



Agenda
City of Charlevoix City Council Regular Meeting
Wednesday, August 5, 2026 - 6:00 PM
Council Chambers, 210 State Street, Charlevoix, MI

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Presentations**
- 4. Inquiry Regarding Conflicts of Interest**
- 5. Consent Agenda**
 - A. City Council Meeting Minutes - July 20, 2026
 - B. Accounts Payable and Payroll Check Registers
 - C. City Band Request for Public Entertainment: \$5,000
 - D. 2026 Election Excellence Grant Acceptance
 - E. Electric Department Succession Planning
 - F. City Band Rehearsal at Odmark Pavilion
- 6. Public Hearings and Actions Requiring Public Hearings**
- 7. All Other Actions and Requests**
- 8. Reports and Communications**
 - A. Public Comment
 - B. City Manager's Comments
 - C. Mayor and Council Comments
- 9. Other Council Business**
- 10. Adjourn**

Persons with disabilities who need an accommodation to fully participate in these meetings should contact the City Clerk's Office at 231-547-3250 or by email clerk@charlevoixmi.gov. A 24-hour notice may be needed for certain accommodations. An attempt will be made to grant all reasonable accommodations requests.

Charlevoix City Council

Consent Agenda

Title: City Council Meeting Minutes - July 20, 2026

Date: August 5, 2026

Presented By:

Background:

Recommendation:

Motion to approve the minutes as presented.

Attachments:

1. 2026.07.20 CC DRAFT

City of Charlevoix
City Council Regular Meeting Minutes
Monday, July 20, 2026 - 6:00 PM

Council Chambers, 210 State Street, Charlevoix, MI

1. Pledge of Allegiance

The meeting was called to order at 6:02 p.m. by Mayor Gennett. The Council, staff, and members of the public rose and recited the Pledge of Allegiance.

2. Roll Call

Mayor: Lyle Gennett

Members Present: Aaron Hagen, Dennis Halverson, Janet Kalbfell, Mark Knapp, Phil Parr, Richard Spring

Members Absent: None

City Manager: Mark L. Heydlauff

City Clerk: Sarah J. Dvoracek

3. Presentations

4. Inquiry Regarding Conflicts of Interest

5. Consent Agenda

Mayor Gennett opened the item for public comment. None were heard.

Motion by Parr, seconded by Knapp to approve the consent agenda as presented.

Yeas: Kalbfell, Knapp, Spring, Halverson, Hagen, Parr

Nays: None

Motion carried.

A. City Council Meeting Minutes — July 6, 2026

Motion to approve the minutes as presented.

B. Accounts Payable and Payroll Check Registers

Motion to approve the accounts payable and payroll check registers as presented.

Dates	Description	Amount
07/17/2026	Payroll Remittance Checks	\$6,764.00
07/17/2026	Payroll (regular payroll net pay)	\$173,061.84
07/21/2026	Regular Accounts Payable	\$428,944.95
07/03/2026-07/17/2026	ACH/WIRE Payments	\$173,448.23
07/21/2026	Tax Refund Disbursement	\$7,921.49
Grand Total		\$790,140.51

The detailed accounts payable and payroll check registers can be viewed on the City's [website](#).

C. Fire/EMS Garage Trench Repair/Replacement

Motion to award the contract to Stevens Concrete Company in the amount of \$76,080.00 for the replacement of the trench floor drain system and authorize the City Manager to sign the proposal.

6. Public Hearings and Actions Requiring Public Hearings

7. All Other Actions and Requests

A. Lake Charlevoix EMS Authority Articles of Incorporation Amendment

Mark Heydlauff, City Manager

City Manager Heydlauff presented information on the Lake Charlevoix EMS Authority Articles of Incorporation Amendment.

Mayor Gennett opened the item for public comment. None were heard.

Motion by Spring, seconded by Hagen to approve the amendments to the Lake Charlevoix EMS Articles of Incorporation and the inclusion of Bay Township as an incorporating member of the Authority.

Yeas: Kallbfell, Knapp, Spring, Halverson, Hagen, Parr

Nays: None

Motion carried.

