


MEMORANDUM

TO: County Council

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Action:** Bill 21-14, Streets and Roads – Sidewalk Snow Removal Plan

<p>Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): approve Bill as introduced.</p>
--

Bill 21-14, Streets and Roads – Sidewalk Snow Removal Plan, sponsored by Councilmembers Riemer and Navarro, was introduced on April 22. A public hearing was held on July 8 and a Transportation, Infrastructure, Energy and Environment Committee worksession was held on October 6.

Background

Bill 21-14 would require the Executive to develop a Sidewalk Snow Removal Plan. Although property owners are already required to remove snow and ice from sidewalks that are contiguous to their property within 24 hours after precipitation ends, winter snow storms have left County sidewalks covered with snow and ice for many days after a winter weather event. In addition, a sidewalk that is not adjacent to privately owned property is not covered by this law. Currently, the County takes primary responsibility for clearing snow and ice from County roads, but does not clear snow and ice from sidewalks along these roads. The Bill would require the Executive to develop a sidewalk snow removal plan that includes a:

- (1) digital map of the County that shows who is responsible for clearing snow and ice on each sidewalk in the County;
- (2) “major storm event” communications plan that addresses notice to County residents of a major storm event and the sidewalk snow and ice removal requirements in this Section;
- (3) targeted public education campaign about sidewalk snow and ice removal for owners of property in the County;
- (4) designation of pedestrian priority routes for targeted education and increased snow and ice removal enforcement;
- (5) public education campaign about how to request enforcement of this Section;
- (6) plan to provide extended hours for County personnel who receive snow and ice removal complaints during a major storm event;
- (7) plan for removal of snow and ice on publicly owned property; and
- (8) plan for trash removal during a major storm event.

Public Hearing

Carl S. Custer, the lone speaker at the public hearing, supported the Bill. (©25) Mr. Custer pointed out that a sidewalk covered with snow and ice is a public safety hazard for pedestrians and that the County has not been enforcing the law requiring a property owner to clear snow and ice from the sidewalk adjacent to the property.

T&E Worksession

DOT Director Art Holmes, DOT Deputy Director Al Roshdieh, Keith Compton, DOT, and Richard Jackson, DGS represented the Executive Branch. The Committee discussed the Bill and some possible factors for the Executive to consider when developing the Sidewalk Snow Removal Plan. The Committee recommended (3-0) to approve the Bill as introduced.

Issues

1. What is the fiscal and economic impact of the Bill?

OMB estimated that creating an inventory of County sidewalks and adding this information to the County GIS system would have a one-time cost of \$350,000. See ©7-21. After the first year, each annual update on the GIS system would cost \$8,000. OMB estimated that a one-time public information campaign about the responsibility of property owners to clear snow and ice from sidewalks with direct mail would cost \$100,000.

The bulk of the cost would be mobilizing County forces or contractors to clear the sidewalks that are not adjacent to private property. The Department of Transportation (DOT) estimated that there are 600 miles of sidewalk in the County that would have to be cleared by County forces. This estimate excludes sidewalks adjacent to private property and sidewalks adjacent to Federal, State, and local government facilities. The County Department of General Services already clears sidewalks adjacent to County facilities. DOT estimated that it would cost approximately \$300,000 per winter weather event to clear 600 miles of sidewalks. Using the 10-year average of 20 snow/ice weather events each year (last year we had 31 events), OMB estimated the annual cost to clear all sidewalks at \$6 million.

The Office of Legislative Oversight reviewed this Fiscal Impact Statement as part of the OLO FY15 Work Program Project. The OLO review memorandum is at ©22-24. OLO pointed out that the Executive's fiscal analysis assumes that all publicly owned sidewalks would have to be cleared in each winter weather event. As OLO pointed out, the Bill simply requires the Executive to develop a plan to clear sidewalks. The plan may include a lower standard for action on sidewalks than on clearing roads and may require clearing only pedestrian priority sidewalks. OLO produced a chart of alternative fiscal impacts based upon different assumptions of number of winter weather events and the number of miles of sidewalks to be cleared.

Once the sidewalk inventory is done, the estimate of annual costs can be more precise. In addition, the annual cost would depend upon the number of winter weather events that occur each year and the substance of the plan.

2. Would this Bill be a prudent expenditure of County funds?

This Bill is likely to result in significant annual costs. DOT does not have an inventory of sidewalks in the County. DOT representatives told the Committee that a sidewalk inventory may be useful for purposes other than snow removal. A public outreach campaign to better inform property owners of their responsibility for sidewalk snow removal would bolster the effectiveness of the current law. A longstanding accumulation of snow and ice on sidewalks is a public safety hazard. Although the Bill would simply require the Executive to develop a plan to clear the sidewalks in the County, the purpose of the Bill is to implement that plan to the extent practicable within available resources and improve pedestrian safety after winter weather events.

The Bill raises a classic cost/benefit question that should be resolved by the Council during its budget deliberations. Once the Executive has developed a Plan to clear sidewalks of snow and ice after winter weather events, the Council can determine the scope of the Plan to be implemented based upon available resources during the annual adoption of the operating budget. The Bill would require the Executive to include planning to remove snow and ice from sidewalks along with planning to remove snow and ice from roadways. **Committee recommendation (3-0):** approve the Bill as introduced.

3. Does the Americans with Disabilities Act require the County to clear snow and ice from all publicly owned sidewalks?

Title II of the Americans with Disabilities Act (ADA) provides that:

No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

Although the implementing regulations do not expressly state that a local government must remove snow and ice from sidewalks to permit access by persons with a disability, the Federal Highway Administration has declared that the ADA requires local governments to use "reasonable" efforts to remove snow and ice from sidewalks. According to the County Attorney's Office, the County may have agreed to this FHA reasonableness standard as part of the agreement with the Justice Department governing sidewalk accessibility. See the County Attorney email opinion at ©26-28. This reasonableness standard is consistent with the requirement in Bill 21-14 to develop a plan to remove snow and ice from sidewalks. Prioritizing sidewalk snow removal based upon available resources is reasonable. The Bill would require the Executive to do the work necessary to determine what is reasonable.

