

PROPOSED BALLOT LANGUAGE:

Shall the voters of the City and County of Denver adopt an ordinance to create a sidewalk master plan and to implement a sustainable program for the construction, reconstruction, and ongoing repairs of sidewalks citywide; to fund the program by charging a fee to property owners; to create a sidewalk enterprise within the definition of Section 20, Article X, of the Colorado Constitution, with the authority to issue revenue bonds payable solely from the fees collected under this program and without further voter approval; and to remove the adjacent property owner's current responsibility for sidewalk repair and reconstruction and place such responsibility on the City.

PROPOSED ORDINANCE LANGUAGE:

Be it enacted by the City and County of Denver:

Section 1. Article VI (Sidewalks, Curbs, Gutters and Driveways) of Chapter 49 (Streets, Sidewalks and Other Public Ways) of the Revised Municipal Code is amended by the addition of new Division 5 to read as follows:

DIVISION 5. – SIDEWALK PROGRAM AND SIDEWALK FUND

Sec. 49-145. General provisions.

(a) Sidewalks are basic infrastructure critical to creating and maintaining an equitable and vibrant city. Sidewalks are necessary to guarantee everyone, including parents, children, and people with disabilities, has the independence to move about the city freely and safely. However, many places in the city do not have sidewalks or have sidewalks that are narrow, in disrepair, and/or do not comply with legally mandated accessibility standards. Presently existing sidewalks require frequent reconstruction and repair.

(b) Historically, each owner of a lot or parcel of real property within the city was responsible for the construction, reconstruction and repair of the sidewalk on their real property. To create a comprehensive, integrated, and accessible sidewalk network, while also reducing the burden on individual real property owners to construct, reconstruct, and repair sidewalks, this division promulgates and sets forth an annual sidewalk service charge to be paid by real property owners, the revenues from which shall be dedicated to sidewalk construction, reconstruction and repair by the city. This division further removes individual real property owners' responsibility for sidewalk construction, reconstruction and repair. Just as real property owners' former responsibility for sidewalk construction, reconstruction and repair was proportionate to the length of sidewalk adjoining their property, real property owners should pay a sidewalk service charge proportionate to the length of sidewalk adjoining their property. Additionally, each owner of a lot or parcel of real property within the city to the extent it makes use of, and is served by, sidewalks, should pay for the use and availability of use of sidewalks.

(c) The revenue from the sidewalk service charge promulgated and set forth in this division is required, and shall be used, solely for sidewalk construction, reconstruction and repair purposes, including financing, administrative, and other costs related to the implementation of the sidewalk construction, reconstruction and repair program.

(d) In addition to the above-stated general purposes, this division is enacted for the following specific purposes:

- (1) To promote the general public health, safety and welfare by assuring that sidewalks are accessible and safely maintained for all sidewalk users.
- (2) To provide for the establishment of a sidewalk master plan and maintenance program for effectively identifying sidewalks in need of construction, reconstruction and repair and developing a comprehensive program for sidewalk construction, reconstruction and repair.
- (3) To establish a reasonable sidewalk service charge for construction, reconstruction and repair of sidewalks computed on a basis of the use made of, and the need for, and the service provided by, sidewalks in the city.

Sec. 49-146. Sidewalk master plan.

(a) The manager of transportation and infrastructure shall, as soon as is practicable, formulate and develop a plan to be known as the sidewalk master plan of the city. The sidewalk master plan shall set forth the location, width and state of repair of all sidewalks within the city, as well as the location of all lots and parcels of real property in the city where there are currently no sidewalks.

