontal sawcutting is utilized and preferred in circumstances to repair defective sidewalks when raised concrete is less than one and one-quarter inches -- no cost to the property owner.
50/50 Concrete Replacement Program	<p>Administered by Streets Division; cost shared 50/50 between <u>residential</u> property owner and the City for replacement of deteriorated sidewalk, curb and gutter, and drive approaches; cost estimates provided at no charge to property owner; costs paid by property owner prior to work performed;; scheduled on first come first served basis; horizontal sawcutting is used when vertical displacements are less than one and one-quarter inches; residents are discouraged from using this program if area is scheduled for upcoming street construction and asphalt overlay projects within the next two years. 100% of concrete replacement costs are paid by business property owners, includes: schools, churches, hospitals, non-profits and government.</p> <p><u>Identified conflict:</u></p> <ol style="list-style-type: none"> a. Voluntary program therefore property owners can simply overlook their civic responsibility to replace defective public way concrete adjacent to their property. b. Insufficient funding is allocated each year for the 50/50 concrete replacement program therefore funds are quickly utilized in advance of the next fiscal year. This issue was previously raised in a legislative intent statement to explore potential loan programs to help residents with the costs of concrete replacement. The Administration’s initial response does not support a loan program. c. In the past, several comments have been received in the Council Office regarding the high costs associated with the City’s estimates even when the cost is only 50 percent to the property owner. Property owners have asserted that the 50 percent bid given by the City is comparable to a full price bid by a contractor. Council staff has not been able to document that assertion.
Special Improvement District (SID)	Primary focus is the replacement of defective sidewalk; deteriorated sidewalks are identified within a defined district; costs shared on a 50/50 basis between City and <u>residential</u> private property owners with option to pay in full concrete replacement assessment over a five-year period; horizontal sawcutting is used when vertical displacements are less than one and one-quarter inches; option provided to property owners to replace defective drive approaches, curb and gutter abutting their property. The exception is in areas where street conditions such as a “high crown, flat grades and old high back style curb and gutter which can only be improved through a street reconstruction or rehabilitation project. These conditions trigger a repair at no cost to property owner; and ADA

	<p>ramps are installed at the time of SID (costs paid by the City). 100% of replacement costs paid by business property owners, includes: schools, churches, hospitals, non-profits and government.</p> <p><u>Identified conflict:</u></p> <ol style="list-style-type: none"> a. Districts are set up through a legal process and SID work cannot be done outside of the District. b. Property owners have the right to protest the creation which could result in some areas of the City not benefiting from needed public way concrete replacement. c. The Council has suggested establishing either larger districts or more districts to allow more participation. This would require additional funding.
<p>Community Development Block Grant (CDBG)</p>	<p>Defined CDBG areas qualify for federally funded CDBG funds to accomplish defective sidewalk replacement projects at no cost to adjacent property owners.</p> <p><u>Identified conflict:</u> Equity issue -- areas that are eligible for CDBG funding cannot utilize an SID; 50/50 program does not replace sidewalk in SID or CDBG areas; residential property owners in CDBG eligible areas benefit from defective replacement at no cost, while residential property owners participating in an SID pay 50 percent of the replacement cost.</p>
<p>Capital Improvement Program (CIP) Street Improvement Projects</p>	<p>All street improvement projects (asphalt overlays to total street reconstruction) must address sidewalk and accessibility ramps according to ADA requirements; horizontal sawcutting is used when vertical displacements are less than one and one-quarter inches; CIP funds are used to pay for ADA compliance repairs that occur in conjunction with CIP projects; and replacement of curb and gutter sections and drive approaches may be required as part of a street rehabilitation project.</p> <p><u>Identified conflict:</u> Property owners in the SID and 50/50 Program pay 50 percent of cost. Property owners abutting a CIP street improvement receive the service free. This could be a disincentive for participation in the SID and 50/50 Programs.</p>
<p>Streets Division's Repair/Replacement of Damaged Concrete</p>	<p>When critically deemed repair is required, such as extensive curb and gutter or sidewalk settlement due to an unknown source of undermining, a hazardous situation exists for either vehicular or pedestrian use, or removal of an ADA sidewalk barrier to ensure safe access for an individual with a disability, and repairs are beyond replacement typically accomplished through the 50/50 Program or other concrete replacement programs, the City absorbs all costs associated with these repairs. The problem must be severe making passage extremely difficult or hazardous, the sidewalk</p>

	<p>defect causes a hardship for the property owner, and individuals who use the sidewalk are in the vicinity of schools, government facilities, public buildings, commercial outlets, public transportation routes, high pedestrian volume areas, etc.</p> <p><u>Identified conflict:</u> Complaints concerning safety issues relating to sections of defective concrete are followed up by City officials to determine the level of impact of the defective concrete. Once a property owner is made aware that a complaint has been received regarding defective concrete adjacent to the property owner’s property and if the property owner is aware that under certain circumstances the City will pay the cost of the repair as long as the property owner refuses to take responsibility for concrete replacement, this could set a precedence and serves as an incentive not to take responsibility.</p>
<p>Private Development and Related Public Way Improvements</p>	<p>Costs associated with public way concrete (sidewalk, curb and gutter, and drive approach) repairs or improvements as part of the development of private property, subdivisions, and permitted new building and facility rehabilitation projects, costs are the responsibility of the private property owner or developer.</p>
<p>ADA Accessibility Ramp construction</p>	<p>All public way locations in need of accessibility ramps are identified by the City’s ADA public way accessibility ramps Transition Plan. In accordance with legal precedence that has been established requiring the installation of public way ramps in conjunction with all capital improvements streets projects that involve asphalt overlays and more extensive scopes of work, the City requires ramp installation for all street projects. Subdivision and other private developments are required to comply. City funds are budgeted each year for accessibility ramp installation projects.</p> <p>Based upon federal criteria, locations in need of ramp construction have been given a priority rating: high, medium or low – criterion includes proximity to government facilities, public buildings, schools, commercial outlets, public transportation routes, high pedestrian volume areas, scheduled CIP street improvement projects; and citizen requests. High priority rating is given to actual need citizen requests pending availability of funding and consideration of previous priority commitments.</p> <p>Any defective sidewalk within 25 feet of a new sidewalk access ramp is repaired or replaced in conjunction with ramp construction. Emergency repairs may be accomplished at no cost to the adjacent property owner when deemed necessary and approved by the Public Services Director.</p> <p><u>Identified conflict:</u> Again, the no cost repair within 25 feet could be a disincentive for property owners to take responsibility for sidewalk repair.</p>

