

MEMORANDUM

November 30, 2016

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Worksession:** Expedited Bill 46-16, Streets and Roads – Snow Removal – Violations

Expedited Bill 46-16, Streets and Roads – Snow Removal - Violations, sponsored by Lead Sponsor Councilmember Riemer and Co-Sponsor Councilmember Berliner, was introduced on November 15, 2016. A public hearing was held on November 29.

Expedited Bill 46-16 would provide for higher penalties for violations of the law requiring removal of snow and ice on commercial property. Section 49-17 of the County Code provides that “a person is responsible for removing snow and ice on any sidewalk, other walkway, shared use path, or parking area on or adjacent to property that the person owns, leases, or manages, including any walkway in the public right-of- way, to provide a pathway wide enough for safe pedestrian and wheelchair use.” A violation of §49-17 is a class C violation, but is not subject to a citation unless the violation still exists 24 hours after a notice of violation.

Expedited Bill 46-16 would make a violation of §49-17 on or adjacent to commercial property a class A violation, while a violation on or adjacent to residential property would remain a class C violation. Under the Bill, “commercial property” would mean real property that either is not designed for or intended for human habitation, or contains a multi-family dwelling of four or more units. “Residential property” under the Bill would mean real property containing either a single-family dwelling or a multi-family dwelling of three or fewer units. Civil penalties for class A violations are 10 times those of class C violations: a maximum of \$500 for the first offense and \$750 for repeat offenses.

A memorandum from the Bill’s sponsor is at ©6.

Public Hearing and Correspondence

A public hearing was held on November 29, at which there were three speakers. Seth Morgan, Chair of the Commission on People with Disabilities spoke in support of the Bill. Dr. Morgan highlighted the importance of clear sidewalks to the independence of people with

disabilities, and asserted that there is a need for a greater fine than the current \$50 to be “persuasive to a commercial property owner” (see ©7). Darrel Droblich, Chair of the Pedestrian, Bicycle, and Traffic Safety Committee also spoke in support of the Bill, stating his belief that “more needs to be done to encourage all property owners, and especially commercial property owners,” to clear the sidewalks for which they are responsible (see ©8). Richard Hoyer spoke in opposition to the Bill, indicating that commercial property owners are not the issue, and that a larger problem results from road-clearing plows pushing snow on to sidewalks. Mr. Hoyer said that a stakeholder group is needed to address the problem of snow removal.

In addition to the speakers, the Council has received written correspondence, both in support and in opposition to the Bill. Tracey Johnstone of the Action Committee for Transit wrote in support of the Bill, citing the importance of clear sidewalks as pedestrian traffic increases, particularly in light of the substantial number of significant snowfalls in recent years. Carl Custer categorized sidewalk snow clearing as a public safety issue, and cited the importance of enforcement, concluding that “fines should get folks’ attention.”

Marilyn Balcombe of the Gaithersburg-Germantown Chamber of Commerce expressed opposition to the Bill (see ©9). While supporting the need for restoring mobility, she asserted that increasing fine amounts for commercial property owners will not resolve the issue. Ms. Balcombe also referenced the problem with plows pushing snow onto sidewalks, and said that better coordination between street crews and sidewalk crews is needed. Jane Redicker of the Greater Silver Spring Chamber of Commerce also wrote in opposition to the Bill, questioning the need for the legislation (see ©10-11). Ms. Redicker referenced a Department of Housing and Community Affairs (DHCA) memorandum which indicated that only two citations were issued in the winter of 2015-2016, and both were dismissed in District Court.

Issue for Committee Consideration

Will increasing fines for commercial properties increase compliance?

DHCA handles enforcement for sidewalk snow removal. When complaints are received on commercial, multi-family, and repeat single-family properties, DHCA staff visits the sites within a day of the complaint being filed. For first-time complaints on single-family properties, DHCA sends out an educational letter informing the owner of their legal responsibilities for clearing of the sidewalks. DHCA issues a “Notice of Violation” (NOV) for commercial and multi-family properties, requiring corrective action within 24 hours. The NOV is intended to encourage compliance with the law, and failure to correct the violation within 24 results in a citation that, under current law carries a \$50 fine.