(b) The sidewalk master plan shall set forth a near-term strategy for implementation of the initial capital investment plan described in subsection 49-146(c), as well as a long-term strategy for a continuing program of maintenance, repair, and/or reconstruction of city sidewalks as needed and over time. These strategies shall initially prioritize sidewalk construction, reconstruction and, repair based on the prioritization tiers assigned in the 2019 Denver Moves: Pedestrians & Trails Plan, or similar plan that prioritizes sidewalk construction, reconstruction and repair to maximize pedestrian safety, transit access, and access to other high-priority destinations such as schools, parks, grocery stores, and health care centers. The sidewalk master plan shall require sidewalks to be constructed, reconstructed and repaired to the minimum standard sidewalk widths identified in the city's Complete Streets Guidelines for the type of street on which the sidewalk is located, unless the manager of transportation and infrastructure determines doing so is not reasonable or feasible.

(c) The manager of transportation and infrastructure shall include in the sidewalk master plan an initial capital investment plan that is to be fully implemented within nine years of the effective date of this section. The initial capital investment plan shall include, at a minimum, the construction of sidewalks on city property adjoining all parcels where no sidewalks currently exist, the upgrade or reconstruction of all existing sidewalks that do not meet the minimum standard sidewalk widths identified above, and the repair or reconstruction of all existing

sidewalks that are in severe disrepair or do not comply with legally mandated accessibility standards as determined by the manager of transportation and infrastructure.

(d) The sidewalk master plan shall include strategies for, and the manager of transportation and infrastructure may make such additional studies as may be necessary for, ensuring the efficiency and creation of functional sidewalk networks, including by consolidating new construction, upgrades and repairs geographically. The sidewalk master plan shall also consider and direct the implementation of strategies to preserve flagstone sidewalks where the existing materials are substantially intact and it is possible to do so while still satisfying sidewalk master plan priorities.

(e) The sidewalk master plan shall be updated in no less frequent intervals than five (5) years, including new improvements and developing problem areas and shall be submitted to the transportation and infrastructure advisory board and city council for their review.

(f) Prior to preparing the annual budget, the manager of transportation and infrastructure shall prepare an annual report and action plan detailing progress made in the prior year toward the goals of the sidewalk master plan, progress made in the implementation of the initial capital investment plan, and a detailed plan for proposed sidewalk construction, repair, and reconstruction to be undertaken in the next year. The annual report and action plan shall be provided for public comment and submitted to the transportation and infrastructure advisory board for its review and approval.

Sec. 49-147. Sidewalk construction, reconstruction and repair service charge.

(a) There is hereby imposed on each and every lot or parcel of land within the city, and the owners thereof, a sidewalk construction, reconstruction and repair service charge (referred to in this division as the “sidewalk service charge”). This charge is deemed reasonable and is necessary to pay for (1) the maintenance, improvement and replacement of existing city sidewalks on the public right-of-way, and (2) the construction, maintenance, improvement and replacement of future city sidewalks on the public right-of-way. All of the proceeds of the sidewalk service charge are deemed to be in payment for use, construction, reconstruction, and repair of city sidewalks by the real property on, and with respect to, which the charge is imposed, and the owners thereof. Real property owned by the city pursuant to the Charter authority of the department of aviation shall not be subject to payment of such sidewalk service charge for so long as the department of aviation performs all necessary and appropriate maintenance, repair, replacement and future construction relating to sidewalks located on such real property.

(b) (1) The sidewalk service charge shall be payable in advance, twice annually or at some other billing frequency that the manager of transportation and infrastructure shall determine is necessary and appropriate, and shall be paid to the city, as billed by the city, by the owner or owners of each and every lot or parcel of real property located within the political jurisdiction of the city and shall be computed by first determining the linear footage of the property frontage for the lot or parcel of real property as set forth in subsection (c) of this section; second, identifying the street type on which the lot or parcel of real property is located as set forth in subsection (d) of this section; and third, multiplying the sidewalk service charge per linear foot for the assigned

street type as set forth in section 49-148 by the linear footage of the property frontage for the lot or parcel of real property.

(2) For property owners who are not billed on a twice annual basis, charges under subsection (b)(1) of this section shall be prorated for each billing period.

(3) For a lot or parcel of real property located on two or more street types, the computation described in subsection (b)(1) of this section shall be performed separately for each portion of the lot or parcel on a different street type, and the resulting numbers summed to determine the total sidewalk service charge for the lot or parcel.

