



SIDEWALKS IN KANSAS: WHO IS RESPONSIBLE?



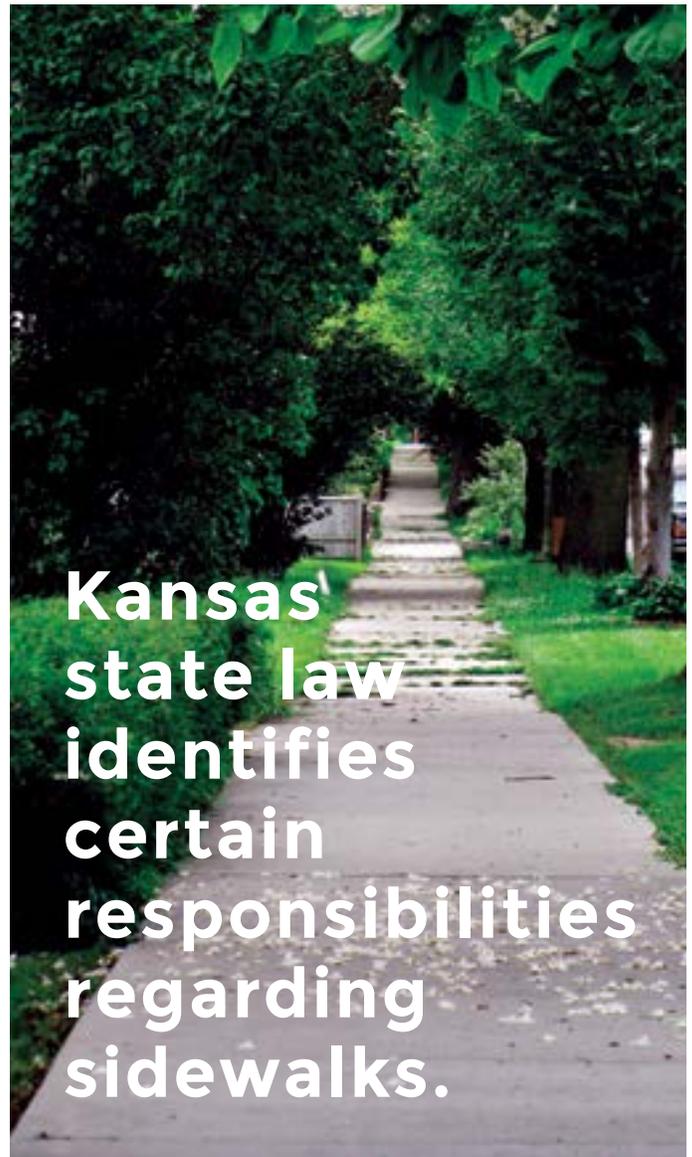
Sidewalks are a vital asset to support health by promoting physical activity through active transportation and recreation.

Sidewalks in Kansas are an important component of the transportation system and are designed to support pedestrians, particularly pedestrians with disabilities, safely access community resources and participate in community activities. Understanding the responsibilities of property owners and the local government in relation to sidewalks ensures that sidewalks in Kansas are constructed, maintained, and operated in a way that supports accessible, safe, and efficient travel for pedestrians of all ages and abilities.



Kansas Health Foundation

This fact sheet is part of a series funded by the Kansas Health Foundation to increase physical activity through walking and bicycling in Kansas.



Q: Who is responsible for Kansas sidewalks?

A: Kansas State Law places responsibility for sidewalks on both local governments and the owner of any property adjacent to the sidewalk. Cities have the most complete authority over sidewalks in Kansas.¹ Townships also have some authority over certain aspects of sidewalks within their boundaries, including construction and maintenance.² Kansas law does not give broad authority over sidewalks to counties. State law does, however, give some counties limited authority over sidewalks.³ Any Kansas county that has been designated as an “urban area” under Kansas law is authorized to construct sidewalks and pedestrian ways in connection with the improvement of any highway or street which the county is by law authorized to make.⁴

DEFINITION: Sidewalk

The portion of a street; between the curb lines or the lateral lines of a roadway, and the neighboring property lines; intended for use by pedestrians.⁵

DEFINITION: Property owner

“Property owner,” as used in this resource means the owner of any property adjacent to the sidewalk.

