Increasing Walking & Bicycling Through Kansas Sidewalks, Trails, & Railroad Crossings
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Increasing Walking & Bicycling Through Kansas Sidewalks, Trails, & Railroad Crossings

PUBLIC HEALTH LAW CENTER
at Mitchell Hamline School of Law

6/20/2017
INTRODUCTION

Moderator:
Mary Marrow
Senior Staff Attorney
Public Health Law Center
The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal advice and does not enter into attorney-client relationships.
ROADMAP FOR TODAY

Part I: Sidewalks
• Design Standards
• Construction, Reconstruction, Maintenance & Repair
• Paying for Sidewalks
• Liability Concerns

Part II: Railroad Crossings
• Design Standards
• Types of Railroad Crossings
• Paying for Railroad Crossings
• Pedestrian/Bicycle Safety Issues
• Liability Concerns
INTRODUCTION

Karie Mees
Staff Attorney
Public Health Law Center
PART I: SIDEWALKS
KANSAS SIDEWALKS

• Design Standards
• Construction, Reconstruction, Maintenance & Repair
• Paying for Sidewalks
• Liability Concerns

WHAT IS A SIDEWALK

Definition: Sidewalk
The portion of a street, between the curb or lateral lines of a roadway, and the neighboring property lines, intended for use by pedestrians. Kan. Stat. § 8-1465.

Definition: Property Owner
“Property Owner” means the owner of any property adjacent to the sidewalk.
DESIGN STANDARDS

The American’s with Disabilities Act (ADA)

A federal law that prohibits the discrimination of individuals with disabilities in all public programs, services, and facilities.

http://www.access-board.gov
CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, AND REPAIR

Local Government


CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, AND REPAIR

Property Owners


• May file a request to or petition the city to construct a sidewalk. Kan. Stat. § 12-1803.

Paying for Local Sidewalks: Cost Sharing Programs & Transportation User Fees
### WHAT IS IT?

<table>
<thead>
<tr>
<th>Tax</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>A tax is force contribution to pay for general services provided by the government which benefit the public at large, regardless of whether a particular person has paid the tax.</td>
<td>A fee is voluntary and assessed against those who gain the exclusive benefit of a governmental service that is not enjoyed by the public at large.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Special Assessment</th>
<th>Excise Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>A special assessment is imposed on property within a limited area for payment of a special or local improvement.</td>
<td>An excise tax is one which is imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege.</td>
</tr>
</tbody>
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*Heartland Apartment Association v. City of Mission, Kansas (2016)*
TRANSPORTATION UTILITY FEE VS EXCISE TAX

Heartland Apartment Association v. City of Mission, Kansas (2016)

• The City of Mission created a Transportation User Fee (TUF) and charged all property owners within the city.
• The amount property owners had to pay was based on a formula that attempted to estimate the number of vehicle trips a particular property generated.
• The funds generated from the TUF were then used for the maintenance and upkeep of the city’s streets, bicycle lanes, and sidewalks.
• The court decided the TUF was an impermissible excise tax that violated the city’s home rule authority.
HOW COST SHARING CAN SUPPORT SIDEWALKS MOVING FORWARD...

<table>
<thead>
<tr>
<th>Location</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Atchison</td>
<td>Implemented in 1979, Atchison’s “Sidewalk Share Program” matches sidewalk repair and improvement projects dollar for dollar.</td>
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<tr>
<td>Garden City</td>
<td>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).</td>
</tr>
<tr>
<td>Kansas City</td>
<td>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.</td>
</tr>
<tr>
<td>Topeka</td>
<td>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.</td>
</tr>
<tr>
<td>Emporia</td>
<td>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.</td>
</tr>
<tr>
<td>Burlington</td>
<td>Burlington provides $10 per linear foot to residents replacing or repairing existing sidewalks.</td>
</tr>
</tbody>
</table>
WHAT IF SOMEONE GETS HURT?

What is liability?

- Duty of Care
- Breach
- Causation
- Damages

http://www.scarymommy.com/parenting-style-let-them-bleed
DUTY OF CARE

Strict liability

Reasonable Person Standard

Legal Responsibility

Willful Wanton

Gross Negligence

Negligence

Low

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WHAT IF SOMEONE GETS HURT?

IMMUNITY: WHY IT MATTERS?

Slight Defect Rule

“slight variances or imperfections in sidewalk surfaces are not sufficient to establish actionable negligence in the construction or maintenance of sidewalks.”

LIABILITY & COST-SHARING PROGRAMS

• Funding the construction/reconstruction of sidewalks will likely not create liability for injuries that occur.