(c) The manager of transportation and infrastructure shall determine the linear footage of the property frontage for the lot or parcel of real property by any of the following methods:

(1) On-site measurements of the linear footage of the property frontage for the lot or parcel of real property made by the city or on its behalf;

(2) Computation of the linear footage of the property frontage for the lot or parcel of real property using the dimensions of the property frontage for the lot or parcel of real property which are set forth and contained in the records of the office of the assessor of the city; or

(3) Estimation, calculation and computation of the property frontage using aerial photography, photogrammetry, or equivalent technology.

(d) The manager of transportation and infrastructure shall identify the street type on which the lot or parcel of real property is located based on the Blueprint Denver future street typology, or such other comprehensive street typology as the city may subsequently create and on which the manager of transportation and infrastructure may choose to rely for purposes of this section.

Sec. 49-148. Sidewalk service charge per linear foot.

(a) Except as otherwise provided in this section, the sidewalk service charge per linear foot per twelve-month period for each street type is fixed as follows:

Street Type	Annual fee per linear foot of property frontage
Commercial Arterial	\$3.58
Commercial Collector	\$2.15
Downtown Arterial	\$4.30
Downtown Collector	\$4.30
Industrial Arterial	\$3.58
Industrial Collector	\$2.15
Main Street Arterial	\$4.30
Main Street Collector	\$4.30
Mixed Use Arterial	\$3.58
Mixed Use Collector	\$3.58
Residential Arterial	\$3.58
Residential Collector	\$2.15
Local or Undesignated	\$2.15

(b) Public health, safety, and welfare are furthered by ensuring that impacts to residents and businesses of neighborhoods experiencing significant change are mitigated to preserve the culture and character of these neighborhoods by helping provide residents and businesses opportunities to remain in place. In furtherance of this purpose, the annual fee per linear foot of property frontage set forth in subsection (a) of this section shall be discounted by 20% for real property located in neighborhoods identified through the city's Neighborhood Equity & Stabilization (NEST) program. If using the city's NEST program to identify neighborhoods in which the annual fee per linear foot of property frontage should be discounted becomes infeasible, the manager of transportation and infrastructure may direct that these neighborhoods be identified through alternate means.

(c) Starting in the fifth (5th) year after the year in which the sidewalk service charge is first collected, and every fifth (5) year thereafter, the current rates of charge (per linear foot of property frontage) shall be adjusted based on the percentage change from the date of the previous adjustment (or in the case of the first period, from the date of initial imposition of the charge) in the CPI-U as that term is defined in subsection 56-92(13.5). The percentage change to be applied to the rates shall be calculated as set forth in subsection 56-93(d).

Sec. 49-149. Administrative review and court proceedings.

(a) Any person who disputes the amount of any charge or rate of charge made against that person's property may request a revision or modification to such charge or rate of charge from the agency or division of the department of transportation and infrastructure assessing such charge. Such request shall be made in writing not later than one (1) year after having been billed for any such charge. Said agency or division shall issue a written determination granting or denying such request, in whole or in part, which determination may be appealed pursuant to the remaining provisions of this section.

(b) Any person who disputes any determination made by or on behalf of the city pursuant to and by authority of the manager of transportation and infrastructure, which determination adversely affects such person, may petition the manager of transportation and infrastructure for a hearing concerning such determination no later than thirty (30) days after having been notified of any such determination.

(c) The manager of transportation and infrastructure may hold such hearing or, in the manager of transportation and infrastructure's sole discretion, may designate an officer or employee of the department of transportation and infrastructure as a hearing officer with authority to hold such hearing or such hearings.

(d) Such petition shall be in writing and the facts and figures submitted shall be submitted under oath or affirmation either in writing or orally at a hearing scheduled by the manager of transportation and infrastructure or the hearing officer. The hearing, if any, shall take place in the city and notice thereof and the proceedings shall otherwise be in accordance with rules and regulations issued by the manager of transportation and infrastructure. The petitioner shall bear the risk of non persuasion, and the standard of proof shall conform with that in civil, non jury cases in state district court.