MATTERS AT ISSUE/POTENTIAL QUESTIONS FOR ADMINISTRATION:

POLICY CONSIDERATIONS

The Administration recommends that a significant long-range financial commitment is needed to address the City's replacement of defective public way. Currently, present concrete replacement funding allocations cannot keep pace with the existing rate of concrete deterioration, especially in CDBG eligible areas. A public way concrete management program is needed to address the current backlog of concrete replacement needs. The Administration illustrates the need for the development and maintenance of a functional, safe, and accessible public way sidewalk network for the benefit of residents, businesses, and visitors by identifying the following policy considerations:

1. A majority of concerns expressed by residents regarding defective public way sidewalk involve public safety and/or cost of replacement. The Administration reports that it is common occurrence to encounter property owners who are unaware that City ordinance places the responsibility of sidewalk repairs/replacement on them. The Administration reports that often times when property owners are informed of their responsibility to replace defective concrete sections of sidewalk adjacent to their properties, responses from property owners include the following concerns:
 - a. Property owners question as to why they are responsible when the damage is as a result of tree roots uplifting from a City tree in the park strip adjacent to their property. Root cutting cannot occur if structural stability is an issue or there is the chance of the health of the tree would be impacted. Although the City's urban forester has implemented a relatively new concept that places a restriction on the tree species that can be planted in park strips, many trees presently growing in park strips are not well suited for the confined space. Replacement of trees is a costly, long-range program.
 - b. Property owners question as to why they are responsible for defective concrete replacement when the City owns the public way sidewalk. Public opinion expressed is that taxes should cover the cost of sidewalk and curb and gutter repair.
 - c. Question of fairness: a resident in CDBG area or capital improvement area accomplishes concrete replacement adjacent to their property at no cost, while another resident pays 50 percent of construction to replace sidewalk.
 - d. When public comment relates to concern for public safety issues in cases of defective public way; there are times when adjacent property owners resist taking responsibility to make repairs. Question arises as to why the City does not require property owners to make the necessary repairs to address the safety concern. City ordinance allows the City to include such needed repairs as part of a future SID; however, limited CIP funds and previous priority commitments have the potential to delay replacement of defective

sidewalk indefinitely.

- e. Residents recognize that the City installs accessibility ramps at street intersections, but is sometimes of the opinion that the City is not fully addressing all ADA needs -- for example, when sections of sidewalk are uneven and create a challenge for a person in a wheelchair to safely travel along a sidewalk. Salt Lake City has the responsibility to maintain accessible sidewalk public way. In an effort to meet ADA requirements, emphasis has been placed on the installation of accessibility ramps, and to a lesser degree, the elimination of accessibility barriers created by defective sidewalk.
2. Defective curb and gutter replacement is an extensive citywide challenge with minimal City funding allocation. Although a significant volume of defective sidewalk has been replaced through the Streets Divisions' 50/50 and CIP programs, CDBG, and SID funds, overall need for defective concrete replacement exceeds the present funding level. Defective curb and gutter results in ponding issues, and \$20 million is needed to address all defective curb and gutter problems. The City's inventory identifies only defective sections of curb and gutter, not the volume of curb and gutter replacement needed to resolve extensive drainage problems, therefore needed allocation could escalate.

Also funding sources do not appear to be in correlation with each other to establish a fully-completed project, functioning project. For example, when a new storm drain is installed with allocated funds from the Drainage Utility Fee, because funds cannot be used to replace defective curb and gutter, ponding problems exist such as in the Rose Park and Glendale areas of the City where the initial curb and gutter occurred with minimal slope. Extensive street and storm drain reconstruction was needed at significantly higher costs rather than simply replacing isolated sections of curb and gutter.

3. An inventory of defective public way sidewalks (800 miles or 20 million square feet of public way sidewalk and 900 miles of curb and gutter) was completed in 2000, but Engineering proposes a follow-up inventory for 2007 requiring a budget approval of \$60,000. The Administration has provided in their Appendix, Table 1, a detailed outline identifying public way concrete construction needs and associated costs. In order to illustrate for the City Council's consideration anticipated funds needed to complete defective concrete replacement in the City, the following is an inventory summary of defective concrete replacement needs as identified by the Administration, with the potential of having the replacement period be extended once additional concrete deterioration is taken into account.

Inventory Summary of Defective Concrete Replacement Needs		
Replacement cost for all defective public way sidewalk in the City	\$15,690,000	Considering an average rate of expenditure of \$1,650,000 for 2003-2005, estimated time to complete is 10-12 years
Cost to complete installation of accessibility ramps city-wide	\$13,000,000	Approximately 13-15 years to complete all remaining ramps, excluding locations with extensive site problems.
Cost to replace all defective sidewalk in CDBG eligible areas.	Approximately \$7,845,000 to replace all defective sidewalk in CDBG eligible areas.	Considering a present annual average expenditure of \$320,000, approximately 25 years to complete replacement of all defective sidewalk.

(Refer to the Administration's Appendix 1 for more and complete details.)

4. Funding eligibility is limited within certain designated areas of the City and poses a perception of an equity issue: Areas that are eligible for CDBG funding cannot utilize an SID; 50/50 program does not replace sidewalk in SID or CDBG areas; residential property owners in CDBG eligible areas benefit from defective replacement at no cost, while residential property owners participating in an SID pay 50 percent of the replacement cost.
5. Defective sidewalks as well as defective curb and gutter have proven to be an extensive city-wide challenge due to limited funding resources allocated each year. The Council may wish to discuss with the Administration proposed funding options that could help accelerate completing defective concrete within the City.