B. Chamber of Commerce Building Lease

Mark Heydlauff, City Manager

City Manager Heydlauff presented information on the Chamber of Commerce Building Lease.

Mayor Gennett opened the item for public comment, one was heard.

Motion by Knapp, seconded by Spring to approve the lease between the City of Charlevoix and the Charlevoix Area Chamber of Commerce as presented.

Yeas: Kalbfell, Knapp, Spring, Halverson, Hagen, Parr

Nays: None

Motion carried.

C. Engineer's Contract Amendment: Northside Trail Project

Mark Heydlauff, City Manager

City Manager Heydlauff presented information on the Engineer's Contract Amendment: Northside Trail Project.

Mayor Gennett opened the item for public comment. None were heard.

Motion by Hagen, seconded by Kalbfell to approve the PSA Amendment #4 in the amount of \$20,850.

Yeas: Kalbfell, Knapp, Spring, Halverson, Hagen, Parr

Nays: None

Motion carried.

8. Reports and Communications

A. Public Comment

B. City Manager's Comments

- City Manager won the croquet tournament against Charlevoix Township
- City has disconnected all copper AT&T lines
- Large branch from a willow tree broke in Ferry Beach and the tree may have to be removed
- Safety electric education materials will be distributed to the public in the near future as a preventive measure

C. Mayor and Council Comments

9. Other Council Business

10. Adjourn

Mayor Gennett adjourned the meeting at 6:21 p.m.

Sarah J. Dvoracek

City Clerk

Lyle Gennett

Mayor

Charlevoix City Council

Consent Agenda

Title: Accounts Payable and Payroll Check Registers

Date: August 5, 2026

Presented By:

Background:

Recommendation:

Motion to approve the accounts payable and payroll check registers as presented.

Attachments:

1. Check Registers 08-05-26 Agenda

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/16/2026 - 07/16/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: PAPER CHECK

Check Date	Check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
07/16/2026	147726	AT&T	328.82
07/16/2026	147727	DELTA DENTAL	3,450.99
07/16/2026	147728	VSP INSURANCE CO. (CT)	534.00
1 TOTALS:			
Total of 3 Checks:			4,313.81
Less 0 Void Checks:			0.00
Total of 3 Disbursements:			4,313.81

Summary of Check Registers & ACH Payments HUNTINGTON NATIONAL BANK - CHECKS ISSUED

07/16/26 Special Accounts Payable Run	\$	4,313.81
07/27/26 Special Accounts Payable Run	\$	57,994.72
07/31/26 Payroll (regular payroll net pay)	\$	177,188.11
07/31/26 Payroll Remittance Checks	\$	6,764.00
08/06/26 Regular Accounts Payable	\$	749,844.76
Checks Sub-Total:	\$	996,105.40

HUNTINGTON NATIONAL BANK - EFT/WIRE PAYMENTS

07/20/26 Enterprise FM Trust (fleet lease)	\$	11,024.36
07/20/26 MI Public Power Agency	\$	58,198.60
07/27/26 MI Public Power Agency	\$	299,705.85
07/27/26 MI Public Power Agency	\$	2,116.70
07/31/26 IRS (Payroll Tax Deposit)	\$	64,167.93
07/31/26 Empower Trust Co LLC (HCSP)	\$	558.00
07/31/26 MissionSquare 401 Plan	\$	1,340.21
07/31/26 MissionSquare 457 Plan	\$	28,963.08
07/31/26 MissionSquare Roth IRA	\$	1,475.00
07/31/26 State of MI (Withholding Tax)	\$	9,701.65
07/31/26 MERS (Defined Benefit Plan)	\$	121,980.55

ACH Sub-Total: \$ 599,231.93

Huntington National Bank Total: \$ 1,595,337.33

CHARLEVOIX STATE BANK - CHECKS ISSUED (PROPERTY TAX DISBURSEMENT TO VARIOUS TAXING AUTHORITIES)

07/16/26 Special A/P Tax Disbursement	\$	1,057,897.43
07/27/26 Special A/P Tax Disbursement	\$	21,537.57
Charlevoix State Bank Total:	\$	1,079,435.00

