

**City of Milwaukee
Department of Public Works**

**Bus Stop and Pedestrian Ramp
Snow Clearing Report**

February 29, 2008

**City of Milwaukee – Department of Public Works
Bus Stop and Pedestrian Ramp Snow Clearing Report**

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Introduction

The existing City of Milwaukee, Department of Public Works Snow/Ice Control policy is based on a prioritized, phased response to snow clearing needs for City streets, medians, intersections, corner sidewalks, pedestrian ramps, bus stops and crosswalks. The initial priorities for this effort, is based on the City's responsibility to maintain public safety and emergency response capabilities on the existing 1,415 miles (7,000+ lane miles) of City streets. Snow clearing methods over the years have concentrated on utilizing mechanical equipment for a faster, more efficient and productive response effort. As the initial roadway priorities are met over hours or days, the snow clearing efforts shift to address street median and intersection clean-up and the clearing of excessive snow at various pedestrian facilities including corners, ramps, bus stops and crossings. The City of Milwaukee has over 40,000 street corner locations and 4,200 bus stop locations.

The City of Milwaukee Common Council, adopted Resolution File Number 071235 on January 15, 2008 which directed the Department of Public Works "to prepare and submit a plan to the Common Council within 30 days specifying how it will clear all snow and ice from curb cuts and Milwaukee County bus stops by hand shoveling or other methods with 24 hours after the snow and ice has ceased to fall."

This report has been completed with input from various City agencies including staff from DPW-Administration, DPW-Infrastructure Services Division, DPW-Operations Division (Fleets, Sanitation and Forestry), DOA-Budget and Management Division and Milwaukee District Council 48, AFSCME, AFL-CIO.

Executive Summary

Current snow clearing practices at bus stops and pedestrian curb cuts will generally commence upon completion of the general City-wide street snow plow operations based on the severity of the event. A general City-wide snow plowing usually occurs only after 4-6 inches of snow has accumulated. Based on the availability of personnel and equipment, this effort generally commences within one day after the snow event and extends for 2-3 days until complete. This time frame may very well be extended during periods of consecutive snow events. City personnel and equipment is supplemented by private contractors with additional equipment during these snow operations. Presently DPW spends ~\$105,000 per clearing operation for about half of the bus stops and pedestrian ramps as necessary. It should be noted that under all other circumstances, the abutting property owner is responsible for clearing the sidewalk, including the corner/pedestrian ramp by City Ordinances

Six alternatives were investigated to improve both the snow clearing methods and the time frame to meet a clearing completion goal of 24-hours at bus stops and curb cuts. Cost estimates were prepared based on reasonable assumptions and existing information and included in the Appendix. The alternatives included:

- Clear all bus stops and pedestrian ramps utilizing manual methods by private sector workforce within 24 hours at a total continuing cost of ~\$450,000 per operation.

- Clear all bus stops and pedestrian ramps utilizing mechanical methods by private contractors with supplemental effort by City forces within 24 hours at a total continuing cost of ~\$450,000 per operation.
- Clear all bus stop and pedestrian ramps utilizing mechanical methods by private contractors with supplemental effort by City forces within 24 hours. In order to achieve an improved clearing result beyond mechanical methods, modify City ordinances to require adjacent owners to further clear these locations after City operations, at a total continuing cost of ~\$450,000 per operation.
- Extend current bus stop clearing efforts to all bus stop locations by private contractor within 24 hours at a total continuing cost of ~\$30,000 per operation.
- Modify City ordinances to extend adjacent property owner responsibility for snow clearing on public sidewalks within 24 hours to include these adjacent pedestrian locations. The cost for current City clearing operations at corners can be eliminated.
- Increase compliance inspection and enforcement of existing sidewalk snow clearing ordinance with added City personnel at an increased annual cost of \$60,000. Compliance will extend beyond 24 hours.

Each alternative was evaluated based on the feasibility of implementation, identified pros and cons and the total estimated cost. The cost of current City practices has been included in the total as appropriate for each alternative. Identified costs per operation results in an annual budget number for a fixed number of occurrences per year. In addition, funding options identified for this increased service level include increasing the existing Snow/Ice fee or eliminating other existing City service levels to offset these added costs. As with current Snow/Ice control costs, these costs will be ongoing costs for each operation.

The report only provides alternatives and does not include any final recommendations. The determination of public service levels and related costs are policy decisions to be made by the Common Council and Mayor.

Current Practices

The city forces and private contractors who drive the snow plows and end loaders during a general snow plowing operation also operate the sidewalk and bus stop cleanup equipment. Therefore, snow clearing operations for the bus stop and pedestrian ramp commence 18 to 24 hours after a general plowing operation is completed and is generally completed within 3 days. City properties and hardship residents are plowed first, then crosswalks and alley openings.

General Plowing Operation

The City's operational response is based on the severity of the storm. Snow and ice control operations vary in size from intermittent saltings of isolated slippery spots with one or two salt trucks to full scale plowings using up to 350 pieces of equipment.

When a major storm occurs, a **general plowing operation** is called. Depending on the severity of the storm, it takes between 18 and 24 hours after snow stops falling to complete a

general plowing operation on all 1,415 miles of streets. Snow operations will continue with cleanup such as clearing snow islands left by parked cars, touching up intersections and crossovers, and widening residential streets. Salting and snow plowing operations are frequently conducted concurrently.