The Administration has presented four options for the Council's discussion in accelerating the process to address the complex issue of concrete replacement/repair of defective public way sidewalks and management needs. Options address defective sidewalk replacement and installation of sidewalk in areas where sidewalks are lacking, and construction of accessibility ramps. Each option provides information on funding, advantages, and disadvantages (refer to Administration's paperwork for details):

Option 1)

Maintain the status quo: continue with the established concrete replacement program and funding levels (CIP, CDBG, SID and 50/50 Program).

Option 2)

Increase funding to the existing sidewalk replacement program to establish a ten year citywide replacement program. Administration reports a personnel increase in Engineering would be needed to handle the additional workload – request for one engineer, one engineering technician; and one SID coordinator – increased personnel costs would be charged through the CIP process.

Option 3)

Increase sidewalk replacement SID funding for use in both CDBG and Non-CDBG areas of the City.

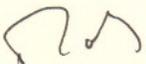
Option 4)

Defective public way concrete property owner fee. According to the Administration, Denver has established a program whereby property owners have an annual assessment for sidewalk replacement based on the square feet of public way concrete adjacent to their property - a viable program supported by a dedicated revenue source with results of a safer public way sidewalk and decreased liability regarding defective concrete in the public way.

The Administration projects that to create a fee or tax for each parcel in the City, a projected annual assessment fee of \$20 to 25 per property (64,000 parcels) would generate approximately \$1,280,000 to \$1,600,000 annually.

CC: Rick Graham, Leroy Hooton, Max Peterson, John Naser, Luann Clark, Lynn Jarman, Dan Noziska, Barry Esham, Annette Daley, Gwen Springmeyer, Diana Karrenberg, Jennifer Bruno, Sylvia Jones, Marge Harvey, and Lehua Weaver.

COUNCIL TRANSMITTAL


TO: Rocky Fluhart
Chief Administrative Officer

DATE: March 8, 2006

FROM: Rick Graham 
Director of Public Services

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DOCUMENT TYPE:

Briefing paper prepared by the Public Services Department regarding defective public way sidewalk replacement.

RECOMMENDATION:

Public Services is requesting the City Council schedule a briefing to discuss program options and funding impacts regarding revision of the City's defective sidewalk replacement program to expedite the elimination of accessibility barriers in the public way.

BUDGET IMPACT:

Budget impacts are contingent on the City Council's decisions regarding increased funding for sidewalk replacement.

BACKGROUND and DISCUSSION:

The City Council has requested Public Services provide information regarding impacts and resources required to hasten the replacement of defective public way sidewalk, including the creation of larger sidewalk replacement Special Improvement Districts (SID's).

PUBLIC PROCESS:

No public process has been pursued at this stage.

Salt Lake City Public Services

**Replacement of Defective
Public Way Sidewalk**

Briefing Paper

March 2006

Salt Lake City Public Services

Replacement of Defective Public Way Sidewalk

Background

In 1989, the City Council adopted the present ordinance regarding the replacement of defective public way concrete. Defective concrete is defined by ordinance as:

- 1) The displacement of sidewalk, curb, gutter, and drive approach sections or appurtenances either horizontally or vertically to a point that one section or any part of a section is separated by at least one-half inch (1/2") from the other; or
- 2) The presence of a minimum of three (3) cracks of any length or width between score marks and/or expansion joints in any sidewalk, curb, gutter, and drive approach sections or appurtenances; or
- 3) The presence of spalling over more than twenty five percent (25%) of the surface area of any sidewalk, curb, gutter, and drive approach sections or appurtenances; or
- 4) The existence of settling, spalling or depressions in a sidewalk, curb, gutter, and drive approaches or appurtenances, which allows water to become entrapped or cause ice pockets; or
- 5) The existence of similar signs of deterioration in sections of sidewalk, curb, gutter, and drive approaches or appurtenances contiguous to sections which are in a condition as defined in subsections A through D of this definition to such an extent that they can reasonably be considered as part of the overall defective areas, or which must be replaced to effect a proper correction of the defective areas, or which must be replaced to effect a proper correction of the defective sections.

Although City ordinance places the responsibility for replacement of defective public way concrete on the adjacent private property owner, the ultimate responsibility falls on the City; therefore, the following options have been established to facilitate the installation, replacement or repair of public way concrete:

Permit to Work in the Public Way

Property owners can hire a contractor to accomplish desired sidewalk, curb & gutter, and drive approach repairs abutting their property. This option requires a permit to work in the public way, which can be obtained through Salt Lake City Engineering. All construction costs are the responsibility of the adjacent private property owner. A "no fee" permit is issued for the replacement of defective concrete. Prior to issuing a permit, the engineering permit staff will check the location for any upcoming street construction projects, street asphalt overlays and concrete replacement special improvement districts (SID's) to determine any potential conflicts. A permit is not issued if the subject location falls within the boundary of a proposed street construction or asphalt overlay project scheduled to occur within the next two years, unless approval from the City Engineer or designee is first obtained and the permittee is informed of the proposed upcoming project.

Streets Division 50/50 Concrete Replacement Program

The Public Services/Streets Division offers this cost-sharing program to assist property owners in the replacement of deteriorated sidewalk, curb & gutter, and drive approaches. The cost of repair is shared on a 50/50 basis between the residential property owner and the City. Business property owners including schools, churches, hospitals, non-profits and government property owners pay 100% of the replacement cost. Property owners must pay for the work prior to the start of construction. Cost estimates are provided without charge and work is scheduled on a "first come first served" basis. Property owners are given the option of having sidewalk tripping hazards repaired by horizontal sawcutting at no cost, if the defective sidewalk meets the established horizontal sawcutting criteria. The Streets Division coordinates with the Engineering Division to determine proposed locations of City street construction and asphalt overlay projects scheduled within the next two years, and 50/50 concrete replacement work is discouraged at all such locations. If a property owner still requests repair of defective sidewalk, following notification of a proposed future city project, approval from the City Engineer or designee must be obtained prior to repair of the defective concrete.