Grand Total: \$ 2,674,772.33

APPROVED:


CITY MANAGER


CITY TREASURER


CITY CLERK

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/27/2026 - 07/27/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: PAPER CHECK

Check Date	Check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
07/27/2026	147729	AT&T MOBILITY	860.89
07/27/2026	147730	CHARLEVOIX STATE BANK	9,827.93
07/27/2026	147731	GREAT LAKES ENERGY COOPERATIV	267.57
07/27/2026	147732	STEVENS CONCRETE CO	38,000.00
07/27/2026	147733	WEX BANK	9,038.33
1 TOTALS:			
Total of 5 Checks:			57,994.72
Less 0 Void Checks:			0.00
Total of 5 Disbursements:			57,994.72

CHECK APPROVAL REPORT FOR CITY OF CHARLEVOIX

Payroll: 0000000054

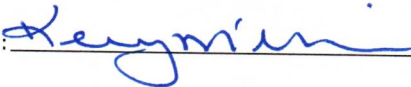
Name	Check Date	Gross	Net
HEYDLAUFF, MARK L.	07/31/2026	6,309.85	4,256.43
DVORACEK, SARAH J.	07/31/2026	3,483.40	2,475.64
KLOOSTER, ALIDA K.	07/31/2026	3,137.80	2,081.90
BARNEVELD, RICHELLE L.	07/31/2026	2,148.25	1,518.95
SCHULZ, GINNY L.	07/31/2026	2,335.22	1,569.58
JENKINS, JESSICA-RAE A.	07/31/2026	2,348.41	1,861.73
MILLER, FAITH G.	07/31/2026	438.16	302.10
MCGINN, KELLY A.	07/31/2026	3,869.90	2,498.05
SCHEEL, JONATHAN D.	07/31/2026	3,277.86	2,313.80
MCDONNELL, JILL L.	07/31/2026	3,822.43	2,228.92
UMULIS, MATTHEW T.	07/31/2026	4,146.88	2,641.25
ORBAN, BARBARA K.	07/31/2026	4,084.84	2,273.92
RILEY, DENISE M.	07/31/2026	764.03	625.55
MUNK, CHRISTOPHER J.	07/31/2026	4,682.26	3,113.39
CHRISTIENSEN, BRIAN D.	07/31/2026	3,491.12	2,413.97
RAMIREZ, CHARLES V.	07/31/2026	539.06	484.55
MARTIN, DONALD L.	07/31/2026	4,160.45	2,879.33
KORTZ, DAKOTA T.	07/31/2026	3,170.29	2,241.96
YOUNG, KRISTEN L.	07/31/2026	2,228.08	1,599.37
CONWAY, PATRICK G.	07/31/2026	1,273.00	1,058.89
MACGILLIVRAY, ROGER	07/31/2026	1,298.25	1,061.61
DOTSON, WILLIAM R.	07/31/2026	666.00	582.06
KALLMAN, ARIN J.	07/31/2026	910.00	801.70
WURST, RANDALL W.	07/31/2026	3,398.85	1,766.19
HILLING, NICHOLAS A.	07/31/2026	4,055.90	2,543.29
MEIER III, CHARLES A.	07/31/2026	3,004.94	1,828.17
ZACHARIAS, STEVEN B.	07/31/2026	3,987.04	2,441.92
NEWMAN, MARK J.	07/31/2026	2,703.20	1,785.16