This packet contains:

	<u>Circle #</u>
Bill 21-14	1
Legislative Request Report	6
Fiscal and Economic Impact Statement	7
OLO FIS Review Memorandum	22
Testimony of Carl S. Custer	25
County Attorney Email about the ADA	26

Bill No. 21-14
Concerning: Streets and Roads -
Sidewalk Snow Removal Plan
Revised: April 16, 2014 Draft No. 2
Introduced: April 22, 2014
Expires: October 22, 2015
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Riemer and Navarro

AN ACT to:

- (1) require the Executive to develop a Sidewalk Snow Removal Plan; and
- (2) 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
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:

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

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

(a) (1) 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. For purposes of this Section, commonly owned property between a single-family residential lot and a common walkway is considered part of the lot if the intervening common property includes a walkway or driveway that serves only that lot.

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

(3) The requirements of this Section do not apply to:

(A) an unpaved walkway;

(B) a private walkway or parking area on the property of a single-family residence;

(C) a public walkway behind a single-family residence that is not directly accessible from the owner's property; or

(D) a walkway that:

(i) is at least 25 feet from vehicular traffic;

(ii) serves only pedestrian destinations that are also accessible by another walkway that this Section requires to be cleared;

(iii) was not routinely cleared of snow and ice after August 1999; and

(iv) is not the primary route for pedestrian access to a winter recreational facility open to the public.

(4) (A) An individual who lives in a multi-family residential property is not responsible for removing snow and ice from a common walkway or parking area.

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

(b) If ice or hardpacked snow is impossible or unreasonably difficult to remove, the person is responsible for applying sufficient sand, other abrasives, or salt to provide safe pedestrian use.

(c) The person is responsible for removing snow and ice within 24 hours after the end of the precipitation that caused the condition. If a snowplow redeposits snow or ice on a sidewalk or other walkway after a person has complied with this Section, the person is not responsible for clearing the walkway until 24 hours after the snowplow redeposited the snow or ice.

(d) The County Executive must designate a department to enforce this Section and may designate other County employees or contractors to enforce this Section.

(e) The Executive may order a different deadline or conditions for removing snow and ice during or immediately after a severe or unusual storm or other public-safety condition.

(f) In addition to any other remedy or penalty for a violation of this Section, the County may clear the snow and ice and charge the

responsible property owner for the cost, which the County may collect in the same manner as property taxes.

(g) A violation of this Section is a class C violation. A person authorized to enforce this Section must not issue a citation for a violation unless the violation still exists 24 hours after a notice of violation. An authorized enforcement officer may issue the notice of violation to any person responsible under subsection (a) for clearing the snow or ice, or post the notice in a conspicuous place on the property where the violation exists. Each day a violation continues to exist is a separate violation, except for a violation on or adjacent to a single-family residential property.

(h) Sidewalk Snow Removal Plan. The Executive must develop, update, and publish on the County internet site a sidewalk snow removal plan that includes a:

- (1) digital map of the County that shows who is responsible for clearing snow and ice on each sidewalk in the County;
- (2) “major storm event” communications plan that addresses notice to County residents of a major storm event and the sidewalk snow and ice removal requirements in this Section;
- (3) targeted public education campaign about sidewalk snow and ice removal for owners of property in the County;
- (4) designation of pedestrian priority routes for targeted education and increased snow and ice removal enforcement;
- (5) public education campaign about how to request enforcement of this Section;
- (6) plan to provide extended hours for County personnel who receive snow and ice removal complaints during a major storm event;
- (7) plan for removal of snow and ice on publicly owned property;

- 82 (A) at bus-stops and Metro stations;
83 (B) near schools;
84 (C) along State highways;
85 (D) along the highest priority pedestrian routes;
86 (E) in urban districts; and
87 (F) used for hiker-biker trails; and
88 (8) plan for trash removal during a major storm event.

89 *Approved:*

90

Craig L. Rice, President, County Council

Date

91 *Approved:*

92

Isiah Leggett, County Executive

Date

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

94

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 21-14

Streets and Roads – Sidewalk Snow Removal Plan

DESCRIPTION:	Bill 21-14 would require the Executive to develop a Sidewalk Snow Removal Plan.
PROBLEM:	Although property owners are already required to remove snow and ice from sidewalks that are contiguous to their property within 24 hours after precipitation ends, recent snow storms have left County sidewalks covered with snow and ice for many days after a winter weather event.
GOALS AND OBJECTIVES:	The goal of this Bill is to decrease the time sidewalks are covered with snow and ice after a major winter weather event.
COORDINATION:	DOT, DPS, Police
FISCAL IMPACT:	To be requested.
ECONOMIC IMPACT:	To be requested.
EVALUATION:	To be requested.
EXPERIENCE ELSEWHERE:	To be researched.
SOURCE OF INFORMATION:	Robert H. Drummer, Senior Legislative Attorney
APPLICATION WITHIN MUNICIPALITIES:	To be researched.
PENALTIES:	Class C Violation

BILL 21-14



ROCKVILLE, MARYLAND

BD
CC
CBF
LL

MEMORANDUM

July 14, 2014

TO: Craig Rice, President, County Council

FROM: Jennifer M. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance

SUBJECT: Council Bill 21-14, Streets and Roads – Sidewalk Snow Removal Plan

Please find attached the fiscal and economic impact statements for the above-referenced legislation.

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
David Platt, Department of Finance
Robert Hagedoorn, Department of Finance
Arthur Holmes, Director, Department of Transportation
Naeem Mia, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Felicia Zhang, Office of Management and Budget

RECEIVED
MONTGOMERY COUNTY

2014 JUL 15 AM 9:51

Fiscal Impact Statement
Council Bill 21-14, Streets and Roads – Sidewalk Snow Removal Plan

1. Legislative Summary.

Property owners and tenants are required under current law to remove snow and ice on sidewalks that are contiguous to their property within 24 hours after the end of precipitation (with some exceptions).

The proposed bill requires the Executive Branch to develop, update, and publish a sidewalk snow removal plan that includes a:

- 1) Digital map of the County that shows who is responsible for clearing snow and ice on each sidewalk in the County;
- 2) "Major storm event"¹ communications plan that addresses notice to County residents of a major storm event and the sidewalk snow and ice removal requirements in County law;
- 3) Targeted public education campaign about sidewalk snow and ice removal for owners of property in the County;
- 4) Designation of pedestrian priority routes for targeted education and increased snow and ice removal enforcement;
- 5) Public education campaign about how to request enforcement of the sidewalk snow and ice removal requirements under County law;
- 6) Plan to provide extended hours for County personnel who receive snow and ice removal complaints during a major storm event;
- 7) Plan for removal of snow and ice on publicly-owned property, such as:
 - Bus stops and Metro stations;
 - Near schools;
 - Along State highways;
 - Along the highest-priority pedestrian routes;
 - In the urban districts; and
 - Used for hiker-biker trails
- 8) Plan for trash removal during a "major storm event."