(e) Thereupon, the manager of transportation and infrastructure or the manager of transportation and infrastructure's designee shall make a final determination. Such final determination shall be considered a final order of the manager of transportation and infrastructure and may be reviewed under rule 106(a)(4) of the state rules of civil procedure.

(f) The district court of the second judicial district of the state shall have original jurisdiction in proceedings to review all questions of law and fact determined by the manager of transportation and infrastructure by order or writ under rule 106(a)(4) of the state rules of civil procedure.

Sec. 49-150. Administration of division by manager of transportation and infrastructure.

The administration of this division is hereby vested in and shall be exercised by the manager of the department of transportation and infrastructure who may, in accordance with article VI of chapter 2, prescribe forms and rules and regulations in conformity with this division for the ascertainment, computation and collection of the fees and charges imposed hereunder, and for the proper administration and enforcement hereof. The manager of transportation and infrastructure may delegate the administration of this division, or any part thereof, subject to the limitations of the Charter and this Code, to duly qualified deputies and agents of the manager of transportation and infrastructure.

Sec. 49-151. Notice

Every decision or determination of the manager of transportation and infrastructure shall be in writing and notice thereof shall be mailed to or served upon the petitioner within a reasonable time from the date of the manager's action, and all such determinations, orders and decisions shall become final upon the expiration of thirty (30) days after notice of such determination or decision shall have been mailed to or personally served upon the petitioner, unless proceedings are begun within the time for review thereof as herein provided. Service by certified mail, return receipt requested, shall be conclusive evidence of service for the purpose of this division.

Sec. 49-152. Fiscal matters and Sidewalks Fund.

(a) All fees and charges paid and collected pursuant to this division shall be segregated, credited and deposited in a special fund or funds (to be referred to as the "Sidewalks Fund"), and shall not be transferred therefrom to any other account of the city, except to pay for expenses directly attributable to the construction, reconstruction and repair of sidewalks, including costs to administer the construction, reconstruction and repair of sidewalks and the requirements of this division.

(b) The fees and charges paid and collected by virtue of this division shall not be used for general or other governmental or proprietary purposes of the city, except to pay for the equitable share of the costs of accounting, management, and government thereof. Instead, the fees and charges shall be used other than as described above, solely to pay for the costs of the construction, repair, maintenance, improvement, renewal, replacement and reconstruction of sidewalks within the city and costs incidental thereto.

(c) The fees and charges paid and collected by virtue of this division shall not be used for landscaping (except as needed to restore landscaping disturbed as part of construction), street furniture, structures, roadways, curb and gutter modifications (except as required incidental to construction or widening of a sidewalk), or snow removal.

(d) The city may pledge all fees and charges collected under this division, including those anticipated to be collected, to the payment of principal, interest and other amounts due on any revenue bond, note, certificate, contract, or other obligation issued or entered into for financing the design, construction, construction inspection, reconstruction, improvement, replacement and installation of improvements under this section and the acquisition of interests in land.

(e) The annual budget of the department of transportation and infrastructure shall include a proposed budget for the construction, reconstruction and repair of sidewalks for the ensuing budget year. There shall also be included in the comprehensive annual financial report of the City a statement of all amounts presently in the sidewalks fund, and an estimate of anticipated revenues for the ensuing budget year.

Sec. 49-153. Billing and collection of charges.

(a) The sidewalk service charge shall be billed and collected from owners of property directly by the manager of transportation and infrastructure. While bills for the sidewalk service charge may be sent to the address of the lot or parcel of real property directed to “owner or occupant,” the obligation to pay promptly the sidewalk service charges is in no way affected by the failure of the city to furnish or send a bill or of the owner or occupant of the premises served to receive a bill for such services. Bills and notices are sent solely as a convenience to the users.

(b) Where possible, the sidewalk service charge shall be billed and collected with the storm drainage service charge established in Division 4 of Article III of Chapter 56 of the Revised Municipal Code.