When DPW is diverted to a large scale snow plowing operation, many normal department operations are prioritized and may be suspended or cut back as equipment and personnel are reallocated to the snow fighting effort. This diversion is most noticeable in Sanitation's solid waste and recycling collections. A **general plowing operation** stops the garbage and recycling collections because Sanitation's garbage and recycling packers are part of the city's snow plowing equipment.

Full scale **general plowing operations** generally do not commence unless snow accumulations measure more than **four inches** and snow is continuing to fall and/or weather forecasts call for additional accumulations of **four or more inches**.

Bus Stops

Depending upon bus stop conditions following a general plowing, DPW will clear plowed up snow on specific bus stops. Operations are mobilized by the Commissioner of Public Works and usually take place during the nights following the completion of a general plowing operation by the Sanitation Division. A general street salting operation does not prompt a bus stop clearing operation.

Bus stop clearing operations take place in twelve hour shifts and run for two to three nights depending on the severity of previous storms. DPW – Infrastructure Services - Street & Bridge Section supervises these clearing operations.

Not all of the approximately 4,200 bus stops within the City are cleared by these operations. State law provides that, wherever safe, buses may stop in the middle of the intersection to pick up or discharge passengers when stops are obstructed by ice or snow. On low-traffic stops riders could board the bus from the radius corner instead the normal stop. The current list of ~2,100 bus stop locations that are cleared of snow reflects this State law.

Snow is cleared from bus stop landings at all signalized intersections, four-way controlled intersections, mid-block or other locations a significant distance from the street corner, at high movement locations and locations identified by the advocates for disabled persons. The front door landing area is always cleared. Rear door landing areas are cleared only at higher traffic areas. Bus stop shelters are County facilities and are not cleared by DPW during the clearing operation.

Pedestrian Ramps

According to Chapter 116-8-1 of the Code of Ordinances, property owners are responsible for clearing ice or snow from walks, intersection corners or crossing abutting their property

within twenty-four (24) hours after the cessation of the snowfall. This includes the corner radius area for those residents with corner lots or those which might contain a mid-block crosswalk. This is enforced on a compliant basis through DPW Forestry Inspectors. The standard enforcement procedure after a complaint has been received is to post a notice at the property; re-inspect the property 24 hours after the placement; DPW contacts the Sanitation Department to clear the snow from the walk; finally the cost for the snow clearing is assessed to property owner on their tax bill.

The city is responsible for alley crossovers and other areas identified as belonging to the city. However, DPW plows crosswalks, alley openings, and the public sidewalks on some city and private properties after a general plowing operation. Sidewalks and radius corners, that DPW is responsible to clear of snow, are done with mechanical equipment.

The DPW operators who drive the street snow equipment during a general plowing operation also operate the mechanical equipment used to clear pedestrian ramps, approximately a four (4) foot wide opening at the ramp area. Therefore, snow clearing operations for the pedestrian ramps commence 18 to 24 hours after a general plowing operation is completed. The city has 38 pieces of sidewalk equipment used to clear pedestrian ramps. This complement is sometimes augmented by private equipment hired with service orders. A pedestrian ramp clearing operation usually takes three days to complete. A general street salting operation does not prompt a pedestrian ramp clearing operation.

The city has a sidewalk hardship exception policy for elderly or disabled individuals to clear snow and ice from their public sidewalks, this does not include the carriage walk or any walk/steps leading to their house from the public sidewalk. The owner of the property is also notified that they are still responsible for meeting the provisions Chapter 116-8-1 of the Code of Ordinances, which deals with clearing sidewalks of snow.

To be eligible for this service, residents must certify that they and all other occupants in their house are senior citizens or disabled and are physically unable to shovel the sidewalk. They also have to certify that they were unable to obtain the services of any other individual. An application, which is obtained by calling the Sanitation Division, must be returned to the division with a doctor's certificate acknowledging the physical disability. A medical certification is not required from senior citizens. The cost for this service is assessed against the property at a rate prescribed by the Department of Public Works.

Practices by other cities

Contemporary large cities with heavy snowfall generally require the abutting property owner to clear snow from sidewalks including pedestrian curb ramps within a reasonable time, usually within 24 hours of snowfall ceasing or accumulating for whatever reason. Some cities also explicitly mentioned a requirement to clear crosswalks. Most policies were silent regarding bus stops but inferred that abutting property owners were also responsible for providing access. A review covered about two dozen other cities in the northern tier and Great Lakes areas including Salt Lake City, Denver, Colorado Springs, Minneapolis, Chicago, Toledo, Detroit, Cleveland, and Rochester NY, among others.

Some smaller cities provide higher levels of service. For instance, Rochester NY clears snow from residential sidewalks when snowfall exceeds four inches and charges a fee for that service. Cities on the east coast, such as Alexandria VA, provide more service but receive much less snow (approximately 15 inches per season) than Great Lakes cities. Several disability and east coast “walk-able city” advocacy groups are promoting greater municipal clearing of pedestrian curb ramps, sidewalks, and bus stops.

