



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: April 26, 2017

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Jamie Wolfe, *JW* Chairperson
State Council for Persons with Disabilities

RE: H.B. 83 (DeDOT Right of Way Maintenance)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 90, which clarifies a county government authority to enact and enforce an ordinance affecting an area within a right of way and consistent with state code. Specifically, it enables a county government to enact an ordinance that concerns the maintenance of sidewalks in residential subdivisions.

Under current law, the responsibility over many public roads and rights of way is under the "absolute care, management and control of the Department and shall be maintained, repaired and reconstructed by the Department". See lines 7-9 and 51-57. This "absolute" standard disallows counties from enforcing normal maintenance standards designed to facilitate travel.

Consider the following New Castle County examples.

1. Consistent with the attached NCC Property Maintenance Violations overview, bushes, fences, and low tree limbs are not allowed to encroach on a sidewalk.
2. Consistent with the attached NCC Ordinance 302.8.5.3, oversized recreational vehicles and boats can only be parked in the side or rear yard of properties under 2 acres. Otherwise, they would often block a sidewalk if parked in the main driveway.
3. Consistent with the attached NCC Ordinance 4.02.003, dog and cat owners must remove feces deposited by their animals on sidewalks within 1 hour of "deposit".

Persons with disabilities with mobility impairments are disproportionately affected by violations of any of the above standards. Individuals reliant on wheelchairs, canes, or assistive technology cannot simply divert their travel onto a lawn or over a curb. They can typically invoke a consumer-friendly County complaint system to promptly resolve right of way issues violating County standards. Consistent with the attached NCC “Code Enforcement” overview, a Code Inspector responds to complaints and property owners are given 12 days to self-correct prior to issuance of a ticket.

Unfortunately, this standard complaint option is not available if the violation is occurring in a DelDOT right of way. For example, it was observed that a portable basketball hoop system was placed for months in a residential curb cut a few years ago in a suburban development. The complaint was submitted to the County but was referred to DelDOT for enforcement since the sidewalk was deemed within DelDOT’s jurisdiction. Although DelDOT did resolve the issue, it would have been easier and quicker to use the County complaint system.

H.B. No. 83 would authorize, but not require, counties to adopt and enforce maintenance ordinances in DelDOT rights of way. From a public policy standpoint, there are at least three (3) advantages to approving this authorization.

First, it would facilitate travel by persons with disabilities who could invoke the normal, streamlined county code enforcement system.

Second, it may obviate duplication of government services. In many cases the problem in the right of way may be the “tip of the iceberg”. For example, an abandoned property may present several Code violations (high weeds; unsafe conditions; standing water) which are already being addressed by the County. Requiring DelDOT to separately and independently address sidewalk issues is not cost-effective.

Third, county enforcement may save the State money. Consistent with the attached January 16, 2014 News Journal article, DelDOT spent \$260,000 to remove snow from sidewalks in one month. If a county ordinance required at least some property owners to remove snow, the State’s responsibility would be reduced.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 83 deldot right of way maintenance 4-24-17

Property Maintenance Violations

Inspecting for Code Violations

New Castle County's code inspectors respond to complaints regarding potential code violations by inspecting the property. Violations that constitute a significant safety hazard - such as an old refrigerator without the doors removed that is sitting out of doors - are followed by a directive to correct immediately.

A Violation Could Mean a Ticket

Property maintenance violations could mean a \$50 ticket for each violation. Upon receiving a complaint, Code Enforcement will perform an inspection. Code Enforcement will send a letter to the property owner listing violations found and give them several days (generally 12) to correct the violations. If the violation still exists when the property is again inspected, a ticket will be issued. If the violation is still not corrected, additional tickets may be issued until it is fixed.