¹ "Major storm event" is not defined in the proposed legislation. "Snow/ice weather event" in this analysis refers to storm events where snow and ice accumulation occur and trigger the requirements under this proposed bill.

- 2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes sources of information, assumptions, and methodologies used.**

The proposed bill requires the County to develop, implement, and enforce a sidewalk snow removal plan; the County will incur two types of expenditures associated with the proposed bill.

A) Development expenditures:

- Development of a sidewalk inventory to identify which sidewalks are the responsibility of private property owners to clear (\$200,000 one-time); and
- Development and publication of a digital map, which County residents and other users can use to identify the party responsible for clearing snow and ice from a specific section of sidewalk (\$150,000 one-time).

B) Compliance/enforcement expenditures:

- One-time cost of a public education campaign (via paper mailings) about the requirements of the bill (\$100,000 one-time);
- Costs associated with clearing those sections of sidewalk under the responsibility of the County (\$300,000 per snow/ice weather event);
- Costs associated with responding to and enforcing the provisions under the proposed bill (unknown at this time); and
- Cost of updating the digital map to reflect current information (\$8,000 per year).

General Assumptions:

- For the purposes of this analysis, 20 snow/ice weather events are assumed to occur annually.
 - An average of 22 weather events per year occurred over the last 6 years that required treatments for snow and ice removal.²
- No revenues are expected to be generated from the proposed bill. However, the County reserves the right under existing law to clear a section of sidewalk and then bill a property owner for the cost of clearing.
- The Department of Transportation (DOT) assumes it is responsible for the clearing of snow and ice from public sidewalks that are not currently required to be cleared by private property owners or other entities, including public walkways that are not directly accessible from the private owner's property.
 - Without a sidewalk inventory to determine the responsibility of clearing a section of sidewalk, DOT assumes that it will have to clear 600 miles of sidewalk. See DOT-specific discussion further below on page 5.

² Source: Montgomery County Department of Transportation

- Only existing publicly-owned sidewalks are included in this fiscal analysis. Planned or future sidewalks are not included.
- The Department of General Services (DGS) is currently responsible for clearing public walkways at County facilities – no incremental cost will be incurred by DGS under the proposed legislation.
- *Due to unavailable information*, the following publicly-owned properties are excluded from this analysis:
 - Clearing of Metro stations are assumed to be under the jurisdiction of the Washington Area Metropolitan Transit Authority (WMATA);
 - Clearing at schools are assumed to be under the jurisdiction of Montgomery County Public Schools (MCPS);
 - Clearing along State highways are assumed to be under the jurisdiction of the State Highway Administration (SHA); and
 - Clearing along hiker-biker trails assumed to be under the jurisdiction of the Montgomery County Parks Department.

Table 1: Summary of Expenditure by County Department

<u>Department</u>	<u>Role</u>	<u>Source</u>	<u>One-Time Costs</u>	<u>Recurring Costs</u>	<u>Annual Costs</u>
Department of Technology Services (DTS)	Develop and maintain digital map of sidewalks in the County	Section 49-17(h)(1)	\$150,000	\$8,000 per year	\$8,000
Department of Transportation (DOT)	Clear snow and ice on publicly-owned sidewalks	Section 49-17(h)(7)	\$200,000	\$300,000 per snow/ice weather event	\$6,000,000
Public Information Office (PIO) and MC311	Targeted public education campaign about sidewalk snow and ice removal	Section 49-17(h)(3)	\$100,000	None	None
Office of Emergency Management & Homeland Security (OEMHS)	Communications plan to notify County residents of sidewalk snow and ice removal requirements	Section 49-17(h)(2)	None	None	None

Department of Housing & Community Affairs (DHCA)	Public education campaign about how to request enforcement for sidewalk snow and ice removal	Section 49-17(h)(5)	None	Unknown	Unknown
Department of Environmental Protection (DEP)	Plan for trash removal during major storm events	Section 49-17(h)(8)	None	None	None
Washington Area Metropolitan Transit Authority (WMATA)	Clear snow and ice at Metro stations	Section 49-17(h)(7)(A)	Not included	Not included	Not included
Montgomery County Public Schools	Clear snow and ice near schools	Section 49-17(h)(7)(B)	Not included	Not included	Not included
State Highway Administration (SHA)	Clear snow and ice along State highways	Section 49-17(h)(7)(C)	Not included	Not included	Not included
Montgomery County Parks Department	Clear snow and ice along trails which are under the jurisdiction of the Parks department	Section 49-17(h)(7)(F)	Not included	Not included	Not included

Department of Technology Services (DTS)

Under the proposed bill's section 49-17(h)(1), the County is required to develop, update, and publish a "digital map" which shows the responsibility of parties for clearing snow and ice on each sidewalk in the County. The County does not currently have such a digital map.

DTS estimates that the cost to develop, update, and publish the digital map will incur a one-time expenditure of approximately \$150,000, which will include the following activities:³

- Creating individual work maps for Department of Transportation;
- Entering sidewalk data into Geographic Information Systems (GIS) database;
- Countywide data merging of individual work maps;
- Integration with ArcGIS Map Viewer;

³ Cost based on the standard DTS hourly rate of \$100 per hour; estimated work-hours are 1,400 hours for all tasks; an additional \$10,000 will be required for software licenses.

- Enhancing ArcGIS Map Viewer to show sidewalk and property-owner info;
- Developing web/mobile applications;
- Quality control checks of geographic information systems (GIS) data and web/mobile applications; and
- One (1) new license for ArcGIS for Desktop license for GIS team;

In addition, ongoing annual updates to the digital map are estimated to cost approximately \$8,000 per year.⁴

<u>Total one-time cost to DTS:</u>	\$150,000 to implement the digital map
<u>Total ongoing cost to DTS:</u>	\$8,000 per year for ongoing annual updates

Department of Transportation (DOT)

Under the proposed bill's section 49-17(h)(7), DOT assumes that it will be responsible for clearing snow and ice on publicly-owned sidewalks (i.e., sidewalks which are not required to be cleared by persons under the existing provisions of Section 49-17).