LOUGHMILLER, JOHN A.	07/31/2026	3,193.12	2,275.26
COLLINS, TIMOTHY E.	07/31/2026	3,975.15	2,773.62
GOWARD, JEFFERY D.	07/31/2026	5,546.16	3,560.88
EATON, BRAD A.	07/31/2026	4,662.98	2,858.05
WILSON, TIMOTHY J.	07/31/2026	4,422.45	3,164.74
STERRETT, PHILLIP R.	07/31/2026	3,914.24	2,199.33
STEVENS, BRANDON C.	07/31/2026	5,284.63	3,154.62
WHITLEY, ANDREW T.	07/31/2026	4,482.20	2,658.78
FARRELL, MITCHELL L.	07/31/2026	4,270.40	2,599.13
BACHMANN, ELIZABETH A.	07/31/2026	2,682.40	1,884.44
KENWABIKISE, DAVID L.	07/31/2026	2,500.01	1,710.43
KLOOSTER, JACOB W.	07/31/2026	1,470.00	1,141.47
ELLIOTT, PATRICK M.	07/31/2026	5,546.15	3,790.94
MORRISON, KEVIN P.	07/31/2026	3,560.39	2,209.38
FURGESON, JUSTIN L.	07/31/2026	4,498.85	3,090.00
BRADLEY, KELLY R.	07/31/2026	3,360.90	1,990.00
HART II, DELBERT W.	07/31/2026	2,757.56	1,749.61
JONES, ROBERT F.	07/31/2026	3,286.16	2,117.18
THORP, WILLIAM D.	07/31/2026	2,998.56	1,886.56
LEITNER, RYAN S.	07/31/2026	3,378.41	2,159.68
NOWKA, STEPHEN P.	07/31/2026	3,376.40	2,467.99
RILEY, DANIEL A.	07/31/2026	3,299.88	2,316.09
REID, ROB A.	07/31/2026	2,885.17	1,968.66
DORAN, JUSTIN J.	07/31/2026	3,585.01	2,727.47
NEDWICK, DAVID J.	07/31/2026	892.63	778.35
CONWAY, ANNEMARIE	07/31/2026	629.00	553.18
FINNERTY, HOLLY E.	07/31/2026	1,577.01	1,283.95
WEAVER-WEIDLICH, DOMINIK T.	07/31/2026	1,347.50	1,109.29
LEITNER, DARICK B.	07/31/2026	1,455.00	1,191.10
SELPH, AURELIUS W.	07/31/2026	645.00	565.67
FREY, DYLAN V.	07/31/2026	1,312.50	1,042.97
JOHNSON, RANDY J.	07/31/2026	1,520.00	1,310.97
SPEER, LIAM M.	07/31/2026	1,100.76	921.53
KUHN, JAMES A.	07/31/2026	1,580.00	1,286.23
WOOD, DIANA G.	07/31/2026	148.50	130.84
HIGGINS, THERESE M.	07/31/2026	605.88	533.78
CRANDELL, ZACKARY R.	07/31/2026	1,260.00	1,032.50
RABIDEAU, JACOB L.	07/31/2026	1,458.00	1,193.39
BORTHS, MICHAEL J.	07/31/2026	1,351.88	1,112.63
KNORR, KENT J.	07/31/2026	3,751.91	2,639.77
ANZELL, BETH A.	07/31/2026	2,403.22	1,773.10
STEBE, LAURA A.	07/31/2026	40.00	36.94
STEWART, SPENCER P.	07/31/2026	1,400.00	1,149.25
BLECKE, SKYLAR T.	07/31/2026	1,472.00	1,154.66
LAVOIE, AUBREY J.	07/31/2026	1,280.00	1,005.82