Options to clear snow from Bus Stops and Pedestrian Ramps

The following options have been identified in accord with the intent of Common Council Resolution File No. 071235:

- Option #1 - Clear snow from all bus stops and pedestrians ramps by utilizing a private workforce
- Option #2 - Clear snow from all bus stops and pedestrians ramps utilizing mechanical equipment
- Option #3 - Clear snow from all bus stops and pedestrian ramps utilizing mechanical methods and require adjacent property owners to clear the remainder of the snow from the pedestrian ramps (requires modification of Chapter 116-8-1 of the Code of Ordinances)
- Option #4 - Increase bus stop snow clearing operations to include all ~4,200 bus stops
- Option #5 - Modify Chapter 116-8-1 of the Code of Ordinances and require adjacent property owners to clear all snow from pedestrians ramps for all snowfalls
- Option #6 - Increase inspection of sidewalks and pedestrian ramps for compliance with Chapter 116-8-1 of the Code of Ordinances
- Option #7 - Bus stop and pedestrians ramp snow clearing policies remain unchanged

Option #1 - Snow clearing from all bus stops and pedestrians ramps utilizing a private sector workforce

- ~\$450,000/snow clearing operation (the City currently spends ~\$105,000 per clearing operation)
- ~44,000 locations (40,000 + corners and 4200 bus stops)
- 1,800 workers needed to complete snow clearing in 1 day or 600 workers needed to complete snow clearing in 3 days
- DPW would divide the City into sections (4 to 10) and then contract the snow clearing operations within each section to private companies/contractors
 - EBE guidelines will apply
 - Each contractor must meet all applicable OSHA Standards and Regulations. Employees must have on at all times an ANSI 107-1999 Class II Safety Vest and Safety Glasses. Additionally, employees should have on appropriate weather/temperature outerwear, gloves and boots. The contractor should provide warming stations for their employees.
 - Each contractor is responsible for all labor, related issues, benefits and claims
- Extra costs include shovels, vests, transportation and supervision
- City personnel will monitor contractor compliance
- A general street salting operation does not prompt bus stop or pedestrian ramp clearing operations

Feasibility – It is unknown if 1,800 workers are available on any given snowfall. Workforce agencies have stated that 800 workers are probable, 1100 workers are possible and 1800 workers are unlikely.

Pro's

- Increase in mobility for pedestrians and disabled individuals
- Clearing operations can be started while plowing operations are still ongoing
- Employment opportunity for Milwaukee residents
- Contractor responsible for all related staffing and labor compliance issues

Con's

- Extra cost per snow clearing operation; this extra cost is unfunded
- The City will cease its current practice of clearing snow from bus stops and pedestrian ramps (possible labor/management issue)
- Weather conditions for workforce; low temperatures, wind chill, ice, etc.
- Transportation of workforce
- Availability/placement of the warming stations
- May require a large amount of oversight to ensure compliance
- If clearing operations are started during the general plowing operations it is likely that some locations will be plowed shut during street plowing operations

Option #2 - Utilize mechanical equipment to clear snow from bus stops and pedestrians ramps

- ~\$450,000/snow clearing operation (the City currently spends ~\$105,000 per clearing operation)
- ~44,000 locations (40,000 + corners and 4200 bus stops)
- 125 pieces of equipment (City and contractor) are needed to complete snow clearing in 1 day or 42 pieces of equipment to complete snow clearing in 3 days
- DPW will contract portions of the snow clearing operations to private contractors
- City personnel will monitor contractor compliance
- Additional equipment must be purchased so that DPW may utilize the 10 skidloaders in its fleet. The City must purchase 10 “V” blades @ \$3,600 to retro fit these skidloaders for snow clearing operations
- A general street salting operation does not prompt bus stop or pedestrian ramp clearing operations

Feasibility – It is unknown if 125 pieces of equipment, such as end loaders, skidloaders, etc., are available and can be committed by contractors any given snowfall. The City has ~48 pieces of equipment (38 tractors & 10 skidloaders) available for pedestrian ramp snow clearing operations.

Pro's

- Increase in mobility for pedestrians and disabled individuals
- Weather conditions are not an issue
- Requires less oversight of the contractors
- Some private contractors may be able to commence while plowing operations are still ongoing

Con's

- Extra cost per snow clearing operation; this extra cost is unfunded
- Some equipment (especially City equipment) not available until 18 to 24 hours after a general plowing operation is completed
- Quality of clearing is limited by the mechanical equipment
- Possible labor/management issues
- Some locations may be plowed shut during the plowing cleanup operations
- Possible impact on other DPW operations

Option #3 - Utilize mechanical equipment to clear snow from bus stops and pedestrians ramps, then require adjacent property owners to clear the remainder of the snow

- Same as Option #2 with further clearing by residents
- ~\$450,000/snow clearing operation (the City currently spends ~\$105,000 per clearing operation)
- ~44,000 locations (40,000 + corners and 4200 bus stops)
- 125 pieces of equipment (City and contractor) are needed to complete snow clearing in 1 day or 42 pieces of equipment to complete snow clearing in 3 days
- DPW will contract portions of the snow clearing operations to private contractors
- City personnel will monitor contractor compliance
- Additional equipment must be purchased so that DPW may utilize the 10 skidloaders in its fleet. The City must purchase 10 “V” blades @ \$3,600 to retro fit these skidloaders for snow clearing operations
- Require adjacent property owners to clear the remainder of the snow (requires modification of 116-8-1 of the Code of Ordinances)
- A general street salting operation does not prompt bus stop or pedestrian ramp clearing operations

Feasibility – It is unknown if 125 pieces of equipment, such as end loaders, skidloaders, etc., are available on any given snowfall. The City has ~48 pieces of equipment (38 tractors & 10 skidloaders) available for pedestrian ramp snow clearing operations.