Most Common Violations In Residential Areas

- **Overgrown grass and weeds:** Grass must be maintained at a height of eight inches or less.
- **Structures in disrepair:** Doors, windows, roofing, as well as accessory structures such as sheds and fences, must be maintained in good repair.
- **Vehicles:** Motor vehicles and trailers on your property must be operable and have up-to-date registration. Vehicles, including boats and boat trailers, must be on a hardened surface.
- **Debris and junk:** The yard should be free of debris, miscellaneous junk, branches, etc. Appliances and bulk items such as stoves, refrigerators, furniture and tires, are considered debris and must not be left out on the property.
- **Trash:** Trash and garbage awaiting pick up should be stored in lidded containers at all times.
- * **Animal feces:** Should not be allowed to accumulate. Droppings should be cleaned up daily. Enforced through the police, pet owners are responsible for cleaning up feces deposited by their pets on others' properties within one hour.
- **Swimming pools:** All pools capable of holding more than two feet of water (including above-ground pools) require a building permit. All pools must meet strict requirements including fencing, self-latching gate and, if applicable, electrical standards.
- * **Encroachment on sidewalk:** Bushes, hedges, fences, or tree limbs must not encroach on the sidewalk. No branch should be lower than seven feet over the sidewalk.
- **Vacant homes:** Any home that is vacant must be maintained as if it were occupied. The grass and shrubs


- **Home based businesses:** There are many restrictions on home-based businesses to protect the residential nature of the community. Before beginning a home-based business, check with Land Use regarding the regulations and restrictions. Also, be certain to check your community's deed restrictions.

Section PM 302.8.4. Oversized vehicle parking. Subject to the following exemptions, in any residential zoning district, it shall be unlawful to park, store, or permit to be parked or stored, other than in a fully enclosed permanent building, any vehicle or off-highway vehicle the length of which is greater than two hundred forty (240) inches or the width of which is over eighty four (84) inches or the height of which is over eighty four (84) inches or the weight of which exceeds eight thousand (8,000) pounds. Such vehicles parked or stored in the following situations shall be exempt from this section:

Section PM 302.8.4.1. When such a vehicle is on the property in conjunction with service or work on the property. The vehicle may only remain on the property for the time required to complete such work or service. Examples include, but are not limited to, delivery trucks, utility vans, and moving trucks.

Section PM 302.8.4.2. One oversized vehicle may be parked on a residential lot two (2) acres or larger when a 0.5 opacity buffer, as defined by Chapter 40, is established along the property line(s) adjacent to the vehicle.

Section PM 302.8.4.3. Up to two (2) oversized vehicles may be parked on a residential lot one (1) acre or larger in size, if the property has direct access to a collector or arterial street, the vehicle(s) are parked on a hardened surface constructed of material treated or covered with brick, block, pavers, stone, concrete, asphalt or crushed decorative rock, and the vehicles are completely screened from view of other residentially zoned properties and all streets by a fence, dwelling and/or vegetative buffer.

 *Section PM 302.8.5. Recreational vehicle parking.* Subject to the following exceptions, it shall be unlawful to park or store a recreational vehicle in any residential zoning district, in any street, roadway, or public right-of-way, or in any street yard including within a driveway.

Section PM 302.8.5.1. Temporary Permit. A person visiting a lot owner or occupant may park his or her recreational vehicle on the roadway adjacent to such lot temporarily, not to exceed fourteen (14) days, provided a temporary permit from the New Castle County Police Department is obtained. The temporary permit shall designate the individual to whom the permit is issued, the recreational vehicle to be parked, and the expiration date of the permit. The New Castle County Police Department shall charge a fee to defray the

costs of administering this section. The temporary permit must be displayed on the rearview mirror of the recreational vehicle during the entire period of time it is parked on the roadway.

Section PM 302.8.5.2. Two (2) or more acres. One (1) recreational vehicle may be parked on a residential lot two (2) acres or larger when a 0.5 opacity buffer, as defined by Chapter 40, is established along all property line(s) adjacent to the vehicle.