Note: Without a sidewalk inventory to identify the responsibility of clearing a section of sidewalk, this analysis assumes that all sidewalk clearing requirements under the proposed bill is the responsibility of the County Department of Transportation. Therefore, the ongoing costs identified in Tables 2-B and 2-C represent an upper limit of costs to the County. It is likely that the County's costs of clearing sidewalks under the plan will decrease once a sidewalk inventory is established and the true scope of work is known.

DOT estimates a one-time implementation cost of approximately \$200,000 to develop an inventory of all publicly-owned sidewalks within the County.

DOT also estimates that the removal of snow and ice on publicly-owned sidewalks will incur ongoing expenditures of \$300,000 per snow/ice weather event, based on the following:

Base Assumptions for cost per snow/ice weather event:

- Clean-up of public sidewalks will occur during any accumulation of snow/ice on publicly-owned sidewalks – DOT does not currently clear/treat publicly-owned sidewalks which are not covered otherwise under existing legislation.
- One (1) work crew will require two (2) hours to clear one (1) mile of sidewalk;⁵

⁴ Cost based on standard DTS hourly rate of \$100 per hour; estimated work-hours are 80 hours per year to update the digital map.

⁵ Work-crew costs assume the use of contractors and rental equipment.

- DOT estimates that the County has 600 miles of publicly-owned sidewalk⁶ that would require clearing under the proposed Section 49-17(h)(7);⁷
 - DOT estimates that there will be 150 plow routes to clear all 600 miles;
 - 50 work crews will be required (or 3 routes per work crew); and
 - 1 inspector will be required to monitor 4 crews, for a total of 13 inspectors.
 - Existing contract inspection staff for road clearing monitoring will be unable to perform sidewalk inspections due to time constraints; road inspectors generally follow road clearing crews on a time-constrained schedule.

Table 2-A: Resources Required to Develop Sidewalk Inventory	
Tasks to Develop Sidewalk Inventory	One-Time Cost
IT Tech reviews and compiles routes for inventory	\$60,400 ⁸
Inspectors perform field/visual verification of sidewalks	\$37,000 ⁹
Establishing whether sidewalk requires clearing under proposed bill	\$62,600 ¹⁰
Administrative Staff/Overhead Costs (Division and Area Section Chief)	\$40,000 ¹¹
Total Costs for Sidewalk Inventory:	\$200,000

⁶ Although the County does not currently have a sidewalk inventory, an estimate of 600 miles of sidewalk is based on the following: DOT has 220 snow routes, of which 150 have significant sections of sidewalk. Of these 150 routes, the length of a sidewalk ranges from 1 to 9 miles, with an average of 4 miles. Therefore, DOT assumes a total of 600 miles (4 miles x 150 routes) of sidewalk that will need clearing.

⁷ DOT sampled approximately 3% of the County and State roads with sidewalks to derive an estimate of 600 miles of sidewalk to be cleared by the County under the provisions of the bill.

⁸ Assumes 220 routes to be reviewed at 4 hours per route (\$65/hour), plus 40 hours of quality control (\$80/hour).

⁹ Assumes total 150 hours required for inspection using two teams of two inspectors (\$60/hour/inspector), plus \$1,000 in vehicle costs.

¹⁰ Assumes that 150 routes will be assessed by IT tech at a rate of 4 hours per route (\$65/hour) and field engineer (\$75/hour) at a rate of 2 hours per route, plus \$1,100 in vehicle costs.

¹¹ Assumes Division Chief (\$20,000) and Area Section Chief (\$20,000) will expend 25% of time on developing the sidewalk inventory.

Table 2-B: Resources Required to Clear Sidewalks under County Responsibility

<u>Work Crew Resources</u>	<u>Quantity</u>	<u>Hourly Rate</u>	<u>Total Hourly Cost</u> ¹²
Snow-and-ice clearing crew:	4 persons		\$125
a. Operator	1	\$35	\$35
b. Laborers	2	\$25	\$50
c. Supervisor	1	\$40	\$40
Rental equipment:	2 pieces		\$100
a. Pick-up truck with trailer	1	\$50	\$50
b. Tractor/snow blower	1	\$50	\$50
Total hourly cost:			\$225
Total cost to clear 600 miles of sidewalk:			\$270,000 ¹³

Table 2-C: Resources Required to Clear Sidewalks under County Responsibility

<u>Administrative Staff Resources</u> ¹⁴	<u>Quantity</u>	<u>Hourly Rate</u>	<u>Total Hours</u> ¹⁵	<u>Total Cost</u>
Inspectors	13	\$60	24	\$18,720
Vehicles	15	-	24	\$1,950 ¹⁶
Supervisors	2	\$80	24	\$3,840
Total Administrative Costs:				\$24,510
Total Work Crew Cost:				\$270,000
Total Administrative Cost:				\$24,510
Total cost to DOT per snow/ice weather event:				\$294,510
(rounded up):				~\$300,000

¹² Labor rates are based on current DOT contracts and are a blend of "high-demand" rates and non-emergency rates.

¹³ \$450 for two hours of work per work-crew to clear one mile times 600 miles of sidewalk.

¹⁴ Administrative staff costs assume the use of contractors.

¹⁵ Assumes snow and ice must be cleared within 24 hours after the end of precipitation (per Section 49-17(c))

¹⁶ Vehicle cost based on current per-vehicle contract rate of \$60 per day plus \$70 per day in fuel expenses times 15 vehicles (or 1 vehicle per each inspector and supervisor).

Total one-time cost to DOT: \$200,000 for developing sidewalk inventory

Total variable cost to DOT: \$300,000 per snow/ice weather event

Based on an average of 20 snow/ice weather events in a given year, the total *ongoing annual* fiscal impact to DOT to clear publicly-owned sidewalks is approximately \$6,000,000 per year.¹⁷

Public Information Office (PIO) and MC311

PIO estimates a one-time fiscal impact of approximately \$100,000¹⁸ for the cost of printing and mailing materials to *all* County property owners as part of the targeted public education campaign.

MC311 estimates that there are no additional fiscal impacts under the proposed bill.