Pro’s

- Increase in mobility for pedestrians and disabled individuals
- Weather conditions are not an issue
- Requires less oversight of the contractors
- Some/most pedestrian ramps and bus stops should be cleaned closer to bare pavement
- Some private contractors may be able to commence while plowing operations are still ongoing

Con’s

- Extra cost per snow clearing operation; this extra cost is unfunded
- Most equipment (especially City equipment) not available until 18 to 24 hours after a general plowing operation is completed
- Quality of clearing is limited by the mechanical equipment
- Possible labor/management issues
- Some locations may be plowed shut during the plowing cleanup operations
- Possible impact on other DPW operations
- Requires an ordinance modification
- May require additional oversight to ensure compliance of the City ordinance

Option #4 - Increase bus stop snow clearing operations to include all bus stops

- ~\$30,000 per bus stop snow clearing operation (additional cost above the ~\$25,000 that is already spent on bus stop clearing operations)
- Additional 2,100 bus stop locations cleared of snow
- Additional 17 end loaders to complete the snow clearing operation in 1 day or 13 end loaders to complete the snow clearing operation in 2 to 3 days (to clear all 4,200 bus stops it will require 34 end loaders to complete the snow clearing operation in 1 day or 26 end loaders to complete the snow clearing operation in 2 to 3 days)
- City personnel will monitor contractor compliance
- No change in snow clearing operations of the pedestrian ramps
- A general street salting operation does not prompt a bus stop clearing operation

Feasibility – It is unknown if an extra 17 end loaders are available on any given snowfall.

Pro's

- Increase in mobility for pedestrians and disabled individuals
- Weather conditions are not an issue
- Allows greater mobility, residents can board buses at the normal locations and not at a crosswalk
- Some private contractors may be able to commence while plowing operations are still ongoing

Con's

- Double the cost of each bus stop clearing operation; this extra cost is unfunded
- Equipment not available until 18 to 24 hours after a general plowing operation is completed
- Increase in damage to some bus stop areas by equipment clearing snow (turf areas)
- Some remote bus stops may be plowed shut during the plowing cleanup operations
- Quality of clearing is limited by mechanical methods

Option #5 - Modify Chapter 116-8-1 of the Code of Ordinances and require adjacent property owners to clear snow from pedestrian ramps

- Modify Chapter 116-8-1 of the Code of Ordinances to eliminate City responsibility for plowed snow at these locations and require adjacent property owners to clear all snow from pedestrian ramps within 24 hours after any snowfall
- Adjacent property owners will clear snow from pedestrian ramps, even after City plowing operations
- Property owners will be required to follow 116-8-1 of the Code of Ordinances
- City personnel will monitor property owners for compliance on a complaint basis
- No change in snow clearing operations of the bus stops (~2,100 bus stop locations are cleared after each general plowing operation)

Feasibility – This change would only impact corner properties. Current property owners already maintain full lengths (two sides) of public sidewalk; the additional impact is minimal. It is unknown how property owners will react to this change in the City Ordinance. Will property owners comply with a change in the City ordinance?

Pro's

- No extra snow plowing cost incurred by DPW
- Greater community involvement
- One owner responsible for one corner
- Increase in mobility for pedestrians and disabled individuals even if only a small percentage of property owners comply with an ordinance change

Con's

- Property owners may not be equipped to clear large quantities of snow from pedestrian ramps
- Property owners may refuse to comply with this change in the ordinances
- May require additional oversight to ensure compliance of the City ordinance
- Requires an ordinance change

Option #6 - Increase inspection of sidewalks and pedestrian ramps for compliance with Chapter 116-8-1 of the Code of Ordinances

- Utilize Public Works Inspectors that would be on lay off during the winter season to increase inspection of sidewalks and pedestrian ramps for compliance of the City Ordinances
- \$60,000/year to keep an extra 5 inspectors for the extra three months or \$120,000 to keep an extra 10 inspectors for the extra three months in the winter season (the City currently spends ~\$105,000 per clearing operation)

Feasibility – Unsure if the extra enforcement of Chapter 116-8-1 of the Code of Ordinances produce better compliance and result in clearer sidewalks and pedestrian ramps.

Pro's

- Greater enforcement of the present or modified Code of Ordinances
- Increase in mobility for pedestrians and disabled individuals even if only a small percentage of additional property owners comply the ordinance

Con's

- Extra cost per year; this extra cost is unfunded
- Increase in violations of current or modified ordinances
- Sanitation Division will have additional properties where they will have to conduct snow clearing from the sidewalks in lieu of compliance
- Contractors may have to supplement City crews if there are a large number of violations
- More properties will have snow clearing charges on their property tax bills

Option #7 - Bus stop and pedestrians ramps snow clearing operations remain unchanged

- No extra cost (the City currently spends ~\$105,000 per clearing operation)
- ~2,100 bus stop locations are cleared after each general plowing operation
- 13 end loaders are required to complete snow clearing from bus stops in 2 days. This operation begins after the general street plowing operation has been completed
- Some pedestrian ramps are cleared during the cleanup operations after each general plowing operation
- 38 tractors are required to complete snow clearing from the pedestrian ramps in 3 - 4 days. This operation begins after all street plowing is finished.