CHECK APPROVAL REPORT FOR CITY OF CHARLEVOIX

Payroll: 0000000054

Name	Check Date	Gross	Net
LLEWELLYN, OLIVIA M.	07/31/2026	1,448.00	1,121.73
GALSTERER, CAROLINE R.	07/31/2026	1,448.00	1,136.30
CUNNINGHAM, ABIGAIL A.	07/31/2026	2,800.00	2,163.67
WALKER, MEREDITH A.	07/31/2026	1,992.39	1,679.90
LESCAVAGE, LONDON T.	07/31/2026	620.00	513.52
GLOTZHOBER, RUTH S.	07/31/2026	976.50	789.21
ROHRER, MAYA R.	07/31/2026	1,283.50	1,018.20
KOKKO, MYLEIGH E.	07/31/2026	1,281.88	1,059.36
HUNTER, AVIANA E.	07/31/2026	1,168.00	972.71
SNYDER, CAMERON L.	07/31/2026	1,268.63	1,058.93
KOPYTKO, KOEN W.	07/31/2026	408.00	359.26
CUNNINGHAM, CORDELIA R.	07/31/2026	1,232.50	979.86
SAUER, JOHN V.P.	07/31/2026	357.00	319.42
STURTZ, ELLA G.	07/31/2026	1,472.19	1,204.18
SUSTIC, LORELEI M.	07/31/2026	1,437.75	1,177.98
PHILP, DAVAYAH A.	07/31/2026	2,123.00	1,709.11
HOSLER, ISABELLA C.	07/31/2026	1,393.44	1,144.25
MAY, MADALYNE M.	07/31/2026	126.88	111.79
PECK, KIRSTEN M.	07/31/2026	1,460.63	1,195.38
GILL, DAVID R.	07/31/2026	1,437.66	1,197.03
LABLANCE, MAUREEN J.	07/31/2026	556.88	489.96
LIVINGSTON, BRIAN D.	07/31/2026	3,325.65	2,547.51
WHITLEY, BENJAMIN W.	07/31/2026	580.50	511.42
KLOOSTER, PATRICK H.	07/31/2026	513.00	351.95
PARKER, SCOTT W.	07/31/2026	99.00	91.42
PETROSKY, TIMOTHY D.	07/31/2026	107.25	94.49
DRENTH, MARK E.	07/31/2026	763.13	591.96
NISWANDER, WILLIAM M.	07/31/2026	1,072.50	884.18
DOAN, RALPH W.	07/31/2026	437.88	385.77
MOORE, GARY G.	07/31/2026	527.00	473.93
METZGER, CHARLES R.	07/31/2026	383.63	347.62
SCHOLEY, ROBERT W.	07/31/2026	4,417.31	3,013.36
MCCRANEY, RUSSELL R.	07/31/2026	3,362.30	2,495.16
POSTMUS, ANTHONY H.	07/31/2026	2,716.86	1,908.91
REECE, DANIEL A.	07/31/2026	3,476.73	2,497.78
KISSINGER, BRADY A.	07/31/2026	3,049.42	1,973.86
GRAY, DAVID A.	07/31/2026	2,580.40	1,954.33
WADKINS, LOGAN M.	07/31/2026	3,030.40	2,062.87
BRYAN, BRENDA L.	07/31/2026	50.00	46.18
GIBSON, SHIRLEY J.	07/31/2026	50.00	44.05
Totals: 113		252,739.23	177,188.11

Approved By:



Date:

7/28/26

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/31/2026 - 07/31/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: PAPER CHECK

Check Date	Check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
07/31/2026	147734	4FRONT CREDIT UNION	1,828.92
07/31/2026	147735	AMERICAN FAMILY LIFE	696.61
07/31/2026	147736	BLUE CROSS BLUE SHIELD OF MIC	1,483.91
07/31/2026	147737	CHARLEVOIX STATE BANK	1,645.00
07/31/2026	147738	COMMUNICATION WORKERS OF AMER	672.95
07/31/2026	147739	THE HARTFORD	436.61
1 TOTALS:			
Total of 6 Checks:			6,764.00
Less 0 Void Checks:			0.00
Total of 6 Disbursements:			6,764.00

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 08/06/2026 - 08/06/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: PAPER CHECK