Total one-time cost to PIO: \$100,000 for public education campaign

Office of Emergency Management & Homeland Security (OEMHS)

OEMHS estimates that there are no additional fiscal impacts from providing notice to County residents of a major storm event and sidewalk snow/ice removal requirements. OEMHS assumes that notices of major storm events and snow and ice removal requirements will be provided at negligible expense.¹⁹

Department of Housing & Community Affairs (DHCA)

DHCA assumes that its enforcement staff will be responding to increased complaints of non-compliance with the proposed bill.

Without knowing how many requests for enforcements will occur for any given snow/ice weather event in any given year, DHCA and OMB cannot estimate a fiscal impact at this time.

It is likely that the number of enforcement actions will decrease over time as compliance under this bill increases over time.

¹⁷ \$300,000 per snow/ice weather times 20 snow/ice weather events annually.

¹⁸ PIO assumes that mailings will be issued once and there will be no recurring mailings for future snow/ice weather events.

¹⁹ Notifications to be provided through existing text messaging and email delivery systems. The incremental cost of adding text is negligible.

Department of Environmental Protection (DEP)

DEP estimates that there are no additional fiscal impacts from developing a trash removal plan. The department already has a plan in place to address trash removal during a major storm event.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

Assuming there are 20 snow/ice weather events per year over the next 6 fiscal years, total 6-year costs are as follows:

<u>Table 3: Expenditures over the next 6 fiscal years</u>			
<u>Department</u>	<u>One-Time Cost in First Year</u>	<u>Ongoing Cost Per Year</u>	<u>Total Costs over the next 6 fiscal years</u>
Department of Technology Services (DTS)	\$150,000	\$8,000	\$198,000
Department of Transportation (DOT)	\$200,000	\$6,000,000	\$36,200,000
Public Information Office (PIO) and MC311	\$100,000	None	\$100,000
Office of Emergency Management & Homeland Security (OEMHS)	None	None	None
Department of General Services (DGS)	None	None	None
Department of Housing & Community Affairs (DHCA)	None	Unknown	Unknown
Department of Environmental Protection (DEP)	None	None	None
Totals:	\$450,000	At least \$6,008,000 per year	At least \$36,498,000 over 6 fiscal years

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes future spending.

Not applicable – the bill does not authorize future spending.

6. An estimate of the staff time needed to implement the bill.

- DTS does not require any additional staff time to implement the proposed bill – both development and ongoing updates to the map will be performed by contract staff;
- DOT estimates that an additional 360 work-hours will be required per snow/ice weather event;²⁰
- DHCA cannot currently estimate additional work-hours required under the provisions of this bill but anticipates an increase in work-hours due to increased requests for enforcement; and
- PIO/MC311, OEMHS, and DEP do not require any additional staff time to implement the proposed bill.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

DHCA estimates that the timing of the required enforcement actions and the necessity for immediate and ongoing compliance at the time of each snow/ice weather event may result in shifting of priorities and workload adjustments which can delay other code enforcement actions.

Other County departments report that the addition of new staff responsibilities will likely not affect other duties on a regular basis since contract staff will likely be used for the additional work under the proposed bill.

8. An estimate of costs when an additional appropriation is needed.

Assuming 20 snow/ice weather events per year, *at least* \$6,008,000 will be required on an ongoing basis to cover recurring costs of snow/ice removal.

Another \$450,000 will be required in the first year of the proposed bill's implementation for DTS and DOT to develop and deploy the digital map and create a sidewalk inventory, as well one-time costs to PIO for developing and issuing mailings for the public education campaign (see item #3 above).

²⁰ 24 hours x 13 FTEs (inspectors), plus 24 hours x 2 supervisors = 360 work-hours (overtime)

9. A description of any variable that could affect revenue and cost estimates.

Cost estimates may be impacted by the following variables:

- The miles of sidewalk the County is responsible for clearing;
- The number of enforcement actions to respond to complaints;
- The number of snow/ice weather events that occur in any year;
- The amount of precipitation that occurs for any given snow/ice weather event;
- Labor costs (costs may increase during periods of high demand); and
- The extent to which snowplows redeposit snow on sidewalks, requiring additional follow-up enforcement action

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

For DOT: Expenditures for clearing publicly-owned sidewalks are difficult to project because the number of snow/ice weather events in any given year is difficult to forecast.

- This analysis assumes an upper limit of 600 miles of sidewalk to be cleared by the County; the actual miles of sidewalk that the County is responsible for under the sidewalk snow removal plan is likely to be lower.
- A sidewalk inventory is necessary in order to determine the true scope of work for the County.

For DHCA: Total expenditures are difficult to project because enforcement is predicated on non-compliance and the County cannot predict how many Notices of Violation and subsequent corrective actions will be required. Expenditures may decrease over time as the compliance rate increases and enforcement actions decrease.

11. If a bill is likely to have no fiscal impact, why that is the case.

Not applicable.

12. Other fiscal impacts or comments.

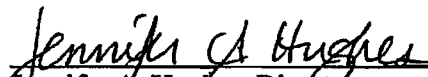
This analysis assumes that the County will implement the sidewalk snow removal plan required under the proposed legislation and will incur costs for snow/ice removal events.

13. The following contributed to and concurred with this analysis:.

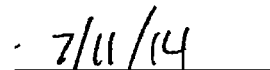
Keith Compton, Department of Transportation

Richard Dorsey, Department of Transportation

Jeffrey Knutsen, Department of Transportation
Randy Paugh, Department of Transportation
Dieter Klinger, Department of Technology Services
Patrick Lacefield, Public Information Office
Chris Voss, Office of Emergency Management & Homeland Security
Tim Goetzinger, Department of Housing & Community Affairs
Luann Korona, Department of Housing & Community Affairs
Dan McHugh, Department of Housing & Community Affairs
Erika Lopez-Finn, Office of Management & Budget
Naeem Mia, Office of Management & Budget
Jed Millard, Office of Management & Budget
Matt Schaeffer, Office of Management & Budget



Jennifer A. Hughes, Director
Office of Management and Budget



Date

Economic Impact Statement
Bill 21-14, Streets and Roads – Sidewalk Snow Removal Plan

Background:

This legislation would require the Executive to develop a Sidewalk Snow Removal Plan. The plan would include:

- a digital map of the County that shows who is responsible for clearing snow and ice from County sidewalks;
- a communications plan that alerts County residents of a major winter storm event and reminds County residents of snow and ice removal requirement;
- a “targeted” public education program;
- a public education program about enforcement of this Bill;
- designated pedestrian priority routes;
- a plan to provide extended hours for County personnel to respond to an increase in complaints from County residents; and
- a plan to remove snow and ice from publicly owned property and for trash removal during a major storm event.

