

Borough of Newburg
Cumberland County, Pennsylvania

ORDINANCE No. ____

AN ORDINANCE OF THE BOROUGH OF NEWBURG, CUMBERLAND COUNTY, PENNSYLVANIA, REPLACING ORDINANCE NO. 5-2009360 REQUIRING THE MAINTENANCE AND REPAIR OF EXISTING SIDEWALKS AND CURBS, AND THE INSTALLATION OF NEW SIDEWALKS AND CURBS BY THE OWNER OF THE PROPERTY FRONTING THEREON, AND PRESCRIBING THE CHARACTER, WIDTH, CONSTRUCTION AND MATERIALS OF SUCH SIDEWALKS AND CURBS.

Whereas, the Borough has the authority under the Pennsylvania Borough Code, 8 Pa.C.S. §1800 to 1806, to require the installation and maintenance of sidewalks and curbs along the public streets within the Borough; and

Whereas, the Borough Council has created a Sidewalk Plan for purposes of delineating those areas in the Borough where sidewalks should be installed and maintained; and

Whereas, Borough Council has deemed it in the best interest of the Borough and its citizens that sidewalks and curbs be installed along public streets within the Borough, in accordance with the Borough's Sidewalk Plan, and be well maintained so that pedestrian travel on the sidewalks will be safe and unobstructed; and

Whereas, there currently exist sidewalks, both inside of the area delineated in the Sidewalk Plan and outside of the area delineated by the Sidewalk plan

Whereas, Borough Council recognizes that requiring installation of new sidewalks and curbs within the area as set forth in the Sidewalk Plan will place a financial burden on abutting property owners if they are required to bear the total cost for the installation; and

Whereas, Borough Council intends to seek federal, state and county funding for the installation of new sidewalks and curbs and the repair of existing sidewalks and curbs in order to provide financial assistance to abutting property owners; and

Whereas, Borough Council anticipates that the installation of new sidewalks and curbs will be done piecemeal over time and within the area identified in the Sidewalk Plan as such work will be dependent on the amount and availability of government funding.

Be it Enacted and Ordained by the Borough Council of the Borough of Newburg, Cumberland County, Pennsylvania, as follows:

SECTION I. DEFINITIONS

As used in this Ordinance, the following words have the following meanings:

“Adjacent/Abutting Property”- Any lot or parcel of land adjoining, bordering or touching a public street as defined herein to exclude alleys.

"Borough" - The Borough of Newburg.

"Curb" - The raised pavement at the edge of the roadway which serves as a gutter for the roadway, and functions as a barrier to obstruct a motorist from driving off the roadway onto the shoulder, median, or sidewalk.

"Defect" or "defective" - The condition of a public sidewalk or curb that exhibits one or more of the following characteristics:

- (a) Vertical separations greater than three-fourth inch (3/4");
- (b) Horizontal separations greater than three-fourth inch (3/4");
- (c) Holes or depressions more than three-fourth inch (3/4") deep;
- (d) Spalling over forty percent (40%) of a single square or panel of sidewalk with one or more depressions more than one-half inch (1/2") deep;
- (e) A single square or panel of sidewalk and/or curb cracked in such a manner that no section thereof has an area greater than one (1) square foot, or is cracked in such a manner that it constitutes a danger or potential danger to the public;
- (f) A sidewalk or curb with any part thereof missing to its full depth;
- (g) A deviation on the staked and constructed grade greater than three-fourth inch (3/4");
- (h) Covered in whole or in part with weeds or other plants, garbage, junk, rubbish, debris, solid waste, bird or animal droppings or any nuisances, obstructions or hazards which makes or tends to make pedestrian travel either substantially impaired, dangerous or impractical;
- (i) Settling of the sidewalk, allowing water to pond to a depth greater than one inch (1").

"Driveway" - A private drive providing access between a public or private street or access drive and the parking area for a property.

"Existing Sidewalk" - Sidewalks which are in place on the effective date of this Ordinance even though they may not conform to the specifications herein.

"Maintain" or "maintenance" - The duty to repair, remove or replace a public sidewalk and/or curb with all work to be performed in accordance with applicable Borough and Pennsylvania Department of Transportation specifications in effect at the time the work is commenced, so as to render the sidewalk and/or curb free from defect(s) and/or defective conditions.

"PENNDOT or PDT" - Pennsylvania Department of Transportation

"Permittee" - Any person, partnership, firm, company or corporation who has applied for and/or received a permit for the construction, reconstruction, repair or replacement of sidewalks and/or curbs.

"Property owner" or "owner" - The record holder of legal title or other legally recognizable equitable interest.

"Public Street" - A dedicated thoroughfare in the Borough that is designated for public travel and transportation, affording the principal means of access to the abutting property. This does not include any alleys, privately owned roads, or other privately owned paved surfaces or other means of access.