Section PM 302.8.5.3. Less than two (2) acres. On lots less than two (2) acres in size, one (1) recreational vehicle (or properly stored boat) may be parked in the rear yard or side yard (behind the front setback line) of a residential lot provided that (a) it is stored parallel to and adjacent to the house or a permanent accessory structure; and (b) a suitable evergreen screen is placed around all sides of the vehicle with the exception of the side used for ingress/egress.

Section PM 302.8.6. Parking of vehicles. In any residential zoning district, the parking or storage of any vehicle, recreational vehicle, or off-highway vehicle is prohibited, unless it is parked or stored on a hardened surface constructed of material treated or covered with brick, block, pavers, stone, concrete, asphalt or crushed decorative rock. The surface must completely extend the entire length of the vehicle. This subsection is subject to the following exceptions:

Section PM 302.8.6.1. When such vehicles are parked on land when the gross acreage of the lot exceeds five (5) acres.

Section PM 302.8.6.2. Construction vehicles, provided they are on the lot where active construction is taking place, or on a lot adjacent or part of the development site thereto.

Sec. 4.02.003. - Dog or cat excrement. :

- A. Every owner of or person responsible for one (1) or more dogs or cats shall take all reasonable measures to prevent accumulation of animal excreta in the area in which such animals are customarily kept. No such owner shall allow animal excreta to accumulate so as to create obnoxious or offensive odors. Any person who fails to correct a violation of this subsection within twenty-four (24) hours following receipt of notice of such violation and order by the Office of Complaints or any person who opposes or impedes an officer or authorized agent or employee of the Office of Complaints in the execution of his or her duties under this subsection shall be deemed to have violated this Section.
- B. Any person who is the owner of or who has responsibility for one (1) or more dogs or cats shall immediately remove, in a sanitary manner, any fecal matter deposited by such dog or cat upon any street, *sidewalk* or park or upon any property without the consent of the owner or tenant of such property. It shall not be a violation of this subsection if such fecal matter is removed within one (1) hour. This subsection shall not apply to any person who because of loss or impairment of eyesight is accompanied by a dog described as a Seeing Eye dog or any dog educated by a recognized training agency or school and which is used as a leader or guide.
- C. The complaining party shall file a complaint in a court of competent jurisdiction. Subsection B. shall only be enforced if the complaining party produces a witness to the act that constitutes a violation of this subsection. It is not the intent of this Section to require surveillance by the County Office of Complaints, the Delaware Society for the Prevention of Cruelty to Animals or any other County department or agency.
- D. The County Office of Complaints or the Delaware Society for the Prevention of Cruelty to Animals shall have the authority to enforce subsection A of this section.
- E. Any person violating this Section shall be subject to the penalties as provided in Section 1.01.009.

(Code 1983, § 3A-5; Ord. No. 94-060, § 1, 4-26-1994; Ord. No. 94-148, § 1, 9-13-1994; Code 1995, § 4-28; Ord. No. 10-113,

Code Enforcement

The Laws We Enforce

Code Enforcement:

- Conducts sweeps in troubled neighborhoods
- Inspects randomly-selected rental housing units
- Investigates complaints regarding violations of county zoning, property maintenance, and building codes

Code Enforcement cannot enforce other codes or violations on public streets and other areas.

Enforcement

Upon receiving a complaint, Code Enforcement will perform an inspection. Code Enforcement will send a letter to the property owner listing violations found and give them 12 days to correct the violations. If the violation still exists when the property is again inspected, a ticket will be issued. If the violation is still not corrected, additional tickets may be issued until it is fixed.

The cost of a ticket is \$50 for each violation, although failure to correct the violation could cause the penalty to increase. Tickets may be [paid online](#) or by mail.

Other violations result in the issuance of a violation notice and a time frame for correction of the violation(s). Failure to correct within the time allotted may lead to charges being filed in court.

Contact Us

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Hours

Monday - Friday
8 a.m. - 4 p.m.

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State assumes sidewalk snow clearing duty

By Melissa Nann Burke, The News Journal 6:40 p.m. ET Jan. 16, 2014



(Photo: DELDOT)

The state spent an estimated \$260,000 to remove snow from sidewalks along 70 miles of its roads this month. It would have been more, but the drifts began melting before workers could get to the rest.