1. The sources of information, assumptions, and methodologies used.

This bill requires the Executive to develop a Sidewalk Snow Removal Plan. Therefore, there are no sources of information, assumptions or methodologies used in the development of the economic impact statement.

2. A description of any variable that could affect the economic impact estimates.

Not applicable. See #1 above.

3. The Bill’s positive or negative effect, if any on employment, spending, saving, investment, incomes, and property values in the County.

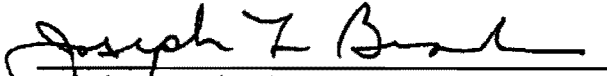
Bill 21-14 requires the Executive to develop a Sidewalk Snow Removal Plan. Although subsequent implementation of the Plan may have an economic impact, this bill has no economic impact.

4. If a Bill is likely to have no economic impact, why is that the case?

Not applicable, see #3 above.

5. The following contributed to and concurred with this analysis: David Platt and Rob Hagedoorn, Finance;

Economic Impact Statement
Bill 21-14, Streets and Roads – Sidewalk Snow Removal Plan



Joseph F. Beach, Director
Department of Finance

5/9/14
Date

MEMORANDUM

September 4, 2014

TO: County Council

FROM: Craig Howard, Senior Legislative Analyst
Aron Trombka, Senior Legislative Analyst
Office of Legislative Oversight

SUBJECT: **Implementation of OLO FY15 Work Program Project – Fiscal Impact Statements**

The Council-approved FY15 Office of Legislative Oversight (OLO) Work Program includes a project for OLO to review fiscal impact statements submitted by the Executive Branch to the Council. Fiscal impact statements are estimates of the fiscal consequences to County Government of implementing pending legislation and Executive regulations. OLO will examine all fiscal impact statements and will prepare supplemental fiscal analysis for certain bills and regulations.

This project will be a full fiscal year initiative that potentially can serve as a model for future work in this area. Depending on the needs of the Council and the lessons learned from this project, future OLO work programs may contain similar, expanded, or modified assignments.

OLO Plan for Review of Fiscal Impact Statements in FY15

Attached to this memo is an initial example of the type of analysis OLO will provide the Council as part of this project. While the level of detail will likely vary based on the specifics of each bill, OLO will refine the format and structure of the written analysis over the first part of the fiscal year based on feedback from Councilmembers.

Going forward, OLO will review each fiscal impact statement the Council receives from the Executive Branch during FY15 and will determine which warrant further analysis for Council consideration. In addition, OLO will also conduct an analysis of any fiscal impact statement based on the request of a Councilmember and/or Council Central staff.

Beginning October 1st, OLO will prepare a monthly summary of all fiscal impact statements received by the Council during the prior month and indicate which of those statements have been selected or requested for additional analysis.

OLO Review of the Fiscal Impact Statement for Bill 21-14, *Sidewalk Snow Removal Plan* September 4, 2014

Summary of Fiscal Impact Statement

The Executive's fiscal impact statement for Bill 21-14 is attached to this review. The fiscal impact statement provides a comprehensive summary of the potential costs associated with the bill, and as a result brings up several important issues related to potential implementation of the bill. The fiscal impact statement includes two primary costs components:

- **\$450,000 in one-time costs the first year of implementation** to develop a sidewalk inventory, develop a digital map of sidewalks in the County, and provide a targeted public information campaign about sidewalk snow and ice removal requirements.
- **\$6 million per year in ongoing costs** to clear snow and ice on publicly-owned sidewalks and maintain the digital map. The primary assumptions used in developing the ongoing costs are that 600 miles of publicly-owned sidewalks will need to be cleared and that 20 snow/ice events requiring clearing will occur each year. DOT estimates costs of \$300,000 per snow/ice event.

Issues for Consideration Resulting from the Fiscal Impact Statement for Bill 21-14

OLO's review of the assumptions and methodology used to develop the fiscal impact statement indicate that the yet undefined implementation standards of Bill 21-14 would play a large role in the actual fiscal impact. As a result, there are five issues that the Council should consider related to the fiscal impact.

1. The Department of Transportation (DOT) currently does not have an inventory of publicly-owned sidewalks. In its initial estimation, DOT assumed that 150 snow routes would have an average of four miles of publicly-owned sidewalks, resulting in 600 miles of sidewalk falling under the bill's snow/ice removal requirement. The fiscal impact statement acknowledges that the 600 mile assumption is an "upper limit" and that the "actual miles of sidewalk that the County is responsible for under the sidewalk removal plan is likely to be lower."
2. The fiscal impact statement assumes that all publicly-owned sidewalks would have to be cleared under the legislation. However, the bill only requires a plan for clearing publicly-owned sidewalks a) at bus-stops and Metro stations, b) near schools, c) along State highways, d) along the highest priority pedestrian routes, e) in urban districts, and f) used for hiker-biker trails. If the intent of Bill 21-14 is only for a portion of the publicly-owned sidewalks to be cleared during snow/ice events, then the ongoing costs may be substantially lower.
3. Executive branch staff noted that one reason all publicly-owned sidewalks were assumed to require clearing is potential compliance with the American with Disabilities Act (ADA). Specifically, the concern was that choosing not to clear specific sidewalks (and thus presumably leaving them impassible) could be a violation of ADA accessibility requirements. This is an important policy/legal question for the County to address.
4. The assumption of 20 snow/ice weather events per year is based on the average number of weather events over the past six years in the County that required treatments for snow or ice removal on roads. As a result, it assumes that sidewalk clearing under Bill 21-14 will be treated to the same standard as roadways. The ongoing cost of the bill would differ from the fiscal impact statement estimate if the implementation plan established a different standard for sidewalks than for roads.
5. The one-time costs associated with developing an inventory and digital map that creates a sidewalk layer in the County's GIS system (\$350,000 when excluding the projected expenditure for a public information campaign) may have future benefits outside the scope of Bill 21-14.