DHCA has provided a table showing the number of complaints, site visits, and citations issued over the last three winter seasons (©12). As referenced by Marilyn Balcombe and Jane Redicker in their letters to the Council in opposition to the Bill, only two citations, one for residential, one for commercial, were issued in winter 2015-2016. The citation numbers were identical in winter 2014-2015, and in winter 2013-2014, there were no citations issued at all. These numbers would appear to indicate the limited utility of increasing fines for commercial properties; conversely, the numbers indicate that under the current enforcement process, would not likely

represent an extreme burden to commercial property owners. It is unclear whether the threat of an increased fine would provide DHCA with needed leverage to encourage compliance on commercial properties. An increased fine for these properties would, however, potentially offer a more effective “tool in the toolbox” should more aggressive enforcement be deemed necessary.

When the Bill was introduced, Councilmember Katz expressed concern that a \$500.00 fine – 10 times that of the fine for residential properties – is too punitive. Under Section 1-19 of the Code (©13), the Executive may, by method (1) regulation provide for amounts lower than the maximums of \$500 and \$750. Also, if the Committee wishes to increase the fines, but to specific amounts below the maximums, it could do so in the Bill by retaining the violation as class A, but expressly providing that the penalties are lower.

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Expedited Bill No. 46-16
Concerning: Streets and Roads – Snow
Removal - Violations
Revised: November 8, 2016 Draft No. 3
Introduced: November 15, 2016
Expires: May 15, 2018
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmember Riemer

AN EXPEDITED ACT to:

- (1) provide for penalties for violations of the law requiring removal of snow and ice on certain property; and
- (3) generally amend the law concerning the removal of snow and ice from sidewalks and pedestrian crossings in the County

By amending

Montgomery County Code
Chapter 49, Streets and Roads
Article I, In General
Section 49-17

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec.1. Section 49-17 is amended as follows:**

2 **49-17. Accumulation of snow and ice on property prohibited.**

3 (a) (1) In this Section:

4 (A) Commercial property means real property that either:

5 (i) is not designed for or intended for human
6 habitation; or

7 (ii) contains a multi-family dwelling of four or more
8 units.

9 (B) Residential property means real property containing
10 either:

11 (i) a single family dwelling; or

12 (ii) a multifamily dwelling of three or fewer units.

13 (2) A person is responsible for removing snow and ice on any
14 sidewalk, other walkway, shared use path, or parking area on or
15 adjacent to property that the person owns, leases, or manages,
16 including any walkway in the public right-of- way, to provide a
17 pathway wide enough for safe pedestrian and wheelchair use.
18 For purposes of this Section, commonly owned property between
19 a single-family residential lot and a common walkway is
20 considered part of the lot if the intervening common property
21 includes a walkway or driveway that serves only that lot.

22 [(2)](3) Except as provided in paragraph (4), each owner, tenant,
23 or manager is jointly and severally responsible for clearing snow
24 and ice from the property and complying with Section 31-
25 26A(d).

26 [(3)](4) The requirements of this Section do not apply to:

27 (A) an unpaved walkway;

- 28 (B) a private walkway or parking area on the property of a
- 29 single-family residence;
- 30 (C) a public walkway behind a single-family residence that is
- 31 not directly accessible from the owner's property; or
- 32 (D) a walkway that:
 - 33 (i) is at least 25 feet from vehicular traffic;
 - 34 (ii) serves only pedestrian destinations that are also
 - 35 accessible by another walkway that this Section
 - 36 requires to be cleared;
 - 37 (iii) was not routinely cleared of snow and ice after
 - 38 August 1999; and
 - 39 (iv) is not the primary route for pedestrian access to a
 - 40 winter recreational facility open to the public.

