

# STAFF REPORT

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- PROPOSED COUNTY CODE AMENDMENT
- PROPOSED PFM AMENDMENT
- APPEAL OF DECISION
- WAIVER REQUEST

Proposed Amendment to the Public Facilities Manual (PFM) Regarding Sidewalk Modifications and Waivers

Authorization to Advertise	<u>April 28, 2015</u>
Planning Commission Hearing	<u>May 20, 2015</u>
Board of Supervisors Hearing	<u>June 23, 2015, 4:00 p.m.</u>
Prepared by:	<u>Jan Leavitt, John Matusik</u> SCRD, LDS, DPWES (703) 324-1733/8449 April 28, 2015, Rev May 6, 2015

STAFF REPORT

A. ISSUE:

A proposed amendment to the Chapter 8 (Sidewalks, Trails and Recreation) of the Public Facilities Manual (PFM) related to sidewalk modifications and waivers. The amendment clarifies when the requirement to install a sidewalk may be modified or waived, and when an escrow is required for future construction.

B. RECOMMENDED ACTION:

Staff recommends that the Board of Supervisors (Board) adopt the proposed amendment to Chapter 8 (Sidewalks, Trails and Recreation) of the PFM.

C. TIMING:

Board of Supervisors Authorization to Advertise – April 28, 2015

Planning Commission Public Hearing – May 20, 2015

Board of Supervisors Public Hearing – June 23, 2015 at 4:00 p.m.

The proposed amendment will become effective at 12:01 a.m. on the day following adoption.

D. SOURCE:

The Department of Public Works and Environmental Services (DPWES).

E. COORDINATION:

The proposed amendments have been prepared by DPWES and coordinated with the Office of the County Attorney. The proposed amendment has been recommended for approval by the Engineering Standards Review Committee.

F. BACKGROUND:

The County requires installation of sidewalks within new development as part of its review of subdivision and site plans. The requirements for installation of sidewalks are provided in Section 17-201 of the Zoning Ordinance, Section 101 Article 2-2 of the Subdivision Ordinance and Section 8-0101 of the PFM. The PFM provisions were last modified in 2005, with follow-up editorial amendments in 2007, to incorporate the recommendations outlined in the Infill and Residential Development Study related to providing more sidewalks in and abutting subdivisions to connect

pedestrians to community facilities, such as libraries, parks, and neighborhood retail shops.

Under the current PFM, a modification or waiver of the requirement to construct a sidewalk may be permitted by the Director when full compliance would result in undue hardship pursuant to PFM § 8-0101.6. There are times, however, when construction of a new sidewalk segment may be out of character with the existing neighborhood and for that reason the community may not want the sidewalk. In these cases, the current standard for obtaining a modification or waiver of sidewalk construction does not allow sufficient flexibility to eliminate the sidewalk requirement.

At the meeting of the Board of Supervisors on April 30, 2013, the Board directed staff to review the PFM to determine whether the sidewalk waiver provisions are too restrictive, and if so, for staff to bring the issue to the Development Process Review Committee for discussion.

At the October 22, 2013, Development Process Review Committee meeting, staff presented background information on the PFM's sidewalk and waiver provisions. In addition, key issues resulting from application of the current sidewalk waiver provision, as set forth in PFM § 8-0101.6, were identified for the Board's consideration:

- Sidewalk construction may be unreasonable due to technical reasons, such as physical and topographic constraints.
- Sidewalks that don't connect to anything.
- New sidewalk segment may be out of character with the community, and for that reason the existing community may not want the sidewalk.
- Sidewalk installation in older developments that were originally developed without sidewalks.
- Future build-out of sidewalk segments may take a long time.
- Funding not available to support future construction.
- Developer's escrows for future completion of the sidewalks are rarely used.

Application of the PFM can place a burden on developers to install sidewalks that are unwarranted by the community. The proposed amendment adds flexibility to the PFM by clarifying when sidewalk installation may be modified or waived by the DPWES Director and when the developer must escrow funds for future completion of required sidewalks.

At the meeting of the Board of Supervisors on April 28, 2015, the Board directed staff to revise the proposed amendment, as presented in the April 28, 2015, Agenda and Board Package, to include a requirement that DPWES, when evaluating such waiver requests, consult with the District Supervisor for the area in which the required sidewalk is located.

G. PROPOSED AMENDMENTS:

The proposed amendment revises the PFM's sidewalk waiver provisions as follows:

- Revises PFM § 8-0101.5 to codify instances when the developer will be relieved of the requirement to construct a sidewalk. Under the proposed amendment, a developer is exempt when a sidewalk meeting the PFM provisions exists, when a trail is constructed in lieu of a sidewalk, and when the sidewalk is planned and funded with the Capital Improvement Plan.
- Revises PFM § 8-0101.6 to replace the reference to "undue hardship" with a list of criteria that may be considered by the Director of DPWES, and stipulates that the Director consult the Board member for the magisterial district in which the required sidewalk is located, when evaluating a modification or waiver request.
- Adds PFM §8-0101.6A and B related to waiver conditions, including clarifying that an escrow is only required when construction of the sidewalk will be deferred or otherwise provided in the future. No escrow will be required in instances when construction of the sidewalk is fully waived by the Director.

