



MEMORANDUM

Office of the City Attorney

Legistar No. 002471

Phone: 334-5011/Fax 334-2229
Box 46

TO: Mayor and City Commission

DATE: November 25, 2002
FIRST READING

FROM: City Attorney

SUBJECT: Ordinance No. 0-02-23; Petition No. 23TCH-02PB
An ordinance of the City of Gainesville, Florida, amending the Land Development Code, relating to sidewalk requirements along public and private streets; amending Section. 30-23, adding a definition; amending Section 30-160(d)(34) and Section 30-160(e)(18), providing that sidewalks meet the requirements of the Land Development Code; amending Sec. 30-188(e)(1), requiring new subdivisions in the Industrial, Agriculture, Airport Services, Conservation and Public Services districts to provide sidewalk only on arterial and collector streets; amending Sec. 30-188(e)(5), clarifying the effective date; amending Section 30-338, by requiring sidewalks for all lots and buildings except as provided or modified; providing for the dedication of property for sidewalks, and the criteria for modifications; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

Recommendation: The City Commission (1) approve Petition 23TCH-02 PB, and (2) adopt the proposed ordinance.

STAFF REPORT

Currently, the Code does not authorize staff or the reviewing board to make modifications to the requirement to provide sidewalks along all abutting streets, public or private. Current Planning Staff has encountered a number of situations where the provision of sidewalks under the present regulation has become an issue due to the complications that one would encounter installing sidewalks in a particular situation. The reviewing board has relieved some petitioners of the code requirements, and some petitioners have occupied new development with a temporary certificate of occupancy with the hope of relief from the requirements of the sidewalk ordinance. The sidewalk regulations currently apply to arterial, collector and local streets.

The City of Gainesville Land Development Code regarding the sidewalk ordinance should be amended to address the following:

1. The submittal requirement, Sec. 30-160, was amended to require sidewalks subject to Sec. 30-338.

2. Sec. 30-338 was amended to create a new paragraph addressing sidewalks, including a purpose clause, explanation of where sidewalks are required and criteria that the reviewing board or staff could use to make modifications.
3. The code would be amended so that new subdivisions in the industrial, agriculture, airport services, conservation and public services districts would be required to provide sidewalks only on arterial and collector streets.

The City Plan Board reviewed the petition and recommended approval.

Public notice was published in the Gainesville Sun on April 2, 2002. The Plan Board held a public hearing April 18, 2002. Planning Division staff recommended that the Plan Board approve the petition. The Plan Board recommended that the City Commission approve Petition 23TCH-02 PB. Plan Board vote 5-0.

Fiscal Note. None

CITY ATTORNEY MEMORANDUM

This ordinance requires two public hearings. If the Commission adopts the ordinance on first reading, the second and final reading will be held on December 9, 2002.

Prepared and
Submitted by:



Marion J. Radson,
City Attorney

MJR:sw

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ORDINANCE NO. _____
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An ordinance of the City of Gainesville, Florida, amending the Land Development Code, relating to sidewalk requirements along public and private streets; amending Section. 30-23, adding a definition; amending Section 30-160(d)(34) and Section 30-160(e)(18), providing that sidewalks meet the requirements of the Land Development Code; amending Sec. 30-188(e)(1), requiring new subdivisions in the Industrial, Agriculture, Airport Services, Conservation and Public Services districts to provide sidewalk only on arterial and collector streets; amending Sec. 30-188(e)(5), clarifying the effective date; amending Section 30-338, by requiring sidewalks for all lots and buildings except as provided or modified; providing for the dedication of property for sidewalks, and the criteria for modifications; providing directions to the codifier; providing a severability clause; providing a repealing clause; and providing an immediate effective date.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on April 18, 2002; and

WHEREAS, at least 10 days notice has been given once by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing to be held in the City Commission Auditorium, City Hall, City of Gainesville; and

WHEREAS, the Public Hearings were held pursuant to the published notice described at which hearings the parties in interest and all others had an opportunity to be and were, in fact, heard; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION

1 OF THE CITY OF GAINESVILLE, FLORIDA:

2 Section 1. Section. 30-23, Land Development Code of the City of Gainesville, is
3 amended by creating and adding the following definition as follows:

4 Section 30-23. Definitions.

5 Loop street(s) means a small green area surrounded by a driveway, providing
6 vehicular access to several buildings, performing the same function as a cul-de-sac but
7 creating a socially useful space.