Special Improvement District (SID)

The primary focus of special improvements districts (SID's) in Salt Lake City is the replacement of defective sidewalk. SID's are created to resolve all of the deteriorated sidewalk problems within a defined district. The City and the adjacent residential private property owners share the replacement costs on a 50/50 basis. Business property owners including schools, churches, hospitals, non-profits, and government property owners pay 100% of the cost. Property owners have the option of paying off the concrete replacement assessment over a five-year period.

Sidewalk horizontal sawcutting is used to remove vertical displacements less than one and one-quarter inches in conjunction with the SID work. This is accomplished at no charge to the adjacent private property owner. If a property owner requests replacement of the defective concrete instead of addressing the displacement by horizontal

sawcutting, the property owner must agree to pay for the sidewalk replacement at the established SID assessment rates. Engineering maintains a GIS map showing proposed SID locations for the next two years.

As part of the sidewalk replacement SID, property owners are given the option of replacing defective drive approaches and curb and gutter abutting their property. Generally, the replacement of defective curb and gutter is not recommended due to such existing street conditions as high crown, flat grades, and old high back style curb and gutter. These conditions can only be corrected through a street reconstruction or rehabilitation project, which would occur at no additional cost to the property owner.

Where technically feasible, ADA sidewalk access ramps are installed at all street corners in an SID area, during the same time frame as the SID. In most cases, the installation of the sidewalk access ramps is accomplished by Streets Division concrete crews or a City ADA ramp contractor. The City pays all the costs of constructing sidewalk access ramps.

Community Development Block Grant (CDBG) Sidewalk Replacement

Federally funded CDBG defective sidewalk replacement projects are accomplished at no cost to the adjacent private property owners. CDBG funding is limited and work can only be accomplished in defined "target areas" based on restrictive federal guidelines.

Sidewalk Horizontal Sawcutting

Sidewalk sections with no defects other than a vertical displacement less than one and one-quarter inches are repaired through horizontal sawcutting. Sidewalk sawcutting is accomplished at no cost to the adjacent private property owner. Horizontal sawcutting to remove tripping hazards and ADA accessibility barriers is accomplished in conjunction with SID and CDBG funded sidewalk replacements, street reconstruction, and asphalt overlay projects. Prioritization for horizontal sawcutting involves maintaining accessibility within the bounds of previous sidewalk replacement projects, street construction and overlay projects, streets 50/50 concrete replacement locations and business districts beautification areas. Requests regarding actual ADA sidewalk accessibility needs are always given a high priority and accomplished as soon as possible.

Capital Improvement Program (CIP) Street Improvement Projects

All street improvement projects, ranging from asphalt overlays to total street reconstruction, address sidewalk and accessibility ramp needs as an ADA compliance issue. In accordance with ADA, the pedestrian access route must be firm, stable, slip resistant, and without changes in level that exceed one-quarter inch, and openings (cracks, grates, etc.) that exceed one-half inch. Sidewalk repair is first accomplished through horizontal sawcutting of vertical displacements less than one and one-quarter inches. Extensive deterioration may require replacement of sidewalk sections to provide an acceptable pedestrian access route. Project funds will be used to pay for ADA compliance repairs that occur in conjunction with CIP projects, except when horizontal sawcutting funds are available to remove tripping hazards. Existing street drainage and curb and gutter conditions may require replacement of curb and gutter sections and drive approaches as part of a street rehabilitation project.

Streets Division's Repair / Replacement of Damaged Concrete

The Public Services/Streets Division may make repairs to public way sidewalk, curb and gutter, and drive approaches that are deemed to be a critical needed repair, concrete replacement related to an actual ADA identified need, and damage from the annual clean-up program or snow plowing. The City absorbs all costs related to such repairs. Critically needed repairs would be those beyond replacement typically accomplished through the 50/50 program or other concrete replacement programs. An example of critically needed work would be extensive curb and gutter or sidewalk settlement due to an unknown source of undermining, when existing conditions present a hazardous situation for either vehicular or pedestrian traffic, or to remove an ADA sidewalk barrier when an actual need exists for an individual with a disability. The Public Services Director or assigned designee must approve the removal of a sidewalk barrier before the Streets Division concrete crew can replace the defective section of sidewalk.

Private Development and Related Public Way Improvements

Public way concrete (sidewalk, curb and gutter, and drive approach) repairs or improvements are accomplished as part of the development of private property, subdivisions, and permitted new building and facility rehabilitation projects. Costs related to these public way improvements are the responsibility of the private property owner or developer.

ADA Accessibility Ramp Construction

Salt Lake City's ADA public way accessibility ramps Transition Plan identifies all public way locations in need of accessibility ramps. The plan has been created to meet federal rulemaking requirements regarding the installation of public rights-of-way accessibility ramps. Legal precedence has been established requiring the installation of public way ramps in conjunction with all capital improvements street projects that involve asphalt overlays and more extensive scopes of work. The City requires ramp installation in accordance with this precedence, and requires all subdivision and other private development to appropriately comply. City funds are budgeted each year for accessibility ramp installation projects to ensure compliance with federal requirements to remove all public way accessibility barriers.

All locations in need of ramp construction have been given a high, medium, or low priority rating based on criteria established by the federal government. The rating criterion includes proximity to government facilities, public buildings, schools, commercial outlets, public transportation routes, high pedestrian volume areas, scheduled CIP street improvement projects, and citizen requests. Many of the ADA accessibility ramp installations are scheduled and programmed in response to citizen requests. Actual need citizen requests are always given a high priority rating and construction is scheduled as soon as possible, pending the availability of ramp construction funding and consideration of previous priority commitments.

Sidewalk access ramps are not built on one corner of an intersection only. Ramp users cannot be directed into an intersection and not be provided a ramp on the other side of the street. Any defective sidewalk within 25 feet of a new sidewalk access ramp is repaired or replaced in conjunction with the ramp construction.

