

**TESTIMONY ON BEHALF OF COUNTY EXECUTIVE MARC ELRICH ON  
EXPEDITED BILL 9-21 Streets and Roads – Sidewalk Snow Removal.**

**MARCH 16, 2021**

Good afternoon, Council President Huckler and members of the Council. I am Hannah Henn, Deputy Director for Policy for the Department of Transportation. I'm here today to testify on behalf of County Executive Marc Elrich on Bill 9-21, Streets and Roads – Sidewalk Snow Removal.

The County Executive supports the underlying objective of ensuring that sidewalks are cleared during and after snow and ice events to improve safety for pedestrians. Therefore, the focus of my testimony is to provide information for your consideration on potential complications, confusion, and costs the Executive Branch anticipates from the proposed legislation. Today I offer conceptual modifications and alternative approaches to achieve similar goals.

#### Complications

The bill picks winners and losers by specifying geographic limits at a moment in time. It is not clear from the bill how or why these routes, particularly State-maintained routes, were selected compared to other potential areas, such as MD 190/River Road in the Westbard area and MD 390/16<sup>th</sup> Street.

The language should be modified to define circumstances that call for County snow removal and the Executive Branch can then detail the locations and incorporate them as part of the mandated Snow Plan. This modified approach would allow for adjusting the limits in the future without requiring a code revision process. For example, if the upcoming Ride On Route Restructuring Study results in adjustments to bus stop locations, sidewalk snow clearing should be adjusted as well.

#### Confusion

We anticipate confusion among property owners because of the differential services proposed. There will be a need for education and outreach to provide clarity to property owners on snow clearing responsibilities. For the near term effort, we have attached legal analysis performed by the Office of the County Attorney that provides suggestions for clarifying language within the bill itself.

While Vision Zero philosophy calls for a proactive approach to safety improvements, the County has focused on a data-driven approach to direct spending to projects that maximize safety benefits to the public. Prioritizing sidewalk clearing may detract from projects and initiatives that would have a stronger relationship to pedestrian safety and have an impact every day of the year.

## Costs

Sidewalk clearing by the Department of Transportation is a contracted operation, so we are capable of increasing coverage. Expanding the County's snow clearing responsibilities will require a significant increase in costs to the County and will likely prompt requests to expand County-provided sidewalk clearing further.

While the fiscal impact statement provided as an attachment to this testimony relies upon average costs over multiple years, we want to highlight that the upper range for these new areas of responsibility could cost over \$1 million if we were to experience a snow season similar that in 2016. Costs may also be higher than average if storm patterns are severe and concentrated enough to require snow removal by trucks.

## Alternatives

The bill as currently drafted results in a significant expansion of County responsibilities to maintain state right of way. An alternative to having the County take on these costs would be to advocate for the State to take more responsibility for its roadways in a comprehensive and multimodal approach. Today, Montgomery County is responsible for all sidewalk maintenance and associated costs along State roads. Long term, we would encourage you to advocate for the State to be accountable for its entire right of way and provide safe infrastructure for all roadway users.

Other approaches might include developing a sidewalk snow removal program in certain areas of the County similar to the leaf collection program in which property owners who are within a determined area are assessed an annual fee into a financially self-supporting program.

The County might also develop a more structured volunteer snow removal program in which residents offer voluntary assistance or students earn service hours. Such a program could be offered across the entire County, resulting in broader benefits and flexibility.

We welcome the opportunity to discuss these concepts in more detail in committee.  
Thank you.



OFFICE OF THE COUNTY ATTORNEY

Marc Elrich  
County Executive

Marc P. Hansen  
County Attorney

MEMORANDUM

TO: Christopher Conklin, Director  
Department of Transportation

VIA: Edward B. Lattner, Chief *Edward B. Lattner*  
Division of Government Operations

FROM: Clifford Royalty, Chief *Cliff Royalty*  
Division of Zoning, Land Use, and Economic Development

DATE: March 8, 2021

RE: **Bill 9-21, Streets and Roads - Sidewalk Snow Removal - Amendments**

While we have no legal objection to the Bill's objectives or methods, we are concerned that some of the Bill's provisions are unclear and could generate interpretative issues. Primary among these is the definition of "Orphan Sidewalk" at lines 45-53. The Bill states:

*Orphan Sidewalk means a sidewalk either abutting a State or County road that may include any of the following areas: (i) adjacent to a vacant lot; (ii) an overpass with no adjacent commercial or residential property adjoined; or (iii) behind a residential or commercial property that is not directly accessible from the owner's property and is separated from the sidewalk by a fence, guardrail, or change in elevation grade.*

Does the phrase "may include any of the following areas" mean that the sidewalk must both abut a State or County road and be located in the areas identified in (i) through (iii)? If so, the Bill should state that an Orphan Sidewalk "means a sidewalk abutting either a State or County road and be located . . ." We would then add an "on" after (ii) and before "an overpass."

Further, the phrase "directly accessible" is vague. We know the phrase is contained in the existing law, but it has given rise to internal debates about how it should be applied.

Lastly, the Bill does have legal consequences. The County will expose itself to liability if it fails to fulfill the duties required by the Bill. And while a violation of Section 49-17 is a citable offense, the County, presumably, will not be citing itself.

Christopher Conklin

March 8, 2021

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cc: Marc P. Hansen, County Attorney  
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