8 Section 2. Subsection 30-160(d)(34), Land Development Code of the City of
9 Gainesville, is amended to read as follows:

10 Sec. 30-160. Submittal requirements.

11 (d) Preliminary development plan. Each preliminary development plan shall include
12 the following:

13 (34) Sidewalk(s) that meet the requirement of Sec. 30-338. ~~Sidewalks, on all~~
14 ~~streets, on both sides, and at least five feet wide. Sidewalks not required on cul-~~
15 ~~de-sac or dead-end or loop less than 100 feet long. Sidewalk required on at least~~
16 ~~one side of street on cul-de-sac or dead-end or loop from 100 to 250 feet long, and~~
17 ~~for a project in which the closest lots to a connecting street on a cul-de-sac or dead~~
18 ~~end are at least 1,000 feet from the street it stems from. Sidewalks on both sides~~
19 ~~on cul-de-sac or dead-end or loop greater than 250 feet long.~~

20 Section 3. Subsection 30-160(e)(18), Land Development Code of the City of
21 Gainesville, is amended to read as follows:

22 Sec. 30-160. Submittal requirements.

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- 1 (e) *Final development plan.* Each final development plan shall include the following:
- 2 (18) Sidewalk(s) that meet the requirement of Sec. 30-338. ~~Sidewalks, on all~~
- 3 ~~streets, on both sides, and at least five feet wide. Sidewalks not required on cul-~~
- 4 ~~de-sac or dead end or loop less than 100 feet long. Sidewalk required on at least~~
- 5 ~~one side of street on cul-de-sac or dead end or loop from 100 to 250 feet long, and~~
- 6 ~~for a project in which the closest lots to a connecting street on a cul-de-sac or dead~~
- 7 ~~end are at least 1,000 feet from the street it stems from. Sidewalks on both sides~~
- 8 ~~on cul-de-sac or dead end or loop greater than 250 feet long.~~

9 **Section 4.** Subsections 30-188(e)(1) and (e)5, Land Development Code of the

10 City of Gainesville, are amended to read as follows:

11 **Sec. 30-188. Required improvements.**

- 12 (e) Sidewalks and shared use bicycle paths.
- 13 (1) Sidewalks are required on both sides of all streets at least 5 feet in width,
- 14 except that subdivisions in the Industrial, Agriculture, Conservation, Airport
- 15 Services and Public Services zoning districts are only required to provide
- 16 sidewalks on arterial and collector streets, as designated by the City Manager.
- 17 However, no sidewalk is required on a cul-de-sac or dead end or loop street(s) if
- 18 the cul-de-sac, ~~or~~ dead end or loop street(s) is less than 100 feet long. A
- 19 sSidewalk is required on at least one side of the street on a cul-de-sac or dead end
- 20 or loop street(s) that is ~~from~~ between 100 ~~to~~ and 250 feet long. Illustrations are
- 21 shown below. Sidewalks shall be at least five feet in width and maintain a clear
- 22 width of at least five feet. Whenever a sidewalk intersects with a curbed street,

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1 ramps shall be installed to facilitate access to the sidewalks by wheelchairs.
2 Ramps and sidewalks shall be constructed in accordance with the Design Manual.
3 For a project in which the closest lots to a connecting street on a cul-de-sac or
4 dead end are at least 1,000 feet from the street it stems from, sidewalks are
5 required on at least one side of the street up to the lot nearest to the connecting
6 street.