H. REGULATORY IMPACT:

If adopted by the Board, the proposed amendment would streamline the land development process by:

- Codifying instances when the developer will be relieved or exempted from the requirement to construct a sidewalk, which will streamline the land development process by eliminating the need for developers to submit a formal waiver request and associated fee in accordance with PFM § 8-0101.5.
- Replacing the reference to "undue hardship" with a list of criteria that may be considered by the Director when evaluating a proposed modification or waiver will add clarity and thus predictability to the land development process. In addition, the proposed text incorporates flexibility into the process by allowing the Director of DPWES, following consultation with the relevant Board member, to grant modifications and waivers in accordance with the criteria listed in PFM § 8-0101.6.
- Clarifying the escrow requirement refines the County's process for collecting escrows. Under the proposed amendment, a developer's responsibility to escrow funds is limited to instances when the sidewalk will be provided in the future in accordance to PFM § 8-0101.6B.

I. FISCAL IMPACT:

The proposed amendment has no anticipated significant fiscal impact on industry or on County staff or budget.

J. ATTACHMENTS:

Attachment A - Proposed Revised Amendment to Chapter 8 (Sidewalks, Trails & Recreation) of the PFM, dated Revised April 28, 2015

**Proposed Amendment to the  
Public Facilities Manual**

1 **Amend the Public Facilities Manual, by revising Sections 8-0101.5 and 8-0101.6, to read as**  
2 **follows:**

3  
4 ~~8-0101.5 Sidewalks may be omitted on one side of the street where that side clearly cannot be~~  
5 ~~developed and where there are no existing or anticipated uses that would generate pedestrian~~  
6 ~~trips on that side of the street.~~

7  
8 § 8-0101.5 Upon proper justification provided on the plan, a developer will be relieved of the  
9 requirement to construct a sidewalk pursuant to § 8-0101.1 under the following conditions unless  
10 the construction of such sidewalk is otherwise necessary based on county or federal  
11 requirements:

- 12  
13 a. A sidewalk meeting current PFM standards and specifications exists at the time of plan  
14 submission, or  
15 b. When it can be demonstrated on the plan that construction of a trail in lieu of the  
16 sidewalk shall meet the requirements of PFM § 8-0200, or  
17 c. The sidewalk construction is planned and funded with the current Capital Improvement  
18 Plan, as adopted by the County.

19  
20 In such cases of relief, the developer is relinquished from providing an escrow but not the  
21 easement or right-of-way necessary for any future construction of same sidewalk pursuant to  
22 § 7-0105.

23  
24 ~~8-0101.6 Subject to approval by the Director, a modification or waiver of the required sidewalk~~  
25 ~~construction may be permitted when full compliance would result in undue hardship. A deposit~~  
26 ~~for future completion of the sidewalk shall be provided by the developer based on the current~~  
27 ~~unit price schedule.~~

28  
29 § 8-0101.6 The Director, following consultation with the Board of Supervisors member for the  
30 relevant magisterial district, may approve a modification or waiver of sidewalk construction  
31 required under § 8-0101.1 where strict application of the requirement would be unreasonable or  
32 would otherwise cause a technical hardship. “Technical hardship” as applied in this section shall  
33 relate to technical implementation issues rather than financial hardship as may be experienced by  
34 the developer. In considering a modification or waiver request, the Director may consider factors  
35 such as, but not limited to the following:  
36

- 1 a. Existing conditions, such as right-of-way constraints, significant topographic challenges,  
2 environmental designations such as RPA, and impacts upon registered historical  
3 properties, for example;  
4 b. Interim conditions and phasing of project construction;  
5 c. Street conditions such as the availability of parking, traffic volume and speed limit;  
6 d. Compatibility of pedestrian connections to adjacent and neighboring uses;  
7 e. Connectivity and distance to a school, community facility (e.g. library, recreation center,  
8 park), neighborhood retail, and transit stops and stations; and  
9 f. Other situations where the Director determines that the developer has justified good cause  
10 to support a modification or waiver.

11  
12 § 8-0101.6A The Director may impose conditions to any modification or waiver in order to  
13 assure that the results will be in accordance with the purpose and intent of § 8-0100.

14  
15 § 8-0101.6B Any developer seeking a modification or waiver to delay sidewalk construction  
16 shall provide an escrow for future construction based on the current unit price schedule.