"Repair/Replacement" - The adjustment, removal, realignment, patching or installation of any sidewalk or curb in accordance with the inspection policy and repair/replacement standards of this Ordinance.

"Sidewalk" - The surfaced portion of that area between the curb lines of the roadway and the adjacent property lines intended for use as a walkway by pedestrians. The sidewalk shall be constructed as per the specifications and standards set forth in this Ordinance.

"Sidewalk Plan" – Those areas delineated in Exhibit 1 attached hereto as being areas in which the Borough Council deems it to be in the best interest of the Borough for sidewalks and curbs to be installed.

SECTION II. LOCATION OF SIDEWALKS

Sidewalks within the Borough shall be located only in those areas as set forth in Exhibit 1 (hereinafter, Sidewalk Plan).

SECTION III. RESPONSIBILITY OF THE ADJACENT OR ABUTTING PROPERTY OWNER FOR THE CONDITION OF EXISTING SIDEWALKS AND CURBS

- A. Whether an existing or future installed sidewalk is located within or outside the area delineated for sidewalks in the sidewalk plan, the adjacent or abutting property owner is responsible for keeping sidewalks and curbs free of any defect(s) or defective conditions by maintaining the sidewalks and/or curbs on or abutting their property in accordance with this Ordinance. If the adjacent or abutting property owner does not properly maintain the sidewalk and/or curb, or the sidewalk and/or curb has a defect and/or defective condition as defined in this Ordinance, the Borough Code Enforcement Officer is authorized by Borough Council to direct the property owner to replace or repair the sidewalk or curb to the specifications and standards set forth in this Ordinance.
- B. The abutting property owner is responsible for maintaining sidewalks free and clear of all obstacles. The pathway shall be in accordance with the specifications of Section VIII and free from any obstacles such as, but not limited to, tree branches, shrubbery, or any other object that may hinder or obstruct pedestrian traffic upon the sidewalk.
- C. Any damage or destruction to sidewalks and/or curbs that results in any defect(s) or defective condition, whether accidental or otherwise, shall be repaired or replaced immediately by the abutting property owner at their expense except any sidewalk and/or curb that is damaged or altered as a result of work done for the Borough, the Newburg-Hopewell Joint Authority or PennDOT shall not be assessed to the adjacent property owner. Actions of any other third persons shall not relieve the abutting owner of the responsibility to maintain, replace or repair damaged, destroyed or defective sidewalks or curbs.

SECTION IV. REPAIR, REPLACEMENT AND INSTALLATION OF SIDEWALKS AND CURBS UPON NOTICE BY THE BOROUGH CODE ENFORCEMENT OFFICER

- A. The intent of this Ordinance is to institute the new installation of sidewalks and/or curbs over a period of time as delineated in Exhibit 1 (Sidewalk Plan), except when there is a development or sale of the abutting property as more fully set forth in Section VI. As federal, state, and county funds become available to the Borough for the installation of sidewalks and curbs. The Borough will provide financial assistance for their installation at its sole discretion.
- B. Inspections of existing sidewalks and curbs will be performed by the Borough Code Enforcement Officer or his/her designee. The Borough Code Enforcement Officer will determine what sidewalks or curbs are in need of replacement and/or repair based on whether the sidewalk and/or curb has any defect(s) or defective conditions as defined in this Ordinance. The Borough Code Enforcement Officer will also be responsible for inquiries and investigation of complaints regarding the condition of sidewalks and/or curbs.
- C. The Borough Code Enforcement Officer will conspicuously mark any inspected sidewalk and/or curb in need of repair or replacement. The Borough Code Enforcement Officer will within five (5) business days notify the adjacent property owner by certified mail and posting on the property that sidewalk and curb repair or replacement is required within ninety (90) days of the date of the notice.
- D. The Borough Code Enforcement Officer will be responsible for inspecting all sidewalk and/or curb new construction, repair and replacement, to determine if it meets the specifications and standards of this Ordinance.
- E. For the installation of new sidewalks, the property owners of the abutting property shall cooperate with the Borough and contractors to facilitate the construction of the new sidewalk.
- F. If the repair/replacement cannot be completed within the required ninety (90) days because of inclement or unseasonable weather, the adjacent property owner may request from the Borough Code Enforcement Officer an extension of time to complete the work. If an extension is granted, the property owner shall post a financial guarantee for the estimated amount of the repair/replacement or installation as determined by the Borough Code Enforcement Officer.
- G. If the adjacent property owner disputes the repair/replacement or installation notification by the Code Enforcement Officer, the property owner has the right to file an appeal to Borough Council. Such appeals shall be filed with the Borough Office within thirty (30) days of the date of the written notification. If the appeal is not filed within the thirty day appeal period, the property owner's right to appeal is waived. The filing of an appeal does not toll the ninety (90) day period to repair/replace or the installation of a new sidewalk or curb.