Range of Potential Fiscal Impacts for Sidewalk Snow/Ice Removal

The ongoing fiscal impact of Bill 21-14 is primarily a function of two assumptions: (1) the number of miles of sidewalk subject to the snow/ice removal requirement; and (2) the number of snow/ice events per year that will trigger the snow/ice removal requirement. A range of reasonable assumptions applies for both of these factors depending on pending policy decisions and information gathering.

- **Sidewalk Miles.** As mentioned above, the Executive's fiscal impact statement indicates that the assumption of 600 miles of publicly-owned sidewalks is an "upper limit." Completion of the sidewalk inventory likely will result in a reduction in the amount of sidewalk miles subject to the provisions of Bill 21-14. Moreover, identification of the "highest priority pedestrian routes" in the snow removal plan could further lower the number of sidewalk miles covered by the bill. Last, when a winter weather event affects only a portion of the County, the number of miles of actual sidewalk snow/ice removal will be a subset of the total miles governed by the snow removal plan.
- **Number of Snow/Ice Events per Year.** DOT has established a policy regarding when to treat roads with salt and when to remove snow by plowing. DOT treats roads for events with less than three inches of snow and plows roads when snow accumulation reaches three or more inches. If Bill 21-14 is enacted, the standard for clearing sidewalks could differ than that for clearing roads and thus require fewer clearings. For example, the standard for sidewalk snow removal could be linked to an accumulation amount. In addition, the policy could provide an exemption when expected weather conditions would result in significant melting within a specified period of time.

The table below shows that annual cost of sidewalk snow/ice removal given alternative assumptions of the number of snow events per year and the number of sidewalk miles. The calculations in the table use the Executive's cost estimate of \$500 per mile per snow/ice event.

**Annual Cost of Sidewalk Snow/Ice Removal
Based on Number of Snow Events per Year and Miles of Sidewalk**

		Number of Snow Events Per Year			
		5	10	15	20
Miles of Sidewalk	200	\$500,000	\$1,000,000	\$1,500,000	\$2,000,000
	250	\$625,000	\$1,250,000	\$1,875,000	\$2,500,000
	300	\$750,000	\$1,500,000	\$2,250,000	\$3,000,000
	350	\$875,000	\$1,750,000	\$2,625,000	\$3,500,000
	400	\$1,000,000	\$2,000,000	\$3,000,000	\$4,000,000
	450	\$1,125,000	\$2,250,000	\$3,375,000	\$4,500,000
	500	\$1,250,000	\$2,500,000	\$3,750,000	\$5,000,000
	550	\$1,375,000	\$2,750,000	\$4,125,000	\$5,500,000
	600	\$1,500,000	\$3,000,000	\$4,500,000	\$6,000,000

Council Public Hearing on Snow Removal
 Tue Jul 8, 2014
 Carl S. Custer
 8605 Hartsdale Ave
 Bethesda, MD 20817

Sidewalks covered with snow are a public safety hazard.

In the past decade, Montgomery County has failed to enforce their requirement for home and business owners to clear their sidewalks of snow.

The Montgomery County Police have failed to enforce that requirement.*

The Montgomery County Government has failed to publicize to the public their need to clear their sidewalks of snow. **

As a result, pedestrians, including students***, have been forced to walk in busy streets or over icy walks of trodden snow.

The initiative of Council Member Hans Riemer and this Council meeting to strengthen the requirement is refreshing. It is for public safety and the right thing to do.

Snow is not the only seasonal pedestrian impediment. In the fall, some homeowners and landscaping companies blow leaves covering walkways thus, forcing pedestrians to walk in the street. The best example is Fernwood south of I-495. The walkway may appear to be a road shoulder, but it is a pedestrian walk way. Leaves also clog gutters. Wet leaves are slick and a hazard, especially to two wheeled vehicles. My letter to Council Member Nancy Floreen in 2007 yielded unsatisfactory results. A staff officer suggested educating landscapers and added some lame excuses. A follow up letter countering the excuses went unanswered.

Enforcement of these requirements need not be onerous. I believe the first priority is publicizing the need for snow to be removed and that leaves must be on the curb, not in the gutter or street nor on the sidewalk or walkway. The dark green and dark red leaf collection flyers are poorly legible. Use lighter colored paper.

For the commercial areas, parking enforcement can be tasked with enforcement.

For residential areas, police can call in addresses.

Publicity should reduce the need for enforcement.

Physically disabled homeowners can hire help to clear sidewalks as they do for mowing lawns, clearing gutters, and raking leaves. Or, they can enlist the aid of neighbors as happens in my neighborhood.

*For example along Old Georgetown Road and Wisconsin Ave, where multiple police patrol cars travel, sidewalks have remained uncleared for days after a snow.

** After calling in examples of unplowed walks last winter, Staff Officer Lynn McCreary called back and said the owners were not aware of the requirement to clean walks.

*** An example is Montgomery Blair High School and the I 495 overpasses on University Blvd and Colesville Road. Plows covered the sidewalks and the sidewalks remained covered for days. Thus, children were forced to walk in the streets.

Drummer, Bob

From: Hansen, Marc P.
Sent: Tuesday, September 02, 2014 5:09 PM
To: Drummer, Bob
Cc: Kirkland, Bonnie
Subject: FW: Request for Legal Support/Review

Bob

FYI.

Marc P. Hansen
County Attorney
Montgomery County, Maryland
240-777-6740

CONFIDENTIALITY NOTICE: The contents of this email may be confidential under the attorney-client privilege, the work-product doctrine, or other applicable law. If you have received this email in error, you may not copy, distribute, or use its contents, and you are requested to delete the email from your system immediately and notify the sender at 240-777-6700. Thank you.

From: Hansen, Marc P.
Sent: Tuesday, September 02, 2014 4:12 PM
To: Royalty, Clifford; Holmes, Arthur
Cc: Kirkland, Bonnie; Compton, Keith; Windle, Anne; Greene, Nancy (DGS); Via, Patricia; Schroeder, Pamela
Subject: RE: Request for Legal Support/Review

Art,

I would add to Cliff's analysis that Bill 21-14 offers DOT an opportunity to establish a standard that establishes a reasonable schedule of snow and ice removal from sidewalks that is doable given the County's resources. I think a schedule could prioritize areas based on usage leaving the less traveled sidewalks to the end.