The Delaware Department of Transportation started taking on this ambitious and likely costly endeavor this winter as a matter of safety and compliance with the Americans with Disabilities Act, officials say.

"Otherwise, people walk in the roadway and set up circumstances for a tragedy," said Jim Westoff, a DeIDOT spokesman.

ADVERTISING



Replay

People who use the sidewalks in cities and towns – hubs for transit and pedestrian traffic – likely won't see a difference, as those footpaths are excluded from the program.

"The things we were not going to do are those sidewalks owned or maintained by municipalities; those located in subdivisions, those that are privately owned and those maintained by others or some written obligation," said Brian Urbanek, assistant director of statewide support services

"That leaves you with approximately 238 out of 520 miles of sidewalk located on state-maintained roads that we have an obligation to keep clear of snow and to maintain."

The program had its first run the weekend after a Jan. 2 storm. Over two days, the department deployed contractors up and down U.S. 202, Kirkwood Highway and Del. 4, among other byways.

"It's a yeoman's job. It's not just the snow that fell, but the plowed-up snow they're moving," said state Sen. Greg Lavelle, who saw the contractors at work on Concord Pike.

"Then, by golly, later Sunday and Monday it had all melted. You could see someone scratching their head and saying, 'Why they'd do that?' Then again, I've also seen people walking along Concord Pike because the sidewalks aren't clear."

The contractors were able to clear access to pathways along roughly 70 miles of roads. Some grateful pedestrians jokingly asked if the workers wanted a tip.

Officials say they're still learning what works best.

"If we have a similar event we anticipate a cost savings of 20 to 25 percent, based on the knowledge and experience gained during this [first] event," Urbanek said.

The new emphasis on sidewalks is part of a broader [DeIDOT plan \(https://www.documentcloud.org/documents/1004578-deldot-ada-transition-plan-final-draft-july-2013.html\)](https://www.documentcloud.org/documents/1004578-deldot-ada-transition-plan-final-draft-july-2013.html) to bring the agency into compliance with the ADA. Federal law says that, just like highways and bridges, pedestrian facilities should be kept in operable and working condition for people with disabilities.

Officials said the provision probably doesn't affect transportation departments in other states the way it does in Delaware. DeIDOT is unusual in that it's responsible for most arterial and local roads – many with sidewalks – in addition to highways and expressways.

Transportation Secretary Shellen Bhatt adopted a new [sidewalk policy \(https://www.documentcloud.org/documents/1004605-deldot-sidewalk-maintenance-policy-05-01-13.html\)](https://www.documentcloud.org/documents/1004605-deldot-sidewalk-maintenance-policy-05-01-13.html) in June that calls for snow removal to commence "immediately" after completion of the plowing of local roads.

"It's not just ADA compliance with the law," said John McNeal, coordinator of ADA implementation for DeIDOT, "but the importance that everyone has the opportunity to participate in the community."

Heather Dunigan, a transportation planner with the Wilmington Area Planning Council, said, "It's nice that they're thinking about it, but we'd like to see this investment of DeIDOT's consider those areas we've identified as high-pedestrian areas; transit areas; high-crash intersections for pedestrians; and those near low-income and disabled populations; so they figure out where they need to shovel first."

This winter, contractors will be called out when 4 or more inches of snow accumulates, Urbanek said. Over time, officials will evaluate whether that level of response is sufficient, he said.

Of the 238 miles of sidewalk in the program, the bulk are in New Castle County (208). Twenty miles are in Sussex, and 10 in Kent.

Primary roads will get attention first, followed by secondary sidewalks, prioritized based on the location of transit routes, schools and high densities of elderly and disabled people, according to the policy.

Since DeIDOT doesn't own the necessary equipment, it's relying on outside help, said Mark Alexander, director of maintenance and operations. After calling around to different firms, the agency added nine contractors to an existing emergency-snow removal contract. Officials hope to increase the pool of contractors to 15 to 20 available for on-call sidewalk work.