- H. If the sidewalk or curb is not repaired/replaced or installed within the ninety (90) day period, the Borough Code Enforcement Officer will cause the sidewalk or curb to be repaired/replaced or installed by the Borough or its designee.
1. All costs of the repair/replacement or the installation of the sidewalk and/or curb that is completed by the Borough or its designee, plus an additional ten percent as allowed by the Pennsylvania Borough Code, 8 Pa.C.S. §1805, will be invoiced to the adjacent/abutting property owner in accordance with this Ordinance. Payment of the invoice in full will be due thirty (30) days from the date of the invoice.
 2. If any portion of the invoice remains unpaid thirty (30) days after the date of invoice, the Borough Code Enforcement Officer may request that the Borough Solicitor file a municipal lien against the property. The lien shall be subject in all respects to the law provided for the filing and recovery of municipal liens.
 3. The cost of repair/replacement or installation incurred by the Borough shall also be recoverable in accordance with the Borough Code, 8 Pa.C.S. §1800 to 1806. The Borough may also pursue any other remedy at law to collect any amount that is delinquent under this Section.

SECTION V. SIDEWALKS, CURBS OR DRIVEWAYS LOCATED ON PRIVATE STREETS OR WITHIN THE RIGHT-OF-WAY OF A PRIVATELY OWNED ROAD OR STREET

This Ordinance is not applicable to any sidewalks or curbs located on private streets or within the right-of-way of a privately owned road or street.

SECTION VI. REQUIRED REPAIR, REPLACEMENT AND INSTALLATION OF NEW SIDEWALKS OR CURBS DUE TO DEVELOPMENT OR SALE OF PROPERTY

- A. For all new construction and development of property within the Borough, subject to the exemptions in subsection D below, new sidewalks and curbs shall be installed and existing sidewalk and curbs shall be repaired in accordance with applicable Borough and PennDOT specifications (Exhibit 1 attached hereto) and standards at the cost of the developer or property owner. Such installation and/or repair shall be completed within one year from the start of construction.
- B. Properties meeting any of the following conditions shall be exempt from the requirements of this Section to install new sidewalks and/or curbs.
1. The elevation at the edge of the right-of-way is greater than two (2) feet above or below the top of the curb elevation. (This condition shall only pertain to exemptions for the installation of sidewalks.)
 2. The roadway drainage patterns would be substantially altered by the installation of the sidewalk and/or curb, as determined by the Borough's Engineer, which

determination shall be final. (This condition shall pertain to exemptions for the installations of sidewalks and curbs.)

3. The property is in an area of the Borough not required by Borough Council to have mandatory sidewalks or curbs, in accordance with the Borough Sidewalk Plan.
- C. A property owner, who owns property which is adjacent to or abuts a street, may submit to submit to Borough Council a request in writing for an exemption under subsection E. from the requirements of this Section. The request for an exemption must be received within thirty (30) days of being notified that the installation of a sidewalk or curb is required.
1. A determination of the applicability of an exemption under subsection E. based on a condition(s) listed above shall be made by Borough Council upon the recommendation of the Borough's Engineer. Borough Council's determination shall be final and shall be issued in writing.
 2. If Borough Council determines that an exemption is inapplicable, such determination shall not toll the one-year period to construct or repair/replace the sidewalks and curbs. If the construction is not completed within one year, the Borough Code Enforcement Officer or his/her designee will cause the sidewalk and/or curb to be installed by the Borough or its designee. Invoicing and collection of the cost of the installation by the Borough shall be as set forth in Section IV of this Ordinance.

SECTION VII. SIDEWALK AND CURB PERMIT REQUIREMENTS

- A. The property owner shall be solely responsible for obtaining all permits needed for the construction, alteration, or repair of sidewalks and curbs on PennDOT roadways within Borough limits which require a PennDOT permit.
- B. Within the Borough, no person, firm or corporation shall construct, reconstruct, repair, or replace a sidewalk and/or curb without first obtaining a permit from the Borough Secretary, to be in a form prescribed by said Secretary. The charge for said permit shall be as set forth in the Borough's schedule of fees as established by resolution of Borough Council.
- C. Upon completion of the construction, the permittee shall notify the Borough in writing that the construction has been completed and is ready for final inspection. Upon receipt of the notice that the construction has been completed, the Borough will have twenty (20) business days from receipt of such request, within which to allow the Borough's Code Enforcement Officer to certify in writing to the Borough that the construction has been completed in accordance with this Ordinance.
- D. No financial guarantee shall be required for repair/replacement of a sidewalk and/or curb, or installation of a sidewalk and/or curb unless more than the ninety (90) days is requested for the construction.
 1. The financial security shall be in the form of a performance bond, irrevocable letter

of credit, certified check, or cash to be deposited with the Borough Secretary and held without interest. The amount of financial security shall be determined by the Borough Engineer based on an estimate of the cost to install or replace the sidewalk and/or curb,

2. The financial security will be used to reimburse the Borough for all costs and expenses incurred by it (as evidenced by itemized bills thereof), in completion of the construction in the event that the permittee becomes insolvent before completing the construction or the permittee does not complete the construction within twelve (12) months of the date that the permit was issued.
3. Upon satisfactory completion of construction, the Borough Secretary will authorize release of the financial security.