Q: What are some examples of responsibilities that local governments and property owners have regarding sidewalks?

A: Kansas state law identifies certain responsibilities regarding sidewalks. These responsibilities include, but are not limited to, construction, reconstruction, maintenance, repair, and funding of sidewalks. The following are some examples of these responsibilities as they relate to both local governments and property owners:

Construction & reconstruction

Property owners

Property owners may petition the city to construct a sidewalk. Upon receiving a petition

County urban areas in Kansas

Kansas law designates counties as an urban area when they have become urban in nature.⁶

The U.S. Census Bureau defines an urban area as an identified territory that encompasses at least 2,500 people, at least 1,500 of which reside outside institutional group quarter.⁷

As of 2016, the only county designated as an urban area under Kansas law is Johnson County.⁸

City class and population size

City of the First Class	A city with a population of more than 15,000, may be declared a city of the first class by the governing body. ⁹
City of the Second Class	A city of the second class is a city with a population of more than 2,000 and less than 15,000. ¹⁰
City of the Third Class	A city of the third class is a city with a population of no more than 2,000. ¹¹

signed by the minimum number of property owners, the governing body of a city may require the sidewalk to be constructed. The required minimum number of property owners to sign a petition is ten in a city of the Second or Third Class and 25 in a city of the First Class.¹²

The governing body of a city can condemn a sidewalk if it is inadequate or unsafe and may adopt

a resolution condemning the sidewalk and order the construction of a new sidewalk.¹³ The governing body must then give the property owner 30 to 60 days to construct or reconstruct the sidewalk at his or her own expense. If the sidewalk is not constructed or reconstructed within the specified time, the governing body shall cause the construction to be done by contract.¹⁴



Property owners may also construct or reconstruct a sidewalk at any time, at their own expense, as long as the sidewalk is constructed according to the city's official sidewalk plans and specifications. The sidewalk must meet all the same requirements it would have to meet had the city constructed it.¹⁵ If a property owner wants the city to construct or reconstruct the sidewalk, the property owner must file a request with the city. The city may then construct or reconstruct the sidewalk in the same way as if the property owners had filed a petition.¹⁶

City government

A city may provide for the construction and reconstruction of sidewalks.¹⁷ However, a city is not required to do so. A city may also condemn a sidewalk that it determines to be inadequate or unsafe for travel. After condemning a sidewalk, the city may construct a new one in its place.¹⁸

Maintenance & repair

Property owners

In all cities, property owners are responsible for all sidewalk maintenance and repair.¹⁹

City government

In cities of the First or Second Class, the city engineer or clerk may make necessary repairs to a sidewalk at any time after giving the property owner a five days' notice. However, if the adjacent property is unoccupied, this notice is not required. In cities of the Third Class, the city may make any repairs without notice to the property owner.²⁰

Funding

Property owners

Responsibility for funding the construction, reconstruction, maintenance, or repair of a sidewalk generally lies with the property owner.²¹ A special assessment can be levied against the property owner for the cost of repair made to the sidewalk if the local government pays for the sidewalk work.²² A property owner may pay the assessment in one installment, or not more than five installments with interest added, at the discretion of the governing body.²³ If the property owner does not pay the assessment within 30 days, the city is required to certify the cost to the county to be put on the tax rolls for collection like other taxes.²⁴

City government

A city may temporarily finance repairs to a sidewalk out of the funds for maintaining streets or out of the general fund or general improvement fund.²⁵ In cities of the first class that have a population between 60,000 and 90,000, it is in the city's discretion to pay for the cost of repairing the sidewalk out of the general improvement fund rather than assessing property owners, when the cost of the project is less than \$3,000 in one year.²⁶

DEFINITION: Special assessment

A special assessment is the imposition of a tax on property that benefits in some way from a public improvement.²⁷