7 (5) Sidewalk construction in accordance with this section shall be required for
8 each individual lot in a subdivision created after September 11, 2000, adoption of
9 ~~Ordinance No. 990853~~, prior to being issued a certificate of occupancy.

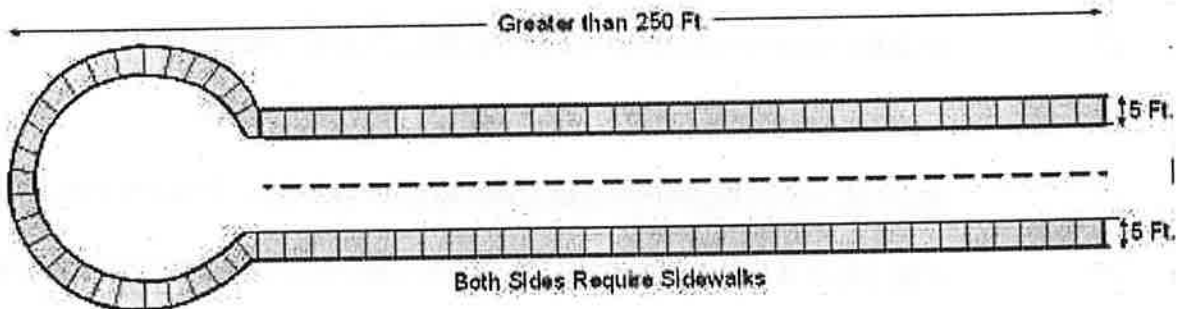
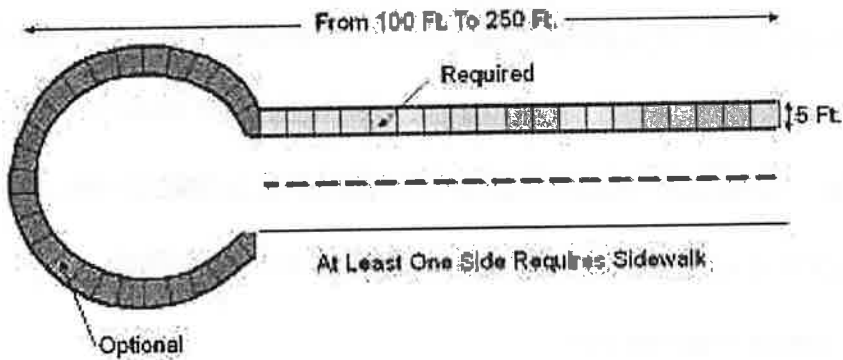
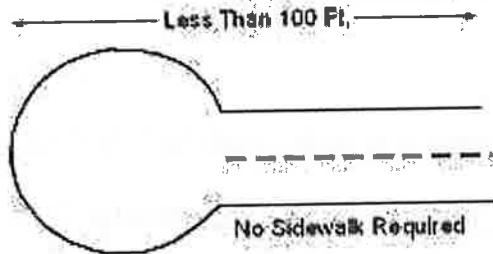
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1 Section 5. New subsections 6(a) through 6(h), inclusive, are created and added to
2 Section 30-388, Land Development Code, to read as follows:

3 **Sec. 30-338. General lot and building requirements.**

4 The following lot and building requirements shall apply in all zoning districts:

5 (6) Sidewalks.

6 (a) Intent. The intent of this section is to enable pedestrian activity
7 throughout the city, especially as a means to promote pedestrian and bus trips,
8 pedestrian safety and accessibility. Sidewalks are required in conjunction with
9 development orders in every zoning district. This shall apply to all development
10 orders issued after September 11, 2000 in every zoning district, and on any parcel
11 or lot where a roadway is existing adjacent to the proposed development or where
12 there is a reasonable likelihood of mass transit service or a pedestrian need for
13 sidewalks. Sidewalk(s) are required on all public and private streets, on both
14 sides, except as specifically excluded or modified by this section.

15 (b) General requirements.