Sidewalk Replacement Issues

The following statements are typical of concerns expressed by property owners when informed of their responsibility to replace defective sidewalk adjacent to their property:

- Tree roots from a City tree in the park strip lifted the sidewalk (curb and gutter, drive approach) next to my property. Why should I pay for damage caused by the City's tree?
- The City owns the sidewalk next to my property. Why should I pay to repair something I don't even own? The taxes I pay should cover the cost of sidewalk, and curb and gutter repair.
- My neighbor is in a CDBG target area, so he did not pay anything for his/her new sidewalk. I have to pay 50% of the construction cost to replace my sidewalk. This is not fair.
- My neighbor's sidewalk is a tripping hazard, but he/she refuses to do anything about it. Why doesn't the City force him/her to replace it or just replace it before someone gets hurt?
- The City installed accessibility ramps at the street intersections, but the sidewalk in the middle of the block is so uneven I can't get my wheelchair to the ramps to use them. Why is the City not addressing all the ADA needs?

Most citizen concerns regarding defective public way sidewalk fall into two main categories: public safety and cost of replacement. Property owners are very concerned about sidewalk conditions in their neighborhoods; however, they are generally unaware of the fact that City ordinance places the responsibility for repair of defective public way sidewalk on the adjacent private property owner. This unexpected responsibility does not generally elicit a favorable response. If property owners refuse to meet their civic responsibility regarding sidewalk replacement, City ordinance allows the City to include such properties in a future special improvement district and assess property owners at the approved assessment rates; however, the limited availability of CIP funding and previous priority commitments could delay replacement of the defective sidewalk indefinitely.

The most common complaint regarding the responsibility of property owners to replace defective public way sidewalk relates to tree root uplifting. In general, property owners are not pleased with the concept of paying for the replacement of defective public way sidewalk adjacent to their property. This displeasure is compounded by the fact that a city-owned tree raised the city-owned sidewalk, and the uplifting will most likely re-occur within five years, if the tree roots cannot be removed. Root cutting cannot occur if structural stability is an issue or the health of the tree will be compromised. In many cases, horizontal sawcutting can be used to eliminate sidewalk displacements less than one and one-quarter inches. This maintenance strategy is generally well received, since property owners are not charged and replacement of the sidewalk is postponed for several years. Many trees presently growing in City park strips are not suited for this confined space. The City's urban forester has restricted the tree species that can be planted in park strips, but this is a relatively new concept and most park strip trees were planted long before the new guidelines were established. Replacement of trees not suited for the restrictive park strip locations will help, but this is a costly, long-range program.

A recent United States Supreme Court decision, *Barden v. Sacramento* (See Appendix No. 2), states sidewalks are covered under the Americans with Disabilities Act of 1990 (ADA); accordingly, municipalities have the responsibility of maintaining an accessible sidewalk network. In an effort to meet ADA requirements, Salt Lake City has placed primary emphasis on the installation of accessibility ramps and to a lesser degree the elimination of accessibility barriers created by defective sidewalk. The Streets Division's 50/50 program and Capital Improvement Program (CIP) projects, using Community Development Block Grant (CDBG) and Special

Improvement District (SID) funds, have been the major contributors to addressing sidewalk replacement needs. Although a significant volume of defective sidewalk has been replaced through these programs, the total need is beyond the present funding level. Emergency repairs regarding ADA accessibility may be accomplished by the City without cost to the adjacent property owner when deemed necessary and approved by the Public Services Director.

Although the focus of this paper relates to defective sidewalks, it should be noted that defective curb and gutter is an extensive citywide problem as well. Very little funding has been allocated for the replacement of defective curb and gutter, which has resulted in considerable citizen concern regarding the growing problem of nuisance ponding. At this time, over \$20,000,000 would be needed to address all defective curb and gutter problems in the City (see Appendix No.1, Table 2). This figure could easily escalate, since inventory statistics only identified defective sections of curb and gutter, not the total volume of curb and gutter replacement needed to resolve extensive drainage problems. Property owner frustration is often expressed when a new storm drain is installed, but curb and gutter ponding problems still exist because the Drainage Utility Fee could not be used to replace the defective curb and gutter. Although projects in recent years have helped to resolve some drainage issues, this problem is still readily evident in the Rose Park and Glendale areas of the City, where the initial installation of curb and gutter occurred with very little slope. Extensive street and storm drain reconstruction is needed in these areas at costs significantly greater than experienced by simply replacing isolated sections of curb and gutter.

Deteriorated Public Way Sidewalk Statistics

An inventory completed in the year 2000 established an asset management baseline for public way concrete (See Appendix No.1). Although completed over five years ago, the inventory statistics, including updates, provide a reasonable indicator regarding overall network value and projected defective concrete replacement costs. Engineering proposes a follow-up inventory be undertaken in 2007, which will require budget approval of \$60,000. There are approximately 800 miles (20,000,000 Square feet) of public way sidewalk in Salt Lake City and 900 miles of curb and gutter. At this time, the approximate cost to replace all defective public way sidewalk in the City is \$15,690,000 (see Appendix No. 1, Table 1). The average annual expenditure for replacement of defective public way sidewalk from 2003 to 2005 is approximately \$1,650,000. This figure includes the average annual expenditure for sidewalk replacement SID's, sidewalk replaced through capital improvement projects, Streets Division 50/50 program, private development involving public way permit work, and CDBG sidewalk replacement projects. At the average rate of expenditure, it would take approximately 10 to 12 years to replace all defective sidewalk in Salt Lake City. This does not account for additional concrete deterioration occurring during this same time period, which could extend the replacement period. Approximately 80% of the \$1,650,000 annual expenditure is allocated to non-CDBG eligible areas of the City, creating a significant defective sidewalk problem in a large portion of the City. This issue will be addressed in detail in the ***Sidewalk Replacement Discussion*** portion of this document.

Approximately \$13,000,000 would be needed to complete the installation of accessibility ramps throughout the City (see Appendix No. 1, Table 4). In recent years, funding for accessibility ramp construction has significantly increased; however, at the present funding level, approximately 13 to 15 years will pass before all the remaining ramps can be constructed, excluding locations with extensive site problems. Ramp construction costs escalate rapidly at locations where site conditions are extreme. It should be noted that ADA also addresses sidewalks, requiring an obstacle free, continuous passage with changes in level not to exceed one-quarter of an inch. In June of 2003, the U.S. Supreme Court rejected an appeal by Sacramento (Barden v. Sacramento) to overturn the Ninth Circuit Court ruling that city sidewalks were covered by ADA. This Supreme Court ruling clearly states the responsibility of municipalities to maintain pedestrian access routes, including barrier-free, compliant sidewalks (see Appendix No. 2).