Feasibility – This is a continuation of our standard operating procedure for the clearing of snow from pedestrian ramps and bus stops

Pro's

- No additional funding is needed

Con's

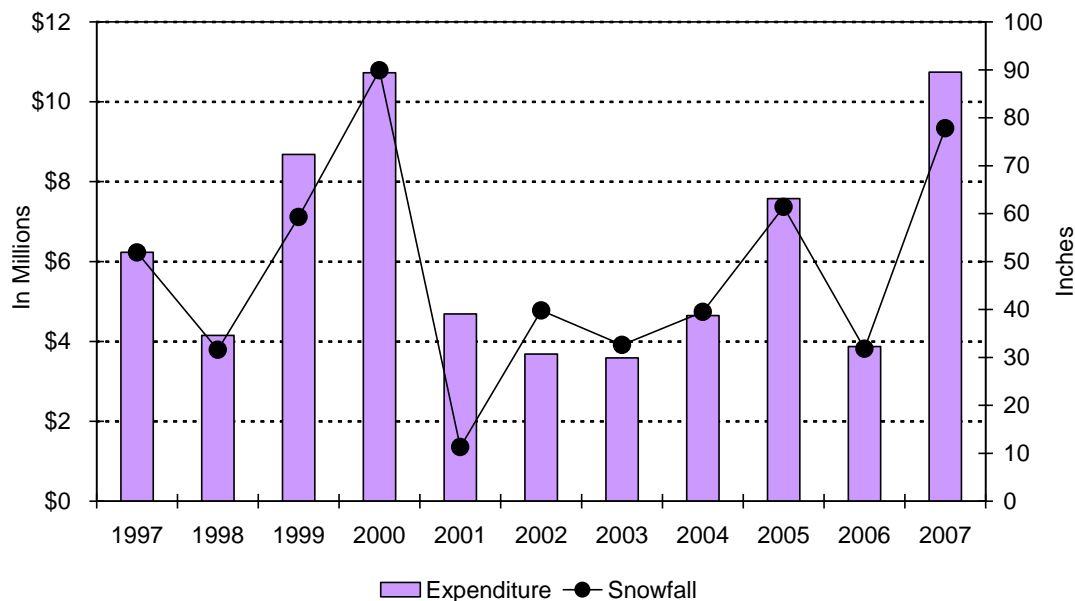
- There is no increase in mobility for pedestrians and disabled individuals during the winter season

Funding Options

In 2008, over \$4.9 million dollars was budgeted to cover 27 snow and ice operations including salting operations, 3-4 general plowing operations (snowfall of 4 inches or more) and special snow cleanup work. The 2008 budget provides \$4.3 million from the Snow and Ice Control Fee and approximately \$600,000 from the tax levy for this service. In addition, tax levy debt of \$1.12 million is allocated for snow and ice control related to major capital equipment.

Snow and ice control expenditures are largely dependent upon snowfall, which has fluctuated tremendously over the past decade. The cost of snow operations is highly correlated with inches of snowfall as shown in the following chart.

Snow and Ice Control Expenditures vs Inches of Snowfall



Options for funding the pedestrian curb ramp and bus stop service enhancement include:

1. **Increasing the Snow and Ice Control Fee** beyond the level adopted in the 2008 Budget. The fee was increased from \$2.4 million in 2007 to \$4.3 million in the 2008 Budget to directly recover a greater proportion of actual costs and reduce reliance on the tax levy – not to provide a higher level of service. The rate had not changed since the fee’s inception in 2002 and did not keep pace with the cost to provide snow and ice clearing service. The fee is charged based on the estimated street frontage for all properties. In the 2008 Budget, the rate was increased from \$0.2738 per front street foot to \$0.4788.

2. For 2008, **changing emphasis from another DPW Service to Snow and Ice Control.** Reducing another service level and applying funding to enhanced snow and ice control pedestrian curb ramp and bus stop snow clearing.

For 2009 and beyond, **adjusting service levels in Department of Public Works or another department** to offset cost of enhanced snow clearing service.

Estimated costs per operation and annually based on 3-4 general plowings per year appear in Appendix 1. For the highest cost option, the estimated increase in the Snow and Ice Control Fee would be approximately \$1.4 million, resulting in an estimated \$28.00 annual fee for the average single family homeowner. This would be an increase of about \$7.00 from the 2008 Adopted Budget and an increase of \$18.00 from the 2007 Budget.

Legal Obligations and Concerns

The City Attorney's office was consulted on various issues relating to this matter and offered the following opinions:

- Under existing City ordinance, the property owner or occupant is responsible for shoveling the abutting sidewalk area including the curb ramp areas. The City must also make its buildings accessible under this ADA. The City most likely would not be found in violation of ADA for failing to shovel all ramps in the city because it had adopted this ordinance. However, the City must take measures to enforce the ordinance. The City's policy would be easier to defend if high-volume intersections were identified and aggressively monitored.
- The City has an obligation to clear piles of snow blocking curb cuts and ramps it affirmatively creates due to plowing operations. The City must act "reasonably" under the circumstances. A temporary denial of access because of snow is not an ADA violation unless it lasts for an unreasonable amount of time.
- A stipulated timeframe, such as 24 hours referenced in File No 071235, would create a duty that does not currently exist under ADA. Whether 24 hours is "reasonable" would depend on many factors including the number of intersections, the limited use of some of those locations and weather forecasts. As an example, if a thaw is expected in 48 hours, it might not be "reasonable" to expend limited City resources to clear every ramp one day earlier. Failure to meet that inflexible deadline might be viewed as an act of negligence on part of the City if a suit is brought against the City.
- In accord with Council File No. 76-1872-a, the City granted Milwaukee County blanket approval with certain conditions to place bus shelters on the public way. One condition was that the County agrees to take the necessary actions to keep them free from debris and snow. If the County does not maintain the shelter, then the shelter can be cleared.
- The City would be responsible for worker's compensation insurance and liable for claims if the City employs persons from community groups that do not meet the definition of temporary help agencies or for using inmates participating in a work release program or a transitional employment program. If the City uses service contracts, the contracts should require the entities to carry worker's compensation insurance because

liability for worker's compensation benefits for these temporary employees, should they be injured while snow shoveling, would be the responsibility of the entity providing the employees if the entity is a temporary help agency.