Sidewalk cost sharing programs

Several Kansas communities have offered incentives to residents for the repair or replacement of sidewalks within city limits. The following are examples of cities that have implemented cost sharing programs:

Atchison	Implemented in 1979, Atchison’s “Sidewalk Share Program” matches sidewalk repair and improvement projects dollar for dollar. ²⁸
Garden City	Garden City offers up to \$1,000 in reimbursement for the repair of existing sidewalks. Do-it-yourself projects qualify for \$1,000 in reimbursement, and the city will contribute half the funds if the resident decides to hire a contractor (still subject to the \$1,000 limit). ²⁹
Kansas City	Kansas City sets aside funds each year to reimburse residents for the replacement of an existing sidewalk. The reimbursement is designed to cover 50% of costs for a single house, 60% for 2-5 adjacent houses, and 75% for more than 5 houses in a row. ³⁰
Topeka	Topeka offers limited funds for a 50/50 sidewalk replacement program for concrete or brick sidewalks that are defective. Under this program, these sidewalks are replaced with concrete sidewalks. ³¹
Emporia	Emporia’s sidewalk share program offers up to \$400 in matching funds, and up to \$700 for corner lots, for the replacement of hazardous sidewalks. Handicap ramps and replacement of connecting sidewalks are done at no cost to owners. ³²
Burlington	Burlington provides \$10 per linear foot to residents replacing or repairing existing sidewalks. ³³

A city is responsible for the cost of repairs made to sidewalks adjacent to property owned by the city, the state of Kansas, or the United States (unless the state or the United States pays the cost of the sidewalk next to the property they own). The city may pay these costs out of the fund provided for the maintenance of streets, the general improvement fund, or by issuing credit or bonds* and levying taxes to pay these debts.³⁴

* Additional information regarding the issuance and sale of sidewalk scrip (credit) or bonds may be found at Kan. Stat. Ann. § 12-1814 (2016).

Q: Who is responsible for sidewalk design specifications?

A: When constructing, reconstructing, and repairing sidewalks, both the city and the property owners are responsible for ensuring that the sidewalk meets required design specifications. The governing body of a city must create plans and specifications (including widths and location in the street) that must be followed for the construction, repair, and reconstruction of all sidewalks.³⁵ Additionally, the grade for a sidewalk



The ADA and Kansas sidewalks

The Americans with Disabilities Act (ADA) is a federal law that prohibits the discrimination of individuals with disabilities in all public programs, services, and facilities.³⁶ Because sidewalks are used by the general public, they must be constructed so they are accessible to individuals with disabilities.

The United States Access Board is the federal agency charged with developing and maintaining design criteria for accessible design. The Board ensures access to federally-funded facilities and provides information about accessible design.³⁷ These accessibility standards promote equality for people with disabilities. Additional information on the ADA standards for accessible sidewalk design; state and local government responsibility for complying with the ADA; and tips on how local governments can comply with the ADA can be found on the [U.S. Access Board website](#). Information about ADA regulations can also be found on the [United States Department of Justice website](#).

DEFINITION: Public facility

A public facility is “a facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to the ADA.”³⁸

Public facilities can include buildings, sidewalks, property, recreation areas, and roads used by the general public.

DEFINITION: Public service

A public service is any service provided by the government for the convenience of the general public. A public service also includes work performed for, or on behalf of, the government.³⁹

must be established in the same manner as the grade for the street or by reference to a stated distance above or below the street grade. If no street grade has been established, the natural grade may be used.⁴⁰

Q: How do local laws in Kansas address responsibility over sidewalks?