16 Where sidewalks are continuous, except for isolated lots or plots, in connection
17 with the issuance of building permits, the city shall require an owner of an isolated
18 lot or plot to provide sidewalks, except as provided below.

19 Sidewalks shall be constructed, if not already existing, along the street frontage of
20 a lot which is being developed for a permitted use, except no sidewalks are
21 required for:

- 22 1. additions or renovations to, or new construction of single family
23 homes on lots platted prior to January 1, 2003, unless a new single family

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1 home is proposed to be built on a lot where there is a sidewalk on the
2 adjacent lot frontages.

3 2. the addition or new construction of 500 square feet or less of gross
4 floor area on any property or any paving of fewer than 5 parking spaces or
5 equivalent area.

6 3. on alleys providing a secondary access to a lot of record.

7 (c) Cul-de-sac or dead-end loop street(s) requirements.

8 A sidewalk is required on at least one side of a street on a cul-de-sac or dead-end
9 loop street(s) from 100 to 250 feet long, except as provided below. Sidewalks are
10 required on both sides on cul-de-sac or dead-end or loop street(s) greater than 250
11 feet long. For a project in which the closest lots to a connecting street are at least
12 1000 feet from the street it stems from, sidewalks are required on at least one side
13 of the street up to the lot nearest the connecting street. Illustrations are shown
14 below.

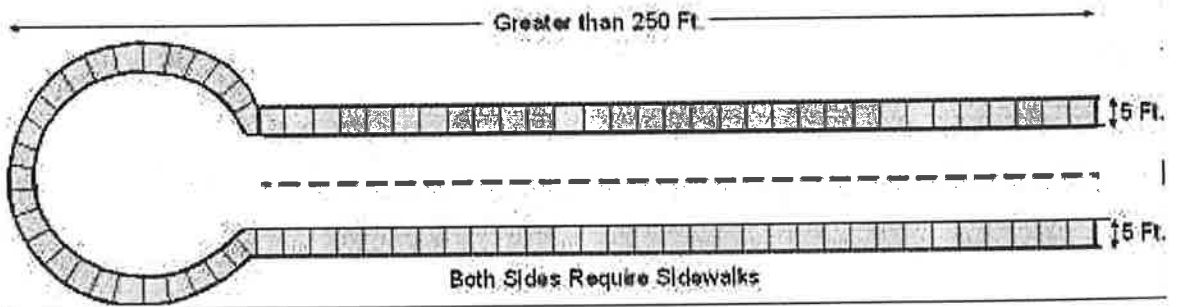
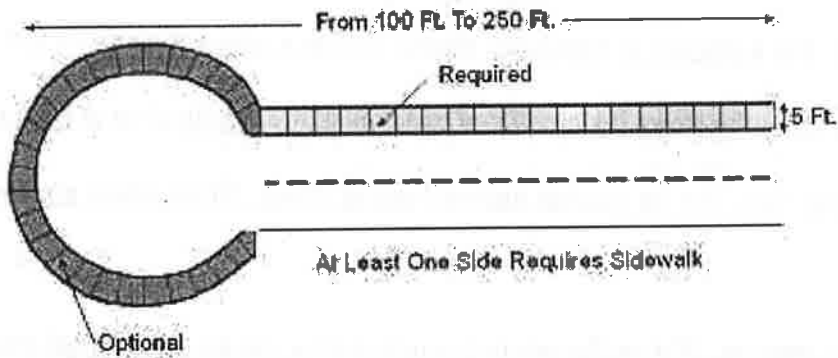
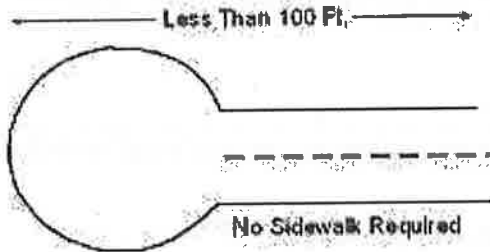
15 Exception: Sidewalks are not required on a cul-de-sac or dead-end or loop
16 street(s) less than 100 feet long.