(c) If any owner or owners of any lot, parcel of land or any real property within the legal boundaries of the city shall neglect, fail or refuse to pay the charges or fees fixed by this division, the rates, charges or fees due therefor may, by the manager of transportation and infrastructure, be periodically certified to the manager of finance who shall record a notice of such lien with the clerk and recorder. Such rates, charges or fees due therefor shall become, from and after the date of such recording of the notice in the office of the clerk and recorder, a continuing lien upon the real property so charged. The manager of finance shall assess and charge the amounts of the charges or fees due against the property involved, and collect the same, plus interest thereon, in the manner as are delinquent real property taxes. The lien created hereby shall be superior and prior to all other liens, regardless of their dates of recordation, except liens for general taxes and special assessments. In addition to the remedies set forth herein, an action or other process provided by law may be maintained by the city to recover or collect any amounts, including interest, owing under this provision. Provided however, that when the failure to pay such rates, charges or fees due is the result of incorrect billing by the manager of transportation and infrastructure, the owner shall only be billed, with the related certification and notice, if any, for not more than two (2) years prior to the mailing of a corrected billing.

(d) Any property owner may apply for deferral of payment of fees until transfer of ownership to another person. All back fees, plus interest thereon, shall become due and payable with transfer of ownership. Applications may be submitted to and program eligibility will be determined by the manager of transportation and infrastructure, according to Federal standards including various factors such as age, disability, income level, and the assets of the property owner. Application for deferral can be made at any time.

Sec. 49-154. Liability.

(a) This division does not create a liability on the part of, or cause of action against, the city or any officer or employee thereof for any condition of any sidewalk or any lot or parcel of real property that does not have a sidewalk, or any inaction on the part of the city or any officer or employee therefor, nor does this division waive or otherwise alter the city's governmental immunity under the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S.

(b) An adjacent property owner shall have no responsibility to construct, reconstruct and repair sidewalks but shall be responsible for other sidewalk maintenance including removal of snow or other obstructions from the sidewalk. Nothing in this division shall be construed to alter a property owner's liability for any removal, modification, or obstruction of the sidewalk, nor does this division represent any indemnification of a property owner by the city for any claim related to a sidewalk that fronts the property owner's lot or parcel of real property, nor does this section purport to reduce the need or the necessity for obtaining property insurance.

(c) Nothing in this section shall limit the authority of the manager of transportation and infrastructure to require the owner of a land area to be developed or redeveloped to provide sidewalks in accordance with section 49-84(b), DRMC.

Sec. 49-155. Violations; evasion of collection or payment.

It shall be a violation of this division for any person to fail or refuse to make payment to the manager of transportation and infrastructure of any fees or charges due the city, or in any manner to evade the collection and payment to such fees and charges, or any part or parts thereof, imposed by this division or for any person to fail or refuse to pay such fees or charges or evade the payment thereof, or to aid or abet another in any attempt to evade the payments of the fees and charges imposed by this division.

Section 2. Sections 49-116 through 49-120, 49-122, 49-131(a), and 49-132 through 49-134 of the Revised Municipal Code are repealed.

Section 3. Subsection 20-17(b) of the Revised Municipal Code is amended by deleting the language stricken and adding the language underlined to read as follows:

(b) The following sections, divisions, agencies, funds or departments of the city are designated as "subsection (2)(d) enterprises" within the definition of Section 20, Article X, of the Colorado Constitution:

- (1) Wastewater management division of the department of transportation and infrastructure;
- (2) The department of aviation in all operations, maintenance and improvements of the Denver Municipal Airport System;
- (3) Environmental services, an agency of the department of public health and environment;
- (4) Winter Park parks and recreation capital fund and Winter Park trust for parks and recreation, funds for projects of the department of parks and recreation; ~~and~~
- (5) Golf enterprise fund for golf projects of the department of parks and recreation-; and
- (6) Sidewalk fund for construction, reconstruction and repair of sidewalks by the department of transportation and infrastructure.