The contractors are paid hourly, rather than by the mile or the amount of accumulated snow. The depth and consistency of snow can vary greatly along sidewalks due to street plowing, which affects how quickly the work can be done, Alexander said.

"In some areas, there was 18 inches or 2 feet of snow out there, and [contractors] had to go through that. Near a bus stop on Route 4, someone had cleared a private road and dumped it at the end of the sidewalk – several feet high," Alexander said. "In other areas, it was just the natural snow that fell."

Mark Blake of the Greater Hockessin Area Development Association sees an opportunity for workers to milk the hourly contract. He also worries about wasting tax dollars when the drifts are melting by the time the sidewalks are cleared.

"In the winter months, I would dare to venture that the amount of pedestrian foot traffic is sparse, and likely only occurs at the bus stops to the nearest office buildings or shopping centers," Blake said.

Alexander said department inspectors follow behind the crews to ensure production levels and maintain acceptable traffic flows. The agency is continuing to work to prioritize high-pedestrian areas and to determine what type of equipment and crews are most efficient.

"All the road-plowing work we did, and all the subdivision work we did – anyone could look at all that and say, most of that [snow] was gone Monday," Alexander said. "Unfortunately, with any snow-removal operation, it can soon be washed away. But you're providing access for people up to that time."

Lloyd Schmitz of Lewes applauded the effort, saying he hopes that Delaware towns will follow suit.

"Pedestrians walking is just another form of transportation," said Schmitz, who until recently chaired a transit advisory committee representing elderly and disabled people. "It would be great if everyone had the same courtesy to pedestrians, and cleared their sidewalks."

Few Delaware cities clear sidewalks beyond those in front of their facilities, largely due to the cost and labor involved.

State assumes sidewalk snow clearing duty

"It's a little problematic in this area because you never know what the weathers going to throw at you," said policy scientist Ed O'Donnell, who worked on a 2012 [University of Delaware study \(http://www.ipa.udel.edu/publications/SnowRemoval.pdf\)](http://www.ipa.udel.edu/publications/SnowRemoval.pdf) on winter sidewalk maintenance.

"It's probably going to be difficult to justify gearing up all the equipment that you need for an event that might or might not occur. It's a whole different world if you're in Minnesota."

In Delaware, most town ordinances focus on requirements on a property owner to remove sidewalk snow within a certain period, usually 24 hours, or face a penalty.

"Essentially, residents are responsible for [clearing the] sidewalks adjacent to homes and within a certain period after the snow event ends," Newark City Manager Carol Houck said. "Enforcement is usually complaint based."

Two state Supreme Court rulings in 2004 struck down Wilmington ordinances that assigned responsibility for sidewalk snow removal to property occupants, owners or agents. The justices found the ordinances conflicted with Wilmington's charter, which assigns the job of maintaining streets, including "footways," to the city.

Officials have not taken up the task, according to spokeswoman Alexandra Coppadge. "The city only clears the sidewalks of city-owned properties and possibly bridges, as they have no property owners," she said last week.

Contact Melissa Nann Burke at (302) 324-2329, mburke@delawareonline.com or on Twitter @nannburke.

SIDEWALK SNOW REMOVAL

COUNTY	PRIMARY ROAD MILES	SECONDARY MILES	TOTAL MILES	PORTIONS OF
New Castle	130	78	208	U.S. 13, 40 and 202; Naamans and Foulk roads; Old Baltimore Pike; Del. 2, 4, 7, 9, 58, 100, 141, 273, 896
Kent	5	5	10	U.S. 13, Glenwood Avenue, Scarborough, Lebanon, Voshells Mill and Bay roads, Old Road 156, Webbs Lane
Sussex	18	2	20	U.S. 13 and 113; Del. 1/Coastal Highway and 9/Lewes-Georgetown Highway
Total	153	85	238	

Source: Delaware Department of Transportation

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