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1 (d) Special Area Plan. Sidewalks shall meet the specific requirements of any
2 special area plans any provisions of this Code to the contrary notwithstanding.

3 (e) Responsibility for construction. The installation of sidewalks is the
4 responsibility of the developer/owner and the sidewalks shall be installed prior to
5 the issuance of a certificate of occupancy by the city. For a phased development,
6 sidewalk(s) shall be completed to serve any area for which a certificate of
7 occupancy or any temporary occupancy is required. The developer/owner shall
8 only be responsible for the sidewalk on the same side of the street(s) on which the
9 approved plan is adjacent, except as specifically modified by paragraph (h) below.

10 (f) Design standard. Sidewalk(s) and ramp(s) shall be constructed in
11 accordance with the City of Gainesville Public Works' Design Manual.

12 Whenever a sidewalk intersects a curbed street, ramps shall be installed to
13 facilitate handicap access.

14 (g) Dedication. From time to time, an amendment to an existing developed
15 area may require the installation of a sidewalk, however, inadequate right-of-way
16 may exist to such extent that a developer/owner cannot install a sidewalk. In this
17 event the City shall require the developer/owner to dedicate sufficient right-of-
18 way to install proper sidewalk areas along all boundaries of the proposed
19 development abutting public streets, or provide an easement to the homeowners
20 association or condominium, as applicable, for additional common area for the
21 sidewalk. The dedication of sufficient right-of-way for sidewalk improvements
22 must be necessary to serve the development or reduce the impact of the
23 development on the City's transportation system, and must, in all instances, meet

1 the “essential nexus” and “rough proportionality” requirements established by the
2 United States Supreme Court in the cases of Nollan v. California Costal
3 Commission and Dolan v. City of Tigard.

4 (h) Modifications. The appropriate reviewing board (“board”), City Manager
5 or designee (hereinafter “City Manager”) where no board approval is required,
6 may approve modifications from the terms of this section. The board or City
7 Manager, may determine the appropriate location and/or termination of
8 sidewalk(s), determine that dedication of right-of-way meets the required
9 obligation, or determine that a portion of a sidewalk may be narrowed, as may be
10 consistent with State accessibility requirements, or any combination of the above,
11 as follows:

12 The board or City Manager shall require the petitioner to provide
13 information in the form of reports, maps, diagrams and similar material to support
14 their request for modification. The board or City Manager, shall make their
15 determination based on the following criteria:

16 The conditions and circumstances, which do not result from the actions of
17 the developer, warrant modification of the sidewalk requirements. In reaching its
18 decision, the board or City Manager shall apply the following standards:

- 19 i. the need to relocate utilities that must be moved solely in order to
20 facilitate the construction of sidewalk;
- 21 ii. construction or redesign of stormwater management facilities;
- 22 iii. insufficient building setbacks;
- 23 iv. a substantial lack of right-of-way;

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- v. protection of heritage and champion trees;
- vi. excessive slope or other topographic or geological features;
- vii. existing and expected future isolation of the subject parcel;
- viii. sidewalks are not permitted by state or local agencies with jurisdiction over the subject right-of-way.

Section 6. It is the intention of the City Commission that the provisions of Sections 1 through 5 of this ordinance shall become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and that the Sections and Paragraphs of this Ordinance may be renumbered or relettered in order to accomplish such intentions.

Section 7. If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 8. All ordinances, or parts of ordinances, in conflict herewith are to the extent of such conflict hereby repealed.

Section 9. This ordinance shall become effective immediately upon final adoption.

PASSED AND ADOPTED this ____ day of _____, 2002.

THOMAS D. BUSSING, MAYOR

ATTEST:

Approved as to form and legality

KURT M. LANNON
CLERK OF THE COMMISSION

MARION J. RADSON
CITY ATTORNEY

This Ordinance passed on first reading this ____ day _____, 2002.

This Ordinance passed on second reading this ____ day of _____, 2002.