41 [(4)](5) (A) An individual who lives in a multi-family
42 [residential property] dwelling is not responsible for
43 removing snow and ice from a common walkway or
44 parking area.

45 (B) A homeowners' association, as that term is used in State
46 law, is not responsible for removing snow and ice from a
47 walkway adjacent to a single-family residential lot, if the
48 lot owner is responsible under paragraph (1) for removing
49 snow and ice from that walkway.

50 * * *

51 (g) Violations.

52 (1) A violation of this Section is:

53 (A) on or adjacent to residential property, a class C violation;
54 and

55 (B) on or adjacent to commercial property, a class A violation.

56 (2) A person authorized to enforce this Section must not issue a
57 citation for a violation unless the violation still exists 24 hours
58 after a notice of violation. An authorized enforcement officer
59 may issue the notice of violation to any person responsible under
60 subsection (a) for clearing the snow or ice, or post the notice in a
61 conspicuous place on the property where the violation exists.

62 (3) Each day a violation continues to exist is a separate violation,
63 except for a violation on or adjacent to a single-family residential
64 property.

65 * * *

66 **Sec. 2. Expedited Effective Date:** The Council declares that this legislation is
67 necessary for the immediate protection of the public interest. This Act takes effect on
68 the date on which it becomes law.

69 *Approved:*

70 _____
Nancy Floreen, President, County Council Date

71 *Approved:*

72 _____
Isiah Leggett, County Executive Date

73 *This is a correct copy of Council action.*

74 _____
Linda M. Lauer, Clerk of the Council Date

LEGISLATIVE REQUEST REPORT

Expedited Bill 46-16 *Streets and Roads – Snow Removal - Violations*

DESCRIPTION:	Expedited Bill 46-16 would make a violation of the County's sidewalk snow removal law on or adjacent to commercial property a class A violation, while a violation on or adjacent to residential property would remain a class C violation.
PROBLEM:	The current fine structure has little deterrent effect on larger properties, for whom snow-clearing may be quite expensive.
GOALS AND OBJECTIVES:	Create an increased incentive for commercial property owners to comply with the County's sidewalk snow removal law by increasing fines for violations.
COORDINATION:	Department of Transportation
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Josh Hamlin, Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class C violation (residential) and class A violation (commercial)



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

HANS RIEMER
COUNCILMEMBER AT-LARGE

To: Councilmembers
From: Hans Riemer
Date: November 8, 2016
Re: Sidewalk Snow Fines: Residential and Commercial

Colleagues, on Tuesday, November 15 I will be introducing a bill that strengthens sidewalk snow removal legislation by establishing a higher compliance fine on commercial property, by making commercial property owners subject to a Class A violation (with a fine up to \$500) if they are found in violation of the sidewalk snow clearing law. Residential property owners would remain subject to a Class C violation (with a fine up to \$50).

While a \$50 fine seems adequate for residential properties, it has very little, if any, deterrent effect on commercial property owners. Clearing commercial property can be more expensive, but it is no less important. The fine needs to be larger to enable code enforcers to more effectively deal with the problem actors, which are few but have a large impact.

While I still believe our current "light touch" and flexible approach to enforcement is generally the right way to go, the larger fine will be an effective tool in code enforcement's toolbox. Restoring mobility for every mode—including motorists, transit, pedestrians, and bicyclists—should be the County's priority after snow events. This legislation helps us do just that.

I respectfully request your support of the bill.



COMMISSION ON PEOPLE WITH DISABILITIES

Testimony on Bill 46-16 Street and Roads – Snow Removal - Violations
November 29, 2016

My name is Seth Morgan. I am chair of the Commission on People with Disabilities and am speaking in favor of Bill 46-16, Streets and Roads – Snow Removal – Violations.