Check Date	check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
08/06/2026	147740	A.W. AND SONS SERVICES	1,021.31
08/06/2026	147741	ACUSHNET COMPANY	824.80
08/06/2026	147742	AIS CONSTRUCTION EQUIPMENT	255,529.40
08/06/2026	147743	AMAZON CAPITAL SERVICES	1,890.57
08/06/2026	147744	APPRIVER LLC	3,217.45
08/06/2026	147745	ART'S AUTO & TRUCK PARTS	44.14
08/06/2026	147746	AT YOUR SERVICE PLUS INC	1,360.00
08/06/2026	147747	AVFUEL CORPORATION	155,921.98
08/06/2026	147748	BANDIT INDUSTRIES INC	204.22
08/06/2026	147749	BLARNEY CASTLE OIL CO	1,309.50
08/06/2026	147750	BS& A SOFTWARE	77,638.00
08/06/2026	147751	CHARLEVOIX AREA CHAMBER OF CO	7,500.00
08/06/2026	147752	CHARLEVOIX CHEESE COMPANY	56.00
08/06/2026	147753	CHARLEVOIX COUNTY TREASURER	1,990.71
08/06/2026	147754	CHARLEVOIX ELECTRIC LLC	2,992.64
08/06/2026	147755	CHARLEVOIX SCREEN MASTERS INC	1,473.00
08/06/2026	147756	CHARLEVOIX TOWNSHIP TREASURER	105.86
08/06/2026	147757	CHARLEVOIX VENETIAN FESTIVAL	15,000.00
08/06/2026	147758	CONWAY PROFESSIONAL SERVICES	10,971.00
08/06/2026	147759	D&D ELECTRONICS	429.60
08/06/2026	147760	DAVID MAGGRET	300.00
08/06/2026	147761	DAVID MAGGRET	300.00
08/06/2026	147762	DHASELEER EVENTS BARN	297.00
08/06/2026	147763	EJ USA INC.	2,568.47
08/06/2026	147764	ENERGY EDUCATION COUNCIL	416.00
08/06/2026	147765	FARMER WHITE'S	184.00
08/06/2026	147766	FLETCH'S INC	39.13
08/06/2026	147767	GALLS LLC	48.48
08/06/2026	147768	GERBER'S HOMEMADE SWEETS	277.00
08/06/2026	147769	GUNTZVILLERS FARM LLC	289.00
08/06/2026	147770	HACH COMPANY	2,190.67
08/06/2026	147771	HARBOR HOUSE PUBLISHERS	3,257.20
08/06/2026	147772	HARRELL'S LLC	1,292.24
08/06/2026	147773	HUTSON INC	88.51
08/06/2026	147774	HYDROCORP	2,243.50
08/06/2026	147775	IPS GROUP INC	4,176.33
08/06/2026	147776	ISCO INDUSTRIES INC	102,620.30
08/06/2026	147777	JACOB SHARROW	250.00
08/06/2026	147778	JACOB SHARROW	500.00
08/06/2026	147779	JACOB SHARROW	500.00
08/06/2026	147780	KALAMAZOO SANITARY SUPPLY LLC	4,377.49
08/06/2026	147781	KENNETH & HOLLY HOGARTH	50.00
08/06/2026	147782	KIWANIS CLUB OF CHARLEVOIX	40.00
08/06/2026	147783	KK'S FARM	166.00
08/06/2026	147784	KRAFT BUSINESS SYSTEMS INC	8.44
08/06/2026	147785	LAKE SHORE TIRE & AUTO SERVICE	15.00
08/06/2026	147786	LASER PRINTER TECHNOLOGIES	876.95
08/06/2026	147787	LAUREN BREWERTON	23.50
08/06/2026	147788	LAURIE HUGHES	609.00
08/06/2026	147789	LENSLOCK INC	88.00
08/06/2026	147790	MAVERICK RANCH ENTERTAINMENT	1,200.00
08/06/2026	147791	MICHIGAN PIPE AND VALVE	384.00
08/06/2026	147792	MISSION COMMUNICATIONS LLC	1,150.00
08/06/2026	147793	MSA SAFETY SALES LLC	455.43
08/06/2026	147794	NORTHERN LAKES ECONOMIC ALLIA	3,500.00
08/06/2026	147795	NORTHERN PUMP SERVICE INC	955.00
08/06/2026	147796	NUCO2 LLC	799.97
08/06/2026	147797	OMS COMPLIANCE SERVICES INC	803.50
08/06/2026	147798	PERFORMANCE ENGINEERS INC	9,839.75
08/06/2026	147799	POWER LINE SUPPLY	1,757.88
08/06/2026	147800	POWER SYSTEM ENGINEERING INC	9,918.50
08/06/2026	147801	PROVIDENCE FARM LLC	95.00
08/06/2026	147802	REHMANN LLC	11,300.00
08/06/2026	147803	ROTARY CLUB OF CHARLEVOIX	45.00
08/06/2026	147804	SCIENTIFIC BRAKE - GAYLORD	96.64
08/06/2026	147805	SITEONE LANDSCAPE SUPPLY LLC	863.80
08/06/2026	147806	SNAP-ON CREDIT LLC	104.58
08/06/2026	147807	SPARTAN TURF PRODUCTS LLC	928.21
08/06/2026	147808	STANDARD ELECTRIC COMPANY INC	450.23
08/06/2026	147809	STATE OF MICHIGAN	290.00