In addition to replacement of defective sidewalk, the initial installation of sidewalk in areas where such improvements have not previously existed would cost approximately \$11,360,000 (See Appendix No. 1, Table 1). This figure does not include industrial areas where installation is not warranted at this time. Further evaluation is also needed in areas where construction feasibility is questionable due to existing site conditions, including steep grades and/or extensive landscaping in the public way.

Sidewalk Replacement Discussion

Four City administered programs presently facilitate most of the sidewalk repair and replacement in Salt Lake City: 1) Sidewalk Replacement Special Improvement Districts (SID's), 2) Community Development Block Grant (CDBG) sidewalk replacement projects, 3) Streets Division's 50/50 program for public way concrete replacement, and 4) Sidewalk Horizontal Sawcutting. SID's are not used in areas eligible for CDBG funding, and the 50/50 program does not replace sidewalk in SID or CDBG areas. Residential property owners in CDBG eligible areas of the City are not charged for defective sidewalk replacement while residential property owners participating in an SID pay 50% of the replacement cost.

Based on statistics from the last three years (2003 thru 2005), approximately \$1,330,000 per year has been expended for the replacement of defective public way sidewalk in non-CDBG eligible areas of the City. This includes funding from sidewalk replacement SID's, CIP projects, Streets Division's 50/50 program, and private development permits to work in the public way. In contrast to the funds expended in non-CDBG areas of the City, approximately \$320,000 per year has been expended in CDBG eligible areas of the City in the same three year period. Approximately 50% of all defective sidewalk is located in CDBG eligible areas of the City, but only 19% of the total annual sidewalk expenditure is used in this portion of the City.

If future SID's were funded at approximately \$1,400,000 (\$700,000 General Fund and \$700,000 SID Property Owner Portion) per year, it would take approximately 6 years to replace all defective sidewalk in the non-CDBG eligible areas of the City. If future SID's were funded at \$2,800,000 (\$1,400,000 General Fund and \$1,400,000 SID per year), approximately 3 years would be required to replace all defective sidewalk in the non-CDBG areas of the City. Increasing the dollar volume for defective sidewalk replacement SID's would accelerate the defective sidewalk replacement timeline in non-CDBG eligible areas of the City; however, Engineering would require a personnel increase to handle the added workload, including one engineer, one engineering technician, and one SID coordinator. Increased personnel costs would be covered by the engineering fees charged through the CIP process.

Approximately \$7,845,000 would be needed to replace all defective sidewalk in CDBG eligible areas of the City. At the present average expenditure of approximately \$320,000 per year, it will take approximately 25 years to replace all defective sidewalk in this portion of the City. \$300,000 was approved through the CDBG program for sidewalk replacement in the 2005/2006 fiscal year. If \$300,000 is projected as the future annual CDBG expenditure, and if the present average expenditure of \$87,000 per year for additional CIP work and privately funded public way improvements in CDBG eligible areas continues, approximately 21 years would elapse before all defective sidewalk could be addressed in CDBG eligible areas of the City. If the present funding for CDBG sidewalk replacement projects is doubled from \$300,000 to \$600,000 per year, it will still take approximately 12 years to replace all defective sidewalk in CDBG areas of the City. Horizontal sawcutting would address ongoing sidewalk displacement problems, reducing long-range defective sidewalk replacement costs. Increased funding through the CDBG program or from other sources is needed to adequately address the extensive defective sidewalk problem in CDBG eligible areas of the City. Sidewalk replacement SID's are not presently used in CDBG eligible areas of the City. The use of SID's in CDBG areas could provide a means of funding the needed sidewalk improvements; however, the fairness of this action might be questioned, since property owners receiving improvements through CDBG funding would receive the improvements at no cost and residential property owners participating in an SID would be charged 50% of the construction cost.

Another option for sidewalk replacement involves the creation of a fee or tax for each parcel in the City. A fee assessment of approximately \$20 to \$25 per year per property would generate approximately \$1,280,000 to \$1,600,000 annually, based on an estimated 64,000 parcels that presently exist within the City limits. A set fee per parcel could be established or fees could be determined by proportional benefit, according to lineal front footage or square foot unit costs with a set minimum and maximum fee per property. The set fee would be based on the desired annual allocation for sidewalk replacement, such as a ten-year program to replace all defective sidewalk.

Comparison of Sidewalk Replacement Program Options

A significant long-range financial commitment is needed to address the City's public way sidewalk management needs. Options discussed in this section are restricted to defective sidewalk replacement; installation of sidewalk where such improvements have not previously existed and construction of accessibility ramps, which are part of the citywide sidewalk network, are very costly and should be evaluated as separate issues.

Various sidewalk replacement options exist that range from maintaining the status quo, recognizing that deterioration is ongoing and ADA issues present significant liabilities, to fully funding replacement of the present backlog and establishing an ongoing maintenance program for the entire sidewalk network. All options should involve the continuation of a horizontal sawcutting program to extend the time period between defective sidewalk replacement and lower overall sidewalk repair and replacement costs. The following options are presented as a decision-making tool regarding this complex issue, not as exact program recommendations:

Program Option No. 1:

Maintain the Status Quo: Continue with the Established Concrete Replacement Program and Funding Level (CIP, CDBG, SID, and Streets Division's Concrete Replacement Program)

Funding:

Maintain the current funding level. The average annual expenditure from 2003 to 2005: \$1,540,000.

Advantages:

- Programs are established, including City ordinances.
- No funding increases would be required until significant citizen concern is expressed regarding public way concrete deterioration (most likely from CDBG eligible areas of the City).

Disadvantages:

- Present concrete replacement funding level does not meet the existing rate of concrete deterioration in CDBG eligible areas of the City.
- Fairness concerns expressed by property owners would still exist; property owners in qualifying CDBG areas would receive free sidewalk replacement while those outside the eligible areas would pay for like improvements.