• City will generally only be liable for injuries on a sidewalk if the city created the hazardous condition.

• Property owners will generally only be liable for injuries if the property owner constructed the sidewalk in a defective manner.
RAILROAD CROSSINGS IN LOCAL COMMUNITIES

- Design Standards
- Types of Railroad Crossings
- Paying for Railroad Crossings
- Pedestrian/ Bicycle Safety Issues
- Liability Concerns

http://www.dtwrail.com/

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DESIGN STANDARDS

Manual on Uniform Traffic Control Devices for Streets and Highways – U.S. Department of Transportation, Federal Highway Administration

Railroad-Highway Grade Crossing Handbook – U.S. Department of Transportation, Federal Highway Administration

https://mutcd.fhwa.dot.gov
RAILROAD CROSSINGS
AT-GRADE & GRADE SEPARATION

http://www.transystems.com/Home/Markets/Freight-Rail/Grade-Separations/Flyovers/Projects/Olathe-BNSF-West-Track-Quiet-Zone-1.aspx
PAYING FOR A RAILROAD CROSSING


- State Railroad Crossing Inventory & Hazard Index
- Railroad Grade Separation Program
- Local Partnership Railroad Grade Separation Program
- State Funded Highway/ Railroad Crossing Program
PEDESTRIAN/BICYCLE SAFETY ISSUES

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PEDESTRIAN/BICYCLE SAFETY ISSUES

WARNING SIGNS

Passive Warning Signs
• Pavement Markings
• Stop/ Yield Signs
• Crossbucks

Active Warning Signs
• Gate & Flashing Lights

http://www.newtonkansas.com/departments-services/police-department/railroad-safety
“No general rule of law is available from which the rights and liabilities growing out of all accidents occurring at railroad crossings may be determined. It necessarily results that each individual case must be determined on its particular conditions and circumstances.”

WORKING WITH KANSAS RAILROADS

http://kcparks.org/attraction/kansas-city-northern-railroad
Sidewalks in Kansas

Who is responsible for what?

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, safety 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.

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. Townships also have some authority over certain aspects of sidewalks within their boundaries, including construction and maintenance. Kansas

Using Railroad Property for Community Trails

Converting railroad property to non-motorized trails provides opportunities to encourage and expand walking, bicycling, and other forms of active transportation and recreation. Using railroad property in this way can benefit both the communities in which the trails are located and the railroad carrier.

Q: What are the benefits of using railroad property for non-motorized trails?
A: Converting railroad property to community trails can benefit communities by providing:

- Additional access to other parts of the transportation system and community without the additional cost of developing new right-of-way.
- An option for community members to engage in a healthy, environmentally friendly, and economical mode of transportation in lieu of motor vehicles.
- Scenic settings for physical activity as many railroads are located along streams, valleys, and rolling hills.

“Right of way” can be used to describe both a right of passage on property belonging to another person and that strip of land on which railroad companies construct rail beds. The information provided in this document is not legal advice. It is for informational purposes only and is not a comprehensive outline of railroad property law. Those interested in acquiring railroad property should consult an attorney. 

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

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Kansas Bicycling and Walking Resources

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Supporting active living through walking and bicycling can create vibrant communities in Kansas. A walking and bicycling system in a local community can:

- Improve health and reduce chronic diseases associated with lack of physical activity;
- Support economic development by attracting residents, new businesses, and tourists;
- Increase accessibility to a community for persons of all ages and abilities;
- Conserve natural resources and the environment by improving air quality and reducing air pollution from motor vehicle use;
- Create connections both within and beyond a community; and
- Enhance and promote community vitality.

To accomplish these goals, Kansas communities are looking for ways to make the built environment of roads, sidewalks, trails, paths, and other facilities safer and more accessible to pedestrians and bicyclists. These resources support these efforts by providing a comprehensive overview of laws and policies that may impact community initiatives to increase and enhance bicycling and walking. These resources can be used by local law-making and planning boards, councils, committees, and departments; walking and bicycling advocates; neighborhood groups; and other groups and individuals interested in creating a more active community. In addition, these resources may be used by other state or county level authorities to advise communities that need guidance implementing plans of their own.

- Policy Options for Local Governments in Kansas: Increasing Walking and Bicycling
- Sidewalks in Kansas
- Using Railroad Property for Community Trails
- Differences Between Active Transportation and Recreation Facilities in Kansas
- Using Kansas Roads & Sidewalks for Active Transportation
- Using Kansas Tails & Shared-Use Paths
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