A: Local laws addressing sidewalks often imitate Kansas state law, but can be more specific. Generally, local laws governing sidewalks are created by individual cities resulting in sidewalk requirements that vary from one community to another. Examples of some local laws regarding responsibility over sidewalks include the following:

Maintaining sidewalks

Wichita, Kansas

In Wichita, Kansas, property owners are responsible for keeping sidewalks free from earth, dirt, filth, mud, papers, stone, snow, ice, refuse, and rubbish.⁴¹ The city council may require the building of any new sidewalk upon the signing of a petition by a majority of residents representing fifty-one percent or more of the area of the improvement district.⁴² The city council may also, at any time, condemn any portion of any sidewalk whenever it is deemed necessary and provide for the construction of a new sidewalk.⁴³ The property owner is then responsible for building the sidewalk in accordance with the local government requirements.⁴⁴ If the sidewalk is not constructed within 30 days, the cost of constructing the sidewalk is assessed and levied against the property

DEFINITION: Improvement district

Kansas state law allows a municipality to create community improvement districts in which certain special taxes may be imposed.⁴⁵ The revenue from these special taxes may be used to fund certain public and private improvements and the payment of operating costs within the specified geographic bounds of the district.⁴⁶

owner.⁴⁷ All sidewalks in Wichita, Kansas, must be constructed, reconstructed, and repaired according to the official plans and specification on file in the office of the City Engineer.⁴⁸

Garden City, Kansas

In Garden City, Kansas, property owners are required to maintain sidewalks in a way that is safe for pedestrians and to remove ice and snow.⁴⁹

Topeka, Kansas

Property owners are required to maintain sidewalks and to remove accumulations such as rocks, mud, and leaves.⁵⁰

Overland Park, Kansas

In Overland Park, Kansas, property owners are responsible for the maintenance and repair of sidewalks.⁵¹ When the City Engineer decides that a public sidewalk is a safety hazard or in need of repair, a notice to repair is issued to the property owner. The required repair or maintenance of the sidewalk must be included in the notice to repair as well as the maximum time period in which the

owner has to make the repairs, not to exceed 60 days.⁵² If the repairs are not made within the specified time frame, the City Engineer may have the repairs made by city staff or contractor. The cost of the repairs is assessed against the property owner.⁵³ The cost of the repair may be paid from the general fund and reimbursed when payments are received from the property owner or when assessments are collected and received by the city.⁵⁴

Sidewalk design standards

Wyandotte County & Kansas City, Kansas

The unified government of Wyandotte County and Kansas City, Kansas, implemented a Curb Ramp and Sidewalk Improvement Program. Through this program, the Public Works Department constructs new curb ramps and upgrades existing curb ramps to make sidewalks and streets more accessible and to comply with the ADA.⁵⁵ In Wyandotte County and Kansas City, Kansas, those responsible for constructing, maintaining, or repairing sidewalks must follow the design specifications created by the unified government.⁵⁶

Colby, Kansas

In Colby, Kansas, all new construction in certain commercial zoning districts must provide public sidewalks on the property that is next to an arterial street, collector street, or residential area. Sidewalks must conform to specific city specifications and all requirements contained in the most recent ADA regulations.⁵⁷

Construction of new sidewalks

Fort Scott, Kansas

The Board of Commissioners of Fort Scott, Kansas, may require a new sidewalk to be built upon the petition of twenty-five or more taxpayers residing in the area in which the sidewalk is to be built.⁵⁸ It is the responsibility of the property owners to follow the sidewalk specifications set by the local government. If the sidewalk is not built within 30 days, it is the duty of the Board of Commissioners to build the sidewalk.⁵⁹ The property owners additionally have the duty to keep the sidewalk in good order and make any repairs necessary.⁶⁰ A special assessment is levied against the property owners to pay for the sidewalk construction or repair.⁶¹

Topeka, Garden City, and Hutchinson, Kansas

Property owners in the cities of Topeka, Garden City, and Hutchinson, Kansas, are permitted to construct, reconstruct and repair sidewalks at their own expense. They may need a permit to do this work.⁶² In Topeka and Garden City, work must be done according to the plans and specifications approved by the City Engineer and is subject to the City Engineer's supervision.⁶³

Q: Who is liable for injuries that occur because of a defective sidewalk?

A: A property owner is only liable for an injury caused by a defect in the sidewalk, if that defect was caused by the property owner. A local government, on the other hand, could be held liable

What is liability?