A copy of the City Attorney's letter to Commissioner Mantes dated January 28, 2008 is included in Appendix 5.

APPENDIX

Appendix 1 – Snow & Ice Control Enhanced Service Costs

Snow and Ice Control							
Enhanced Service for Pedestrian Curb Ramp and Bus Stop Snow Clearing							
February 25, 2008							
Option	Description	Gross Cost Per Operation	Net Cost per Operation	Additional Annual Net Cost	Total Snow & Ice Fee	Rate	Avg 44 foot Frontage
1	Hand Shovel All curb ramps and bus stops	\$450,000	\$345,000	\$1,380,000	\$5,680,000	\$0.6325	\$27.83
2	Mechanically Clear All curb ramps and bus stops	450,000	345,000	1,380,000	5,680,000	0.6325	\$27.83
3	Mechanically Clear Excess; property owners complete	450,000	345,000	1,380,000	5,680,000	0.6325	\$27.83
4	Mechanically Clear all bus stops ; Status quo curb ramps	135,000	30,000	120,000	4,420,000	0.4922	\$21.66
5	Abutting Property Owners responsible	0	-105,000	-420,000	3,880,000	0.4320	\$19.01
6	Increased enforcement of current ord 116-8	165,000	60,000	60,000	4,360,000	0.4855	\$21.36
7	Status Quo- 2,089 Bus Stops and Public Curb Ramps	105,000	0	0	4,300,000	0.4788	\$21.07

2008 Adopted Snow and Ice Control Fee was \$4.3 million or \$.04788 per front street foot.
 Current Service Level costs approximately \$100,000 per general plowing operation.
 Annual Net Cost based on **four** general plowing operations per year.

Avg 44 foot frontage per I:\DPWWATER\HISTORY\[Residential Municipal Services Bill History.xls] 19CCF_Single

Appendix #2 - Cost Estimate for Option #1

Snow clearing from all bus stops and pedestrians ramps utilizing a private sector workforce

Assumptions

City has approximately 40,000 pedestrian ramps
City has approximately 4,200 bus stops
Labor hired through temp agency @ \$25/hr.
Approximately 2 bus stops or 4 pedestrian ramps could be cleaned per hour
Administration, supervision, and miscellaneous = 25% of direct cost
Approximately 20% locations will have to be done twice

Level of Effort and Cost

40,000 pedestrian ramp locations to be cleared
Extra 20% for pedestrian ramps = 8,000 locations
Total 48,000 pedestrian ramp locations to be cleared

4,200 bus stop locations to be cleared
Extra 20% for bus stops = 840 locations
Total 5,040 bus stop locations to be cleared

48,000 ramp locations divided by 4 locations per hour
= 12,000 labor hours required for pedestrian ramps

5,040 bus stop locations divided by 2 locations per hour
= 2,520 labor hours required for bus stops

12,000 x \$25/hr.	\$300,000
2,520 x \$25/hr.	\$63,000
25% for Admin, etc.	<u>\$90,750</u>
Total cost per operation	\$453,750

Staffing Required

12,000 hours/6.5 hour shift* = 1,846 workers to accomplish this task in one day
or 615 workers to accomplish this task in three days

* Assume 8 hr. shift with 1.5 hours lost to transportation, breaks, etc.

Appendix #3 - Cost Estimate for Option #2 & #3

**Utilize mechanical equipment to clear snow from bus stops
and pedestrians ramps**

Assumptions

City has approximately 40,000 pedestrian ramps
City has approximately 4,200 bus stops
Equipment hired through Private vendor @ \$135/hr.
Approximately 16 bus stops or 4 pedestrian ramps could be cleaned per hour
Administration, supervision, and miscellaneous = 20% of direct cost

Level of Effort and Cost

44,200 pedestrian ramp or bus stop locations to be cleared
divided by 16 locations per hour
= 2,763 equipment hours required

2,763 x \$135/hr.	\$373,000
20% for Admin, etc.	<u>\$74,600</u>
Total cost per operation	\$447,600

Staffing Required

2,750 hours/22 hour shift* = 126 endloaders to accomplish this task in one day
or 42 endloaders to accomplish this task in three days

* Assume 2 - 12 hr. shifts with 1 hour/shift lost to transportation, breaks, etc.

Appendix #4 - Cost Estimate for Option #4

Increase bus stop snow clearing operations to include all bus stops

Assumptions

City has approximately 2,100 bus stops that are not cleared following a General Plowing
Equipment hired through Private vendor @ \$135/hr.
Approximately 13 bus stops could be cleaned per hour
Administration, supervision, and miscellaneous = 20% of direct cost

Level of Effort and Cost

2,100 additional bus stop locations to be cleared
divided by 13 locations per hour
= 162 equipment hours required

162 x \$135/hr.	\$21,900
20% for Admin, etc.	<u>\$4,300</u>
Total cost per operation	\$26,200

Staffing Required

162 hours/10 hour shift* = 17 endloaders to accomplish this task in one day
or 13 endloaders to accomplish this task in three days

* Assume 1 - 12 hr. shift with 2 hour/shift lost to transportation, breaks, etc.