A basic unifying theme of many of the concerns affecting people with disabilities is the issue of independence. People with disabilities are in basic ways no different from all members of society. We want the autonomy of self-determination in deciding our life choices; where we live, the schools we go to, the jobs we apply for, and so on. Part of that ability requires that barriers to independence be eliminated. Great advances along these lines have been made as a result of the Americans with Disabilities Act and the laws enacted by our forward thinking local legislators aimed at creating inclusiveness.

A recurring concern that threatens this independence is that of how local jurisdictions address the issue of snow removal when it is needed. Roads are cleared promptly and efficiently as most members of society use cars or public transportation to get to work, buy staples, and so on.

However, the need to clear sidewalks is not given a similar degree of attention and urgency. Those who become de facto prisoners of their homes because they need clear sidewalks, wheelchair ramps, crosswalks and disability parking are often forgotten with all the attendant dangers that isolation brings. Not only are snow blocked sidewalks a danger to people with disabilities but also endanger our aging residents and everyone else as well. You may want to include in the bill that the width of the path of travel to be shoveled should be at minimum 36" wide.

The Council has passed laws about the responsibilities of home owners to clear the sidewalks in front of their homes. Understanding that not all residents will comprehend the need for these laws, a fine of \$50 is used to encourage homeowner compliance.

A concern of many commissioners is for people who are physically unable to shovel snow. We know it's the responsibility of the homeowner to remove snow. However, we are hoping that the County will be a resource in coordinating volunteers, like the City of Rockville to assist those who are unable to do it.

But, what is clear is that a fine that results in action by a homeowner to clear their sidewalks will not necessarily be as persuasive to a commercial property owner. Thus, a more severe fine of \$500 is needed to achieve compliance.

It is unfortunate that fines are needed at all but until all property owners comply because that is the right thing to do, we will need fines that are more than a slap on the hand in order to get attention and action.

Department of Health and Human Services

401 Hungerford Drive • Rockville, Maryland 20850 • 240-777-1246 • 240-777-1288 FAX
www.montgomerycountymd.gov/hhs

J

**Public Hearing on Expedited Bill 46-16,
Streets and Roads – Snow Removal – Violations**

**Testimony of Darrel Droblich
Chair of the Pedestrian, Bicycle, and Traffic Safety Committee
2700 Blaine Drive
Chevy Chase, MD 20815**

Summary:

Support for Expedited Bill 46-16, Streets and Roads – Snow Removal Violations.

Good Afternoon.

I'm Darrel Droblich, a resident of Chevy Chase and Chairman of the Montgomery County Pedestrian, Bicycle, and Traffic Safety Advisory Committee. I am here today in support of Bill 46-16, Snow Removal Violations.

The Advisory Committee is a 17-member body appointed by the County Executive and confirmed by the Council. As you know, we share your commitment to improve pedestrian, bicycle and traffic safety as well as accessibility for everyone... and remain dedicated to assisting you to achieve the County's goal of making Montgomery County a model walkable and rideable community.

Over the last few years the Committee has heard numerous complaints from citizens, especially those with mobility issues, about the lack of snow removal and inability to use sidewalks or get to bus stops during large snowfalls. As a result, in 2014, the Committee supported Bill 21-14, Streets and Roads Snow Removal Plan. We hope this this plan eventually is fully funded.

Last fall, the Committee held a "Walk-About" event in Gaithersburg with senior citizens and members of the disabilities community. Council members Berliner and Katz joined us as we all experienced what people with mobility issues face everyday trying to get to the store, a doctor's appointment, or to a bus stop. These trips become a nightmare or simply impossible during snowstorms and for many days after in many parts of the County.

I firmly believe that more needs to be done to encourage all property owners, and especially commercial property owners, as this bill addresses, to clear any sidewalk, other walkway, shared use path, or parking area of ice and snow for pedestrians and wheelchair users to safely get to where they need to go. Appropriate fines need to be given to business owners who don't take their responsibility seriously.

Thank you for your attention and your ongoing commitment to protect the health and safety of our citizens.



Gaithersburg-Germantown Chamber of Commerce, Inc.

