

RiskTopics

New York City Sidewalk Law
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Introduction

New York City Administrative Code (7-210; 19-152) governs the liability of real property owners for the sidewalks abutting their owned properties.

Discussion

In the City of New York, real property owners are responsible for maintaining the abutting sidewalks in “reasonably safe condition,” pursuant to the New York Administrative Code (the “NY Code”). The NY Code includes provisions regarding the liability of abutting property owners when property damage and/or personal injury occurs, including death, where the cause is deemed a failure by the abutting property owner to maintain the sidewalk in reasonably safe condition. Although persons working in the capacity of their employment while injured may be covered by applicable workers compensation laws, the NY Code is an important consideration for property owners to be aware of their potential liability for damages to others. This NY Code can result in shifting liability from the City to the property owner where property damage and/or personal injury are the result of the property owner’s failure to maintain abutting sidewalk in a reasonably safe condition.

Not all properties will be subject to this law. For example, there are various exclusions pertaining to one, two, or three family residential properties that are owner-occupied and used exclusively for residential purposes.

To ensure that property owners have the financial ability to pay for any judgments against them, property owners may also be required to purchase liability insurance to cover sidewalk-related injuries (Local Law 54 of 2003).

The New York Sidewalk law is far-reaching in the requirements for maintaining sidewalks in “reasonably safe condition.” This requirement includes the obvious things like properly repairing cracks and broken pavement as well as to remove snow and ice, but also includes other considerations such as:

- Failure to install
- Failure to construct
- Failure to reconstruct
- Failure to pave
- Failure to replace defective sidewalk (see definition below)
- Failure to remove dirt, other materials, and obstacles
- Failure to correct hazards, such as inadequate slope, grade, pitch
- Failure to fence abutting vacant lots and to refill or raise sunken lots

A defective sidewalk is defined as a vertical grade differential between adjacent sidewalk flags greater than, or equal to one inch, or a sidewalk flag which contains one or more surface defects of one inch, or greater in all horizontal directions; and is one half inch, or more in depth.

There are some additional considerations that may impact the abutting property owner’s liability, such as sidewalk grates, manholes, tree wells, bike racks, sign posts, curbs, etc. In some instances, defects and/or failure to maintain these types of structures may be the local company’s responsibility. However, if the abutting property owner’s negligence contributed to the failure of a grate, manhole, and/or access cover the abutting property owner may be liable in whole, or in part for damages.

It is important for abutting property owners in the City Of New York to understand this law and their responsibilities. The abutting property owner’s responsibility includes removing winter snow and ice (see guidelines for consideration below), and also having an ongoing and diligent Preventative

Maintenance Plan to keep the sidewalks in compliance with the New York City Sidewalk Law.

Considerations for Snow and ice removal: While snow is falling, a property owner may not be required to clear snow or ice from sidewalks. After the snow and/or ice stops, property owners should clear snow and ice on abutting sidewalks to create a path for pedestrians. Property owners should also remove snow and ice from sidewalks next to bus stops and fire hydrants. The NY Code includes additional requirements relating to the time of snowfall, such as:

- If snowfall ends between 7 AM and 5 PM, sidewalks must be cleared within four (4) hours.
- Between 5 PM and 9 PM, sidewalks must be cleared within fourteen (14) hours.
- Between 9 PM and 7 AM, sidewalks must be cleared by 11 AM.

Take appropriate action to clear the entire sidewalk of snow and ice. Treat surfaces with calcium chloride and sand to prevent falls on surfaces. Watch for thawing and re-freezing; and reapply treatments at night when surfaces may refreeze. Document all snow and ice removal as well as surface treatments with a snow and ice removal log.

Building Owner Guidance: Property owners should also establish a preventative maintenance plan. Considerations include:

1. Establish a written Preventative Maintenance Plan which includes scheduled (weekly, monthly) physical inspection of sidewalks noting any deficiencies, or, corrections needed, and estimated timeframe for completion. Document cracks, broken pavement, dirt or other materials, obstacles, excessive sloping, inadequate grading or pitch, defects around grates and utility boxes. Also note the condition of fencing abutting vacant lots at sidewalks. If an adjacent property feature is defective, such as a tree well or curb, consider reporting the condition to New York City via 311 and document the call to the City.
2. When hiring contractors for sidewalk installations and/or repairs, or snow and ice removal, use experienced and qualified contractors under a written contract which has been subject to proper legal review. Address

key issues with Standard Terms & Conditions, as well as insurance requirements and indemnification for subcontractor negligence.

- **Contractors and/or vendors should name the building owner as Additional Insured on their CGL policies.**
 - **GL policy limits of at least \$1,000,000 per occurrence may be appropriate.**
 - **Require contractors to provide the specific endorsement on their policy showing the building owner as a covered entity under the policy; and have the endorsement reviewed by an attorney to ensure there are no exclusions on the policy that would deny coverage.**
- 3. Require contractors to have appropriate safety, labor, training, and subcontractor policies.**
 - 4. For rental properties, ensure leases and other agreements clearly state whether the tenant is responsible for sidewalk maintenance. Consider insurance terms such as requiring the building owner to be a Named Insured on the tenant's policy and requiring the tenant to maintain at least \$1,000,000 per occurrence GL coverage. Consider consulting an attorney who is knowledgeable with NYC Administrative Laws.**
 - 5. Have a formal process to review all contracts and policies for their terms contained therein?**
 - **Verify contract and lease terms have not expired?**
 - **Contractor, vendor, and lease certificates of insurance are on file and formally reviewed to ensure they meet building owner requirements on an annual basis?**
 - **Are contracts, leases, and insurance policies reviewed with an attorney who is knowledgeable with NY Sidewalk Law?**
 - 6. Property owners should keep records of all inspections, repairs, snow and ice removal and surface treatment efforts and other maintenance so they can demonstrate the reasonableness of their actions. Documentation could also include photographs and/or videos of sidewalk conditions before and after maintenance.**

In some instances interim actions to warn the public about adverse sidewalk conditions may be used so long as they do not create a hazard. For example, an

adverse condition could be painted yellow to highlight its existence. A warning sign could be installed so long as City permission is obtained; and so long as the sign and/or its post do not create an additional hazard. Interim actions should be short term in nature pending permanent correction of the adverse condition.

Conclusion

In summary, it is important for property owners in New York City to become familiar with the New York Sidewalk Law. Being familiar with the law and considering the above suggested guidelines could help reduce your exposure to potential litigation and related costs.

References

The NYC Administrative Law 7-210 is available from the New York State legislature website: <http://public.leginfo.state.ny.us/menugetf.cgi>

Find frequently asked questions (FAQ) relating to NYC sidewalk rules at <http://www.nyc.gov/html/dot/html/sidewalks/sidewalkintro.shtml>

The New York Labor Law is available at: <http://www.nyc.gov/html/dot/html/infrastructure/19-152.shtml>

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