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 08/06/2026 - 08/06/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: PAPER CHECK

Check Date	Check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
08/06/2026	147810	SWANSON K & D INC	12,750.00
08/06/2026	147811	TAI JAXX DRURY	1,200.00
08/06/2026	147812	TARGET SPECIALTY PRODUCTS	422.21
08/06/2026	147813	THE DUTCH OVEN BAKERY	232.00
08/06/2026	147814	TOP LINE ELECTRIC LLC	3,450.00
08/06/2026	147815	TRACE ANALYTICAL LABORATORIES	1,258.56
08/06/2026	147816	TRACI CHOUINARD	339.95
08/06/2026	147817	TRAVERSE CITY DANCE PROJECT	1,000.00
08/06/2026	147818	TRUCK & TRAILER SPECIALTIES	7,259.68
08/06/2026	147819	UNIFIRST CORPORATION	552.93
08/06/2026	147820	UNIVERSAL CREDIT SERVICES INC	35.20
08/06/2026	147821	UP NORTH ASSESSING INC	5,800.00
08/06/2026	147822	USABUEBOOK	1,059.15
08/06/2026	147823	WILBERT BURIAL VAULT CO	1,819.20
08/06/2026	147824	WITT FAMILY FARM	156.00
1 TOTALS:			
Total of 85 Checks:			749,844.76
Less 0 Void Checks:			0.00
Total of 85 Disbursements:			749,844.76

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/20/2026 - 07/20/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: EFT

Check Date	Check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
07/20/2026	566(E)	ENTERPRISE FM TRUST	11,024.36
07/20/2026	567(E)	MICHIGAN PUBLIC POWER AGENCY	58,198.60
1 TOTALS:			
Total of 2 Checks:			69,222.96
Less 0 Void Checks:			0.00
Total of 2 Disbursements:			69,222.96

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/27/2026 - 07/27/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: EFT

Check Date	Check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
07/27/2026	568(E)	MICHIGAN PUBLIC POWER AGENCY	299,705.85
07/27/2026	569(E)	MICHIGAN PUBLIC POWER AGENCY	2,116.70
1 TOTALS:			
Total of 2 Checks:			301,822.55
Less 0 Void Checks:			0.00
Total of 2 Disbursements:			301,822.55

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/31/2026 - 07/31/2026

BANK CODE: 1 - GENERAL CASH - HUNTINGTON BANK - CHECK TYPE: EFT

Check Date	Check	Vendor Name	Amount
Bank 1 GENERAL CASH - HUNTINGTON BANK			
07/31/2026	570(E)	**EFTPS* Payroll Taxes	64,167.93
07/31/2026	571(E)	EMPOWER TRUST COMPANY LLC	558.00
07/31/2026	572(E)	MissionSquare - 401 Plan 1091	1,340.21
07/31/2026	573(E)	MissionSquare - 457 Plan 3009	28,963.08
07/31/2026	574(E)	MissionSquare - Roth IRA 7061	1,475.00
07/31/2026	575(E)	STATE OF MICHIGAN	9,701.65
07/31/2026	576(E)	MERS	121,980.55
1 TOTALS:			
Total of 7 Checks:			228,186.42
Less 0 Void Checks:			0.00
Total of 7 Disbursements:			228,186.42

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/16/2026 - 07/16/2026

BANK CODE: 2 - TAX CASH - CSB - CHECK TYPE: PAPER CHECK

Check Date	Check	Vendor Name