SECTION VIII. SIDEWALK AND CURB SPECIFICATIONS

All sidewalks and curbs, or portions thereof, hereafter constructed or repaired shall comply with the following specifications:

- A. Sidewalks abutting state-maintained roadways and Borough streets shall be constructed in accordance with the current Pennsylvania Department of Transportation specifications and standards. All sidewalks shall be constructed to grade established by existing adjoining walks or, in the absence of the foregoing, by the grade established by the Borough Engineer, and shall be paved with a four inch thick single course of Class A cement concrete using limestone aggregate, which shall have a compressive strength of not less than 3,500 pounds per square inch within 28 days of placement, with a minimum of six inches of compacted aggregate base PDT Type C or better Number 2A. Individual pavers (concrete, stone, or clay brick) may be substituted for concrete when authorized by the Borough Council, and must be set on a minimum of six inches of compacted aggregate base PDT Type C or better Number 2A with a 1" sand top setting layer.
- B. All sidewalks shall be at least five feet in width. Wider walks to a maximum of eight feet may be required by the Borough in commercial or industrial areas or multiple family areas, due to anticipated traffic and the development of the area. In areas of existing sidewalk or in order to fit existing site constraints, narrow sidewalk widths may be approved by Borough Council upon the recommendations of the Borough Engineer, subject to the Americans with Disabilities Act ("ADA").
- C. Paving joints shall be perpendicular to sidelines at intervals consistent with adjoining or abutting sidewalks and not greater than the sidewalk width. One half inch (1/2") expansion joints shall be placed through the walk at least every 20 feet between the sidewalk and curb, and between the sidewalk and other rigid structures.
- D. Traverse stress joints (dummy joints) shall be placed at five (5) foot intervals and shall be approximately 1/8 inch wide and at least one inch deep.
- E. The surface shall be roughened with a brush or other equipment to prevent smooth and slippery surfaces.

- F. All sidewalks shall be constructed so that the outer edge of said walk shall rest flush with the top of the curb, and shall be constructed so as to incline upwards from the street side edge of the sidewalk toward the boundary of the lot at a rate of not less than one-fourth inch nor more than one-half inch in one foot, except as otherwise authorized by the Borough.
- G. All sidewalks and curbing shall be designed in accordance with current Americans with Disabilities Act (ADA) requirements and specifications. This includes all curb ramps, curb cuts, and driveway ramps.
- H. Curbs abutting state maintained roadways and Borough streets shall be constructed in accordance with the current Pennsylvania Department of Transportation specifications and standards.

SECTION IX. GENERAL SIDEWALK REGULATIONS

- A. No person shall remove, deface, damage, destroy or otherwise alter the condition of any sidewalk and/or curb within the Borough of Newburg in a manner which would result in any defect(s) or defective conditions without the express written authorization of the Borough of Newburg.
- B. Any person who shall break or otherwise damage any sidewalk and/or curb in any manner which causes defect(s) or a defective condition shall within ten (10) days thereafter cause the same to be repaired or reconstructed in accordance with the specifications and standards in this Ordinance. Failure to do shall be a violation of this Ordinance.

SECTION X. VIOLATIONS

Any person, firm, corporation, or other entity who violates any of the provisions of this Ordinance shall be guilty of a summary offense, and upon conviction shall be sentenced to pay a fine of not less than fifty dollars (\$50.00) and not more than one thousand dollars (\$1,000.00) plus the cost of prosecution. Each day a violation of this Ordinance continues to exist shall constitute a separate violation.

SECTION XI. SEVERABILITY

If any section, paragraph, clause, phrase or part of this Ordinance is for any reason held invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance, and the application of those provisions to any person or circumstances shall not be affected thereby.

SECTION XII. INCONSISTENT ORDINANCE REPEALED

All other ordinances or parts of ordinances, insofar as they are inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION XIII. EFFECTIVE DATE

This Ordinance shall take effect ten (10) days from its enactment.

ENACTED AND ORDAINED by the Borough Council of the Borough of Newburg into law this _____ day of _____, 2021

ATTEST:

BOROUGH OF NEWBURG

Sara Rhine, Borough Secretary

BY: _____
Amber Metcalfe, President

Approved this _____ day of _____, 2021

Mayor Melissa Negley
Borough of Newburg