910 Clopper Road, Suite 205N, Gaithersburg, Maryland 20878 (301) 840-1400, Fax (301) 963-3918

Expedited Bill 46-16, Streets and Roads - Snow Removal – Violations

Marilyn Balcombe

November 22, 2016

Thank you for the opportunity to comment on Bill 46-16 which will increase the compliance fine on commercial property, by making commercial property owners subject to a Class A violation (with a fine up to \$500) if they are found in violation of the sidewalk snow clearing law.

We thank Councilmember Reimer for asking for input from our commercial property owners prior to submitting the proposed legislation. We also support the need for “restoring mobility” after a snow event. However, we do not think this bill will have the desired impact. Increasing the fine from \$50 to \$500 does not help resolve the very issue impacting most commercial property owners from complying with the law in the first place.

We oppose the increased fines primarily because commercial property owners often do not have control over clearing their sidewalks due to the lack of control over when the abutting streets will be cleared. As our commercial property owners report, and code enforcers concur, one of the major problems with snow clearing is that after a commercial property owner clears their sidewalk, snow-plows come along and push snow back onto the walk way. Commercial property owners are left with the choice of clearing their sidewalks twice or waiting until the adjacent road is clear and risking a fine for non-compliance.

Based on data from the Code Enforcement Section of Housing and Community Affairs, there were NO fines issued for the winter of 2015-2016. Of the 888 total reported complaints, 719 were single family properties that received an educational letter with no further follow up. The remaining 169 properties were visited by code staff with only 2 citations for non-compliance. Both cases were dismissed in District Court. Increasing the fine from \$50 to \$500 will not have the desired impact of “restoring mobility”.

If restoring mobility is the ultimate goal, there needs to be better coordination between the street crews and sidewalk crews. If there are “problem actors” out there who continually flout the law, perhaps the legislation can specifically target repeat offenders.

We do not believe this legislation is the answer. Thank you.



November 22, 2016

Council President Nancy Floreen
and Members of the Council
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20854

RE: Expedited Bill 46-16 – Streets and Roads – Snow Removal Violation - OPPOSE

Dear Council President Floreen and Members of the Council:

On behalf of the Greater Silver Spring Chamber of Commerce, I am submitting this letter in lieu of testimony to express the Chamber's opposition to Bill 46-16. We appreciate the opportunity to comment on this legislation, which will increase by tenfold the compliance fine on commercial property, by making commercial property owners subject to a Class A violation (with a fine up to \$500) if they are found in violation of the sidewalk snow clearing law.

Fundamentally, we question the very need for this legislation. According to a memo from the Department of Housing and Community Affairs (DHCA), the agency responsible for enforcement of current snow removal laws:

"The numbers for the winter of 2015-2016 include the creation of 888 cases. Of these, 169 properties were visited by code staff and 719 first-time SF [single family] properties were sent the above mentioned educational letter. We issued 2 citations for non-compliance. The cases were sent to the District Court where the citations were dismissed in court."

The memo went on to further state:

"One issue we have when enforcing the sidewalk shoveling requirement is that many times the snow-plows have not completed the road clearing adjacent to the sidewalk in question. Taking immediate action in such cases would not be productive before the streets are cleared completely because the snowplows often push snow back onto the sidewalk. There have been several instances where the property owner has shoveled to comply with the law, only to have the sidewalk re-covered with snow by the snowplow."

Based on this information, it seems to us that the current level of enforcement and fine structure does not need to be changed, and imposing a higher fine on commercial property owners will do nothing to "restore mobility," the stated goal of the bill's sponsor.

We agree with the sponsor that the County's "current "light touch" and flexible approach to enforcement is generally the right way to go. . ." The Chamber member property and business owners with whom we discussed this bill told us that they do their best to get out and get the sidewalks around their properties cleared as soon as possible. It's in their best interests. Business and property owners want to get back to work and open and accessible for their customers.