In the law, to be held “liable” for something means to be held legally responsible for an injury that one’s action or inaction caused.⁶⁴ A person can be found liable under civil or criminal laws. Typically, to be held civilly liable for someone else’s injuries, the injured person must prove that:

- 1 A legal responsibility (a “duty of care”) exists to protect others from harm;
- 2 Someone failed (“breached”) to meet the duty of care;
- 3 An individual is injured (“damaged”) in some way; and
- 4 The damage was caused by that breach in the duty of care (“causation”).

For more information about civil liability, visit the Public Health Law Center’s [liability webpage](#).

for a considerable defect if it had notice of the defect and did not repair it.⁶⁵ A local government could also be liable if the defect was caused by the local government.⁶⁶

Liability of a local government

Governmental immunity relieves a city from liability for negligent acts of its officers or employees when they are performing governmental functions.⁶⁷ However, governmental immunity does not apply to injuries resulting from defects

in streets or sidewalks.⁶⁸ The reasoning behind this exception is that public streets and sidewalks are necessary for public use at all times and under all conditions.⁶⁹

A city has a legal responsibility to keep its streets, sidewalks, and crosswalks in a condition that is reasonably safe for use.⁷⁰ However, a city does not insure the safety of individuals who use its streets and sidewalks.⁷¹ The slight defect rule places limitations on a city’s liability for injuries caused by sidewalk defects.⁷²

In order for a local government to be liable for an injury caused by a sidewalk defect, the sidewalk defect must be “of such magnitude or extent as to be likely to cause injury to travelers who are proceeding with due care.”⁷³ Therefore, a city cannot be held responsible for a pedestrian who sustains an injury when the sidewalk becomes defective through use, age, or other means.⁷⁴ Additionally, the city must have notice of the defective condition of a street or sidewalk in order to be held liable for injuries caused by the defect.⁷⁵ If the city had notice of a defect in the sidewalk, for a time sufficient to make the repairs, the city could be held liable for an injury caused by the defect.⁷⁶ If the city did not have notice, but the defect was one that should have been discovered through reasonable care by the city, the notice is inferred.⁷⁷

However, when the defective condition in the sidewalk was caused by the city, the slight defect rule will not apply, and it will be implied that the city had notice of the defective condition.⁷⁸ If the city is responsible for creating the defect, the city could be liable for negligence.⁷⁹

DEFINITION: Slight defect rule

The slight defect rule states that “slight variances or imperfections in sidewalk surfaces are not sufficient to establish actionable negligence in the construction or maintenance of sidewalks.”⁸⁰

Liability of a property owner

Kansas state law, as stated above, requires property owners to keep the sidewalk in good condition.⁸¹ However, this responsibility is owed to the city and not to individuals using the sidewalk.⁸² Generally, an individual is not able to hold a property owner responsible for an injury caused by sidewalk defects simply because they own the land next to the defective sidewalk.⁸³ However, like the city, a property owner will be held responsible for injuries if the property owner constructs or maintains the sidewalk in a defective manner.⁸⁴

The Public Health Law Center thanks research assistants Karie Mees and Micah Olson for their assistance in developing this resource.

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota, made possible with funding from the Kansas Health Foundation.

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Endnotes

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- 78 Smith v. Kansas City, 146 P.2d 660, 663-64 (Kan. 1944); see also Harris v. McConnell, 194 Kan. 800, 803 (Kan. 1965).
- 79 Harris v. McConnell, 194 Kan. 800, 803 (Kan. 1965).
- 80 Lyon v. Hardee's Food Systems, Inc., 250 Kan. 43, 45 (Kan. 1992).
- 81 KAN. STAT. ANN. § 12-1808 (2016).
- 82 Harris v. McConnell, 194 Kan. 800, 802 (Kan. 1965).
- 83 Harris v. McConnell, 194 Kan. 800, 802 (Kan. 1965).
- 84 Harris v. McConnell, 194 Kan. 800, 803 (Kan. 1965); KAN. STAT. ANN. § 75-6104(I) (2016).