Appendix 5 – City Attorney Letter

DM/FILE

GRANT F. LANGLEY
City Attorney

RUDOLPH M. KONRAD
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January 28, 2008

Mr. Jeffrey J. Mantes, Commissioner
Department of Public Works
Municipal Building, Room 516

Attn: James Purko

Re: Removal of Snow and Ice from Intersections

Dear Commissioner Mantes:

By e-mail dated January 3, 2008, you requested our responses to four questions, to assist you in preparing a plan to the Common Council regarding removal of snow and ice from curb cuts and Milwaukee County bus stops. You provided information on your current practices.

We will respond to your questions seriatim.

1. What requirements are placed on municipalities such as Milwaukee for removing snow and ice from pedestrian ramps/radius corners by the Americans with Disabilities Act?

Before responding to your question, it is important to understand that, even if a duty under the ADA exists, that duty is to act "reasonably" under the circumstances. There are no fixed time deadlines. "Temporary interruptions in accessibility, such as those caused by snow, generally do not constitute violations of Title II, however, unless they persist beyond a reasonable period of time." April 16, 1996 advice letter from the United States Department of Justice. What is "reasonable" could depend on the amount of snow, the number of intersections in the City, the volume of pedestrian traffic at certain intersections, whether a thaw is imminent, and the like.

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The City has the obligation under the ADA to ensure access to City programs and services. Thus, sidewalks, (including ramps,) fronting on City facilities should be cleared and fully accessible within a reasonable time after a snowfall.

Regarding the mounds of snow that block curb cuts and are deposited by City plows, under 42 U.S.C. § 12132, the City likely has a duty to remove these barriers because the City provides the “service” of plowing streets. The City must provide that service in a non-discriminatory manner, and must provide non-discriminatory access to City streets and sidewalks (again, within a “reasonable” time). We note that City ordinances already require DPW to remove accumulations of excessive amounts of snow in crosswalks put there by City plows. § 116-8-1, MCO.

We now turn to the issue of whether the City must, under the ADA, shovel or otherwise remove snow from the ramp itself, in addition to clearing any mounds of snow blocking the curb cut. It is our understanding that safe operation of a wheelchair would necessitate removing the snow down to the surface of the ramp, to expose the curvature and grid marks of the ramp.

There is very little guidance, either by case law or DOJ rulings, on this point. The Seventh Circuit Court of Appeals, in *Foley v. City of Lafayette*, 359 F.3d 925, 930, 931 (2004), ruled that the failure to shovel a train station ramp, so that it was accessible by wheelchairs, was not actionable under the ADA, because it was a single act of negligence and not part of a “willful or systemic” city policy that deprived disabled persons of the accommodations due them. In *Pack v. Arkansas Valley Correctional Facility*, 894 P.2d 34, 39 (Colo. App. 1995), the court held that an isolated act of negligence (prison visitor slipped on snow and ice in a handicap parking zone) was not actionable under the ADA; the “ADA was intended instead to prevent consistent and discriminatory denial of access.”

In *Barden v. City of Sacramento*, 292 F.3d 1073 (9th Cir. 2002), the court found that providing sidewalks was a governmental “service, program or activity,” and that a disabled person could have an action under the ADA if the City did not have a policy to maintain existing sidewalks. The 1996 DOJ guidance letter referenced earlier states that a city must only clear snow from sidewalks that are required by the ADA to be accessible (e.g., fronting government buildings) and that are within the control of the City.

City ordinance requires property owners or occupants abutting a paved public sidewalk or crosswalk to remove and clear away snow and ice on the entire paved surface within 24 hours after snow has ceased falling. (If ice cannot be removed,

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sand or other such material must be placed.) § 116-8, MCO. "Sidewalk area" is defined by the ordinances as the portion of the street between the face of the curbing or the roadside, to the lot line. § 113-12, MCO. State law also defines "sidewalk" as the area between the curb lines, or lateral lines of a roadway, and the adjacent property lines, constructed for the use of pedestrians. Wis. Stat. § 340.01(58). Thus, under City ordinance, it is the property owner's or occupant's responsibility to shovel the sidewalk, including the ramp area. If the City is the property owner or in control of the property, it is the City's responsibility.

As stated above, the ramps beyond the curb cuts are part of the sidewalk, and property owners and occupants are responsible under § 116-8, MCO, to shovel them. Thus, the City does not have a policy that denies access to disabled individuals; the City, in fact, has a policy in place to address these ramps after a snowfall – the ordinance requiring owners and occupants to shovel, and its enforcement. We believe that a court may view this as a reasonable policy given the large number of intersections and limited governmental resources. In our opinion, a court would be more inclined to rule in the City's favor if the City's policy included identifying high priority areas, and if those areas were cleared by the City in the event property owners fail to do so.

In summary, the City has an obligation to remove barriers to curb cuts and ramps it affirmatively creates due to snow plowing operations. The City also has an obligation to clear curb cuts and sidewalks (including ramps) abutting the City's own property. The obligation under the ADA is to act "reasonably" under the circumstances. A temporary denial of access because of snow is not a violation unless it lasts for an unreasonable period of time.