One concern, however, that should be addressed with risk management is the obligations of DOT to repair (or otherwise warn the public) when a defect in a sidewalk is detected during snow removal. The County wins many slip and fall cases because the plaintiff cannot show that the County was aware of the defect. This defense will be harder to maintain if the County is removing the snow from a sidewalk with an open defect.

Marc P. Hansen
County Attorney
Montgomery County, Maryland
240-777-6740

CONFIDENTIALITY NOTICE: The contents of this email may be confidential under the attorney-client privilege, the work-product doctrine, or other applicable law. If you have received this email in error, you may not copy, distribute, or use its contents, and you are requested to delete the email from your system immediately and notify the sender at 240-777-6700. Thank you.

From: Royalty, Clifford
Sent: Tuesday, September 02, 2014 2:46 PM
To: Holmes, Arthur

Cc: Kirkland, Bonnie; Hansen, Marc P.; Compton, Keith; Windle, Anne; Greene, Nancy (DGS)

Subject: RE: Request for Legal Support/Review

Art,

I reviewed the applicable law and I agree with your observation that the ADA does not provide clear (or better yet, any) guidance concerning snow and ice removal from public sidewalks. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." The Rehabilitation Act contains a similar requirement. Neither Title II of the ADA, nor the Rehabilitation Act, nor the implementing regulations for the former, specifically state that a sidewalk is a service, program, or activity or that a local government is responsible for removing snow and ice from sidewalks.

However, the Federal Highway Administration (FHA) (which has been designated to enforce the ADA as to right of way) has determined that sidewalks are covered by Title II and that local governments must employ "reasonable" snow removal efforts. The courts have generally been supportive of the FHA's position. The County arguably acceded to the FHA position when it signed a settlement agreement with the Department of Justice governing sidewalk accessibility (though the settlement agreement mainly addresses curb cuts). The FHA reasonableness standard is not a real standard, but, unfortunately, it is the standard to which the County is subject at present. The County could obviously challenge any FHA determination that the County has violated the ADA, but I am not aware of any such determination and I am doubtful that the County is desirous of litigating the issue.

I understand that DOT has concerns about Bill 21-14. Any policy concerns are not within my bailiwick, but the Bill does not appear to violate the ADA. In fact, the Bill seems to further the purposes of the ADA. Whether the Bill expands the County's jurisdiction in a way that violates State law is a separate topic.

If Anne or Nancy have a different take on this, I am inviting them to respond to this email.

Cliff

CONFIDENTIALITY NOTICE: The contents of this email may be confidential under the attorney-client privilege, the work-product doctrine, or other applicable law. If you have received this email in error, you may not copy, distribute, or use its contents, and you are requested to delete the email from your system immediately and notify the sender at 240-777-6700. Thank you.

From: Holmes, Arthur

Sent: Friday, August 29, 2014 10:22 AM

To: Hansen, Marc P.; Compton, Keith

Subject: Request for Legal Support/Review

Marc:

This is a request that the OCA review the Federal ADA Statute – The Americans with Disabilities Act of 1990 - as it relates to our (Executive Branch) responsibility to remove snow and ice from sidewalks under our control.

I understand that that the current Montgomery County Code (Section 49-17) requires land owners to remove snow and ice within 24-hours following the end of a storm. However, there are exceptions that place up to 600 miles of sidewalk - located in the public right-of-way - unassigned for snow and ice clearing/control. For example, the sidewalk along a long portion of Shady Grove Road is located well behind the developed lots. The lots front interior subdivision streets and back to Shady Grove Road. The existing law requires that those owners clear the sidewalks along the frontage of their properties; but not the walkways situated behind the homes along Shady Grove Road. In these cases, as with many

others, the rightful abutting owner is not required to address this particular walkway. As an aside, a pending Bill at Council will assign this 600 miles to the Executive Branch.

Recently, MCDOT has been made aware of its responsibility to meet Federal ADA by providing accessible walkways, notwithstanding snow coverage. A disabled individual complained to Department of Justice (DOJ) that their Civil Rights were violated by access denial due to snow coverage on a sidewalk along Connecticut Avenue. DOJ handed the complaint to Federal Highway Administration (FHWA) for investigation. Our folks met with FHWA at the request of State Highway Administration (SHA) in as much as we are required to maintain sidewalks along State roads per COMAR. That complaint is currently being investigated. I believe the sidewalk that is the subject of the complaint to DOJ is covered under existing MC law. But, as noted above, approximately 600 miles (in our estimation) my fall to us to address.

Our review of Federal Law leads us to ADA Title II, Subpart B, §35.133. However, ours is not a legal review and the Federal ADA is somewhat voluminous; hence my request that OCA provides a comprehensive legal review to possibly include case law that may set precedent locally. Our findings are noted below as copied from the Feds:

§ 35.133 Maintenance of accessible features

- (a) A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the Act or this part.
- (b) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.
- (c) If the 2010 Standards reduce the technical requirements or the number of required accessible elements below the number required by the 1991 Standards, the technical requirements or the number of accessible elements in a facility subject to this part may be reduced in accordance with the requirements of the 2010 Standards.

As you may be aware, Councilmember Riemer plans to introduce Bill 21-14 - Roads and Streets – Snow Removal on Sidewalks. The T&E Committee will meet with Executive staff to discuss the Bill prior to going to full Council. I am asking for this legal review and assistance because the Executive Branch must be clear as to its responsibilities with respect to full compliance with Federal mandated ADA as pertains to snow and ice control on sidewalks. The Executive's position with respect to Bill 21-14, and our dialog at Council, should be predicated on our knowledge of our requirements under Federal Law. The Federal Law as we read it seems vague and ambiguous.

At present the T&E session is set for September 8 although we have asked Council staff to reschedule to allow time for this requested legal review.

Keith Compton is our Point Person on this Bill and the related ADA issue. He has spoken with Cliff Royalty about this. Cliff, as usual, was very helpful. Based upon Keith's conversation with Cliff, I believe Cliff would agree that this requires a thorough legal review to be sure we're on the right track and good footing (no pun intended).

Please call me or Keith Compton with any questions or comments.

Arthur Holmes, Jr., Director
Department of Transportation
Montgomery County, Maryland
240-777-7170
arthur.holmes@montgomerycountymd.gov