The problem, as so well stated in the memo from County's enforcement officials, is that property owners' efforts to clear their sidewalks are often directly dependent on the County's and State's success in clearing the adjacent roadways. Further, it seems counter-productive, and a threat to individual safety, to have a law that requires that sidewalks be cleared at the same time that the County's Department of Transportation (DOT) is

often telling citizens (who include business and property-owners) to stay home until DOT crews can clear the roads. It also forces DHCA inspectors, who have not been designated as “essential personnel,” to be out when County officials have told our residents to stay home. Despite these admonitions, many property owners do venture out to clear their sidewalks because they want to get their businesses open again. But even more counter-productive is spending the time and money to clear your sidewalk, only to have it recovered (and in worse shape) when the snowplows come through to clear the road.

The County’s enforcement personnel indicate that they also receive “repeat single-family complaints.” If drastically increasing the fine (tenfold) for commercial property owners will have a “deterrent effect,” then why would it not do the same for repeat residential offenders? Unfortunately, this just seems to reinforce the perception that Council is simply interested in going after big bad business, no matter how big or small the business.

If indeed the goal of this legislation is to “restore mobility,” after snowfall in our area, and to change the bad behavior of a few “problem actors,” then perhaps a system that punishes only the repeat offenders – both commercial and residential – would be more appropriate. Or better, the County should consider a broader public education campaign that urges everyone to be a good neighbor in a snow event, and also encourages realistic expectations about the timing of all efforts to “restore mobility.”

For these reasons, we oppose Expedited Bill 46-16 and ask you to reject its enactment.

Sincerely,



Jane Redicker
President

<u>WINTER SEASON</u>	<u>TOTAL CASES</u>	<u>TOTAL SITE VISITS</u>	<u>COM/IN/MF</u>	<u>RESIDENTIAL</u>	<u>EDUCATIONAL MATERIAL MAILED (1st REPORT)</u>	<u>CITATIONS RESIDENTIAL</u>	<u>CITATIONS COMMERCIAL</u>
2014	450	42	32	10	408	0	0
2015	718	146	113	33	572	1	1
2016	885	169	132	37	716	1	1

* Winter Season is noted as December to March

MONTGOMERY COUNTY CODE

Sec. 1-19. Fines and penalties.

Any violation of County law that is identified as a Class A, B, or C violation may be punished as a misdemeanor by a fine of not more than the amount shown below, or by confinement in the County jail for not longer than the time shown below, or by both the fine and confinement, in the discretion of the court, in which the violator is convicted. Any violation may, in the alternative and at the discretion of the enforcing agency, be punishable as a civil violation under Section 1-18. The civil penalty must be in the amount shown below, unless a lower amount for a specific violation is set by an executive regulation adopted under method (1).

<i>Class</i>	<i>Criminal Violation</i>		<i>Civil Violation Maximum Penalty</i>	
	<i>Maximum Fine</i>	<i>Maximum Jail Term</i>	<i>Initial Offense</i>	<i>Repeat Offense</i>
A	\$1000	6 months	\$500	\$750
B	\$200	30 days	\$100	\$150
C	\$50	None if fine is paid; 10 days otherwise	\$50	\$75

If no penalty is specified for taking any action prohibited by County law or failing to take any action required by County law, that action or failure to act is a Class A violation. (1983 L.M.C., ch. 22, § 2; 1984 L.M.C., ch. 24, § 1A; 1984 L.M.C., ch. 27, § 3; FY 1991 L.M.C., ch. 10, § 2; CY 1991, ch. 18, § 1.)

Editor's note—The above section is cited in DeReggi Construction Company v. Mate, 130 Md.App. 648, 747 A.2d 743 (2000) and Jakanna Woodworks, Inc. v. Montgomery County 344 Md. 584, 689 A.2d 65 (1997).

See County Attorney Opinion dated 1/16/02 discussing the circumstances in which the Inspector General may access personnel records without the employee's consent.