



# MONTANA MUNICIPAL INTERLOCAL AUTHORITY

PO Box 6669

Helena, MT 59604-6669

## RISK MANAGEMENT BULLETIN

Please distribute to all appropriate personnel and post in a conspicuous place.

**Date:** June 13, 2023

**RM Bulletin #05-23**

**To:** MMIA Member-Owners

**From:** MMIA Risk Management

**RE:** Sidewalks

### Sidewalk...

*“The portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for use by pedestrians.”*

The definition does not distinguish between hard surface walkways, as typically required by local construction standards, and long-standing use of dirt and grass pathways located on adjacent property from the street. Sidewalks are vital to each community’s infrastructure. They are intended to facilitate safe foot travel for businesspeople, homeowners, tourists, school kids, and community members. They connect pedestrians with designated crossing locations for streets, bridges, and busy intersections. They also facilitate safe travel for bicycle travel.



#### Why is sidewalk condition so important?

The condition of sidewalks change over time. Being exposed to extreme heat, cold, impacts by plows, tree roots, ground settling, frost heaves, and erosion can deteriorate sidewalks. The results can be broken or cracked surfaces, sunken or raised surfaces, pitting, separated sections, missing portions, or even grass growing over the concrete. Without regular inspection and maintenance plans, sidewalk conditions worsen, and the underlying causes can go undetected. Proactive inspection and repair of sidewalks, parking lots, and other walkways can reduce the risk of a slip, trip, and fall incidents.

While many of us still have the physical strength and agility to negotiate all types of sidewalk hazards, others may no longer have that ability. Those having to rely upon canes, crutches,

walkers, wheelchairs, or mobility aids commonly used by the visually impaired to identify and negotiate hazards bare a greater risk of injury. Being able to lift a foot to negotiate the typical trip and fall hazard becomes a challenge. For some, shuffling has become the method of walking.



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Equally important as improving pedestrian safety and eliminating the liability risk of injury is the need for ADA Compliance. This plays a significant role in sidewalk accessibility for all members of society. While the construction planning process, be sure to consider any necessary ADA requirements when replacing, repairing, and building new sidewalks. Lawsuits for non-ADA Compliant sidewalks appear to be on the rise countrywide. Millions of people visit Montana each year. ADA Compliance should be a serious consideration in any repair, upgrade, and new construction projects.



### **Rules of the Sidewalk**

Sometimes neighboring property owners are unaware of or have forgotten their responsibility for sidewalks adjacent to their property. Montana Statute has given municipalities the ability to enact ordinances to address sidewalk maintenance and repair responsibilities as noted in **MCA 7-14-4105, MCA 7-14-4109, MCA 7-14-4110, MCA 7-14-4122**. Even “goat paths”, “dirt paths”, and similarly worn tracks of landscape being used in a sidewalk manner within the City’s right-of-way are subject to liability, maintenance, & repair laws. In these cases, the municipality has a duty of care to maintain the path along with the property owner.

### **Inspection and Repair Planning**

Regularly inspected sidewalks and walkways ensure a proactive approach to identifying problem areas and implementing repairs as quickly as possible. Retain your inspection findings and repair records in the event an injury occurs on a sidewalk. Lastly, don’t forget to save any correspondence with property owners and save all records.

### General recommendations:

1. Perform inspections annually. The beginning of the Spring thaw period is a good time to perform the annual inspection.
2. Inspect high-traffic areas every other month.
3. Municipal sidewalks in or associated with parks, parking lots, or adjacent to municipal buildings should be included in this plan.
4. Develop an internal process that will respond to complaints and incidents involving sidewalk conditions.
5. Consider the sidewalk safety items below to assist in your sidewalk inspections.
  - A. Vertical displacement of sidewalk sections.
  - B. Cracks or gaps.



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- C. Single or multiple cracks in a single sidewalk section.
- D. If a substantial portion of a sidewalk section has spalling or chipping.
- E. Chunks of loose concrete or slabs that move or wobble.
- F. Utility plugs, valves, bolts, or other objects that protrude from the sidewalk surface.
- G. Unsecured utility covers, grates, and manholes.
- H. Tree limbs, bushes or other plants posing an obstruction into or hanging over the sidewalk.
- I. Rocks, sand, dirt, or other debris accumulating on the sidewalk.
- J. Areas of ponding water on sidewalk.
- K. Roots protruding from sidewalk or dislodging the sidewalk slab.
- L. Are curb cuts in good condition with an even transition to sidewalks for ADA Compliance?
- M. Is the ground surface directly next to sidewalks relatively level and free from hidden drop-offs or holes?
- N. Are downspouts and drains positioned to discharge away from walkways?
- O. Goat paths & dirt paths inventoried and considered for formal construction?
- P. Consider the removal of trees with root systems impacting sidewalks. Work with municipal Forestry Dept. if applicable.

### **Costs of Construction and Repair**

While many ordinances place the full financial burden of sidewalk repairs and installation upon the adjacent property owner, some municipalities have shown flexibility in addressing the unexpected costs for the property owner. When possible, municipalities have used tools such as Financing Plans and Cost Sharing Programs when costly repairs must be made.

### **Court Cases Links**

The following court decisions provide details on how sidewalks, goat paths, and dirt trail liability have evolved since the mid-1990s.

[Corvallis School Case](#)

[Dobrocke Case](#)