Program Option No. 2:

Increase Funding to the Existing Sidewalk Replacement Program (CDBG, SID, and Streets Division's Concrete Replacement Program) to Establish a Ten-Year Citywide Replacement Plan

Funding:

Increase sidewalk replacement funding resulting in annual expenditure of approximately \$1,569,000 apportioned to cover CDBG and non-CDBG eligible areas. Proportional increases to CDBG, SID, and Streets Division 50/50 would need to be determined.

Advantages:

- Programs are established, including City ordinances.
- Increased funding would meet the estimated need of \$1,569,000 per year for a ten-year total deteriorated sidewalk replacement schedule.

Disadvantages:

- A significant CDBG funding increase would be needed, which may not be feasible. Approximately \$784,500 per year would be needed for CDBG eligible areas of the City based on the estimated need of \$1,569,000 per year for a ten-year citywide replacement schedule.
- Funding sources would need to be determined, which could impact other programs, unless a new funding source is established.
- Fairness concerns expressed by property owners would still exist; property owners in qualifying CDBG areas would receive free sidewalk replacement while those outside CDBG eligible areas would pay for the same improvements.

Program Option No. 3:

Increase Sidewalk Replacement Special Improvement District (SID) Funding for Use in Both CDBG and Non-CDBG Areas of the City

Funding:

Increase sidewalk replacement SID funding to approximately \$2,800,000 (\$1,400,000 General Fund and \$1,400,000 SID – Property Owner Portion) per year.

(Note: Accessibility ramp construction funding would need to be increased by approximately \$450,000 to address associated ramp construction required by ADA).

Advantages:

- Funding at the proposed level would replace all deteriorated public way sidewalk in both Non-CDBG and CDBG areas in approximately 6 years, based on an estimated total replacement need of \$15,690,000 (See Discussion Section).
- The Special Improvement District process is well established and generally well accepted by property owners.
- SID's focus on specific areas with the objective of eliminating all deteriorated sidewalk within a defined district.
- Adjacent residential private property owners and the city share the construction cost on a 50/50 basis.

Disadvantages:

- The formal SID approval process provides property owners with the right of protest, which could prevent some areas in the City from ever receiving needed concrete repairs, creating a liability for both the property owner and the City.
- Fairness concerns regarding improvement costs would exist with this option, since residential property owners previously eligible for "no cost" CDBG sidewalk installation would now be paying 50% of the installation cost.

Program Option No. 4:

Defective Public Way Concrete Property Owner Fee

Funding:

A fee assessment of approximately \$20 to \$25 per year per property owner parcel would generate approximately \$1,280,000 to \$1,600,000 per year based on an estimated 64,000 parcels that presently exist within the City limits.

Advantages:

- Property owners would pay a small amount annually instead of paying the entire cost for reconstruction when the replacement occurs. The Streets Division's 50/50 program requires payment before construction starts, which can prohibit participation by those on fixed incomes. SID's have a five-year pay off period, but this can still place a financial burden on some property owners.
- The City would be responsible for contracting the replacement of defective sidewalk. Property owner involvement would be minimized.
- Property owners would have the option of hiring a contractor at their own cost to install the improvements prior to the scheduled replacements. A public way permit would be required.
- CDBG funding would still facilitate sidewalk replacement in qualifying areas; however, the fairness issue would no longer exist regarding some property owners paying for improvements and others receiving the improvements without charge, since all property owners would pay the annual fee.

Disadvantages:

- Establishment of a fee program would require significant effort, including a public education and communication program.
- The billing process could possibly be handled through Public Utilities; however, this would increase **the volume of accounting transactions handled by this department.**
- City ordinance revisions would need to be developed, reviewed, and passed.
- Property owner resistance may be encountered regarding increased costs for City services.

Summary

The replacement of defective public way sidewalk is a major concern in cities all across the United States, especially in light of the recent Supreme Court decision that states city sidewalks are subject to Title II of the Americans with Disabilities Act. Concrete replacement is being addressed in a variety of ways. Some cities have accepted complete responsibility for replacement of defective public way concrete; whereas, other cities place the entire burden on the adjacent private property owner. In general, those cities accepting responsibility for concrete replacement generate funding through taxation or fees, and cities placing the responsibility on the adjacent private property owner have established programs similar to our CIP special improvement districts (SID) or the Streets Division's 50/50 concrete replacement program. Concrete replacement through an SID is restricted to the legally defined district, making it difficult to expeditiously respond to ADA sidewalk repair requests outside of the district. Also, property owners have the right to protest the creation of an SID, which means some areas of the City may never receive needed public way concrete replacement. Since the Streets Division's 50/50 program is voluntary, property owners can simply ignore their civic responsibility to replace defective public way concrete adjacent to their private property. In light of liability issues that may exist regarding defective concrete in the public way, programs that generate ongoing revenue should be of most interest in our effort to determine the best option for Salt Lake City. Denver has established a program that assesses property owners an annual sidewalk replacement fee based on the square feet of public way concrete adjacent to their property. This approach has provided a viable program, supported by a dedicated revenue source, resulting in a safer sidewalk network and decreased liability regarding defective concrete in the public way.

Defective public way sidewalk in Salt Lake City is a significant concern, requiring further evaluation to determine a prudent and effective course of action. Approximately \$15,690,000 worth of defective sidewalk exists in the City. The present rate of expenditure is not adequate to keep up with the rate of public way sidewalk deterioration, especially in the CDBG eligible areas of the City. A public way concrete management program should be established to address the current backlog and facilitate ongoing maintenance of this valuable City asset. Revision of the existing sidewalk repair and replacement program would of course involve changes to existing City ordinances that address public way concrete. The development and maintenance of a functional, safe, and accessible public way sidewalk network will provide a great benefit to residents, businesses, and visitors to Salt Lake City.