While we could not guarantee the outcome of a lawsuit, the City most likely would not be found in violation of the ADA for failing to shovel all ramps in the City, because it has adopted an ordinance requiring property owners to clear all sidewalks within 24 hours of a snowfall's cessation. It would be easier to defend any such lawsuit if the City took measures to enforce the ordinance, and identified high priority routes for active monitoring and clearing.

Of course, the City may, if it wishes, choose to clear all or most of the ramps itself. That is a policy determination.

2. Does the 24-hour requirement in file 071235 place the City in any position of excessive liability understanding that it is unlikely that DPW would be able to meet this requirement?

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As stated above, under the ADA the City need only act in a "reasonable fashion." Whether 24 hours is "reasonable" would depend on many factors, including the number of intersections, the limited use of some of those locations, and weather forecasts. For example, if a thaw is expected in 48 hours, it might not be "reasonable" to expend limited City resources to clear every ramp one day earlier. Creating an inflexible 24-hour requirement is creating a duty that does not currently exist under the ADA.

Failure to meet that inflexible deadline might be viewed as an act of negligence on the part of the City if someone is injured and a lawsuit is brought against the City.

3. Does Milwaukee County Transit System (MCTS) have any legal responsibility to remove snow and ice from areas in the public way where they load/unload passengers from their buses? MCTS has taken the position that the responsibility belongs to the municipality where the bus loading area is located.

It is our understanding from speaking with your staff that bus shelters are placed on the public way by permit. Common Council File No. 76-1872-a authorized you to grant permits to Milwaukee County for bus passenger shelters, at the County's request. Instead of a separate resolution each time the County seeks permission to place a shelter on a public way in the City, the Council granted blanket approval with certain conditions. One condition reads as follows:

That the County agrees to make periodic inspections of the bus shelter sites and to take the necessary action to keep them free of debris, posters, graffiti, snow, etc., so as not to create a hazard or nuisance. (emphasis supplied).

Permission was granted only on the condition that the County Board adopt a resolution approving and accepting the conditions in the City's resolution.

Therefore, the County has agreed to remove snow. This would be typical of a permit to occupy a public way. If the County Board did not adopt the resolution discussed above, then the shelters can be removed.

4. DPW anticipates that the hand shoveling of snow at pedestrian ramps would be accomplished via formal service contracts with (a) private vendors, (b) non-profit agencies, or (c) community groups. It has also been suggested that we consider prisoners in the County

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work release program and/or persons in probation and parole programs. Typically, DPW is guided by Section 2.9.7 of our "General Specifications for Formal Contracts" when determining levels of insurance and liability issues required for contracts we enter into. Please advise what levels of insurance is recommended for the snow removal contracts we contemplate.

The responsibility for worker's compensation insurance and liability for worker's compensation claims is controlled by Wis. Stat. Ch. 102. The service contracts should require the entities to carry worker's compensation insurance because liability for worker's compensation benefits for these temporary employees, should they be injured while snow shoveling, would be the responsibility of the entity providing the employees if the entity is a temporary help agency under Wis. Stat. § 102.01(2)(f). See, Wis. Stat. § 102.04 (2m). Wis. Stat. § 102.01(2)(f) defines temporary help agency as:

'Temporary help agency' means an employer who places its employee with or leases its employees to another employer who controls the employee's work activities and compensates the first employer for the employee's services, regardless of the duration of the service.

An employer does not have to be in the business of placing temporary help in order to fall within the statutory definition. *Gansch v. Nekoosa Papers, Inc.* 158 Wis. 2d 743, 748-749, 463 N.W.2d 682 (1990). Therefore, private vendors and non-profit organizations that are employers could be considered temporary help agencies. (Employer is defined in Wis. Stat. § 102.02(2)(f) - it is an expansive definition.) Community groups may not be employers and therefore would not meet the definition of temporary help agency. If the City of Milwaukee employed persons from community groups that do not meet the statutory definition of temporary help agencies, then the City of Milwaukee would be responsible for worker's compensation benefits should the person be injured during the course of employment with the City of Milwaukee.

Regardless of whether the persons hired are employees of the City or the temporary help agency, the exclusive remedy provision would apply, barring any claim by the person against the city in tort. *Gansch, supra*; Wis. Stat. § 102.29 (6).

If prisoners in the work release program or persons on probation and parole programs are selected to do the shoveling, then Wis. Stat. §§ 102.07 (14) and (16)

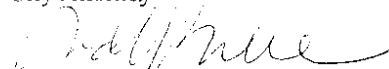
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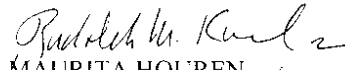
governs who is responsible for worker's compensation benefits. Wis. Stat. § 102.07 (14) addresses who is the employer for adults performing uncompensated community service work under various statutory provisions. These persons would be employees of the "county in which the district attorney requiring or the court ordering the community service work is located or in which the place of assignment under s. 304.062 or 973.10(1m) is located." Under Wis. Stat. § 102.07(16), the City of Milwaukee would be responsible for worker's compensation benefits for inmates participating in a work release program under s. 303.065(2) or in transitional employment program.


Liability insurance and indemnification clauses for injury or damage caused by the hired persons to third parties, naming the City as an additional insured, are always prudent. We can work with you and the City's risk consultant to develop appropriate levels.

Very truly yours,


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