APPENDICES

Appendix No. 1:
Public Way Concrete Construction Needs

Appendix No. 2:
Settlement of Sacramento Sidewalk Lawsuit (Barden v. Sacramento)

APPENDIX NO. 1

Defective Public Way Concrete Construction Needs

Table 1: Public Way Sidewalk Construction Need

CATEGORY	SQUARE FEET	VALUE
EXISTING SIDEWALK	20,000,000	\$120,000,000
DEFECTIVE SIDEWALK		
Not Tree Root Related	1,868,000	\$11,208,000
Tree Root Related	487,000	\$ 2,922,000
Sidewalk Beautification Areas	39,000	\$ 1,560,000
TOTAL DEFECTIVE SIDEWALK	2,394,000	\$15,690,000
“NO SIDEWALK” LOCATIONS	1,623,000	\$ 11,361,000
TOTAL SIDEWALK NEED	4,017,000	\$ 27,051,000

NOTE: Values are based on \$6.00 / SF for Tree Root and Not Tree Root related, \$40.00 / SF for Beautification Areas, and \$7.00 / SF for “No Sidewalk” Locations. Existing Sidewalk is a GIS approximation.

Table 2: Public Way Curb and Gutter Construction Need

CATEGORY	LINEAL FEET	VALUE
EXISTING CURB & GUTTER	4,750,000	\$133,000,000
DEFECTIVE CURB & GUTTER	713,000	\$19,964,000
“NO CURB & GUTTER” LOCATION	1,109,000	\$ 33,270,000
TOTAL CURB & GUTTER NEED	1,214,400	\$ 53,234,000

NOTE: Defective curb and gutter figures do not include additional concrete replacement that may be necessary to resolve drainage issues. Curb and gutter values are based on \$28.00 / LF for existing and replacement, and \$30 for “No Curb and Gutter”.

Table 3: Public Way Drive Approach Construction Need

CATEGORY	SQUARE FEET	VALUE
EXISTING DRIVE APPROACHES	7,680,000	\$ 69,120,000
DEFECTIVE DRIVE APPROACHES	478,000	\$4,302,000

NOTE: Drive approach values are based on \$9.00 / SF.

Table 4: Public Way Accessibility Ramp Construction Need

CATEGORY	RAMPS	VALUE
EXISTING ACCESSIBILITY RAMPS	10,000	\$25,000,000
LOCATIONS NEEDING RAMPS	5,200	\$13,000,000

NOTE: Accessibility ramp values are based on \$2500 / ramp.

APPENDIX NO. 2

Settlement on Sacramento Sidewalk Lawsuit (Barden v. Sacramento)

United States Supreme Court denies the petition for a writ of certiorari – City of Sacramento v. Joan Barden, et al. (See complete US Supreme Court statement of petition denial at the following website: <http://www.usdoj.gov/osg/briefs/2002/2pet/6invt/2002-0815.pet.ami.inv.pdf>)

Reprint of Article Published in the Sacramento Bee, June 25, 2003

DISABLED, CITY SETTLE SIDEWALK LAWSUIT Sacramento agrees to set funding and not push case to high court

By Terri Hardy – Bee Staff Writer
Published 2:15 a.m. PDT Wednesday, June 25, 2003

Ending a bitter four-year legal battle, city officials and an attorney for disabled activists have reached an agreement on a lawsuit over sidewalk accessibility, they announced Tuesday.

The tentative settlement calls for the city of Sacramento to drop its push to have the U. S. Supreme Court hear the case. In return, the city must dedicate 20 percent of designated transportation funds for the next 30 years to improve sidewalks, crosswalks and curb ramps.

The Sacramento City Council unanimously approved the details in concept Tuesday. To be officially settled, the agreement must be approved in federal court.

The apparent end to the rancorous lawsuit was hailed by city officials and the attorney representing the disabled residents.

Some activists, however, said they were worried about whether the city would follow through with the settlement and if there would be enough money for planned improvements.

City Councilman Dave Jones said settling was the right thing to do and an important step in mending relations with the disabled community.

"There's been a lot of frustration in the community about whether the city is listening to their concerns," Jones said. "My hope is that our decision to settle this case and get about the business of making our city accessible will repair the lines of communications."

In a written comment, Mayor Heather Fargo said she was optimistic the case would be settled.

"I believe these negotiations continue to foster our relationship with the disabled community and the city's ADA Advisory Commission to ensure prioritizations of dollars and resources," she said.

Melissa Kasnitz, an attorney for the disabled residents who brought the case, said she was pleased with Tuesday's agreement.

"It's been a long road, but we've now ended up in a place where both the disabled community and the city will be well-served," she said.

Disabled Sacramento residents sued the city in 1999, saying it was failing to comply with the federal Americans with Disabilities Act and must make all sidewalks accessible.

The city's attorney fought the case, claiming it was not responsible for the sidewalks and that fixing them would be an undue financial burden.

After losing an earlier legal round, the city agreed to install 1,500 curb ramps annually to make sidewalks more accessible, spending \$11.5 million over the past three years.

In November, the City Council urged the city attorney to settle the case, but negotiations were slowed over plaintiff's attorney fees. As part of the settlement, the city will pay as much as \$795,000 toward those costs, as well as \$10,000 to each of the eight named plaintiffs.

Warren Cushman, president of the local chapter of Californians for Disability Rights, was relieved to see a settlement. Some from the disabled community were concerned that if the case went before the U.S. Supreme Court, the court might pare down the ADA law.

"Given the direction of the court over the past few years, we had a legitimate fear that the case would be used to overturn a plank of the ADA," Cushman said. "We didn't want Sacramento to be the cornerstone in that."

Some activists also were concerned that the agreement set no minimums for funding each year. Cushman was concerned at the funding sources targeted – the gasoline tax and Measure A funds, a half-cent sales tax approved by voters for transportation projects.

Cushman, who sits on the Sacramento Transportation Authority's Measure A Steering Committee, said the funds will stop coming in 2008 unless voters give their approval to continue them – something far from certain.

The settlement also calls for monitoring of the city's efforts and requires Sacramento's ADA Advisory Commission to make recommendations on planned projects.

Ron Brown, the chairman of the commission, said he's pleased with his group's larger role. He believes the settlement makes it clear that the city is committed to providing access to the disabled.

"The city never tried to ignore disabled issues, it's just something that happened," Brown said.

"I'm hoping the city's efforts to mitigate the situation will be seen as a positive step toward resolving some of these issues that have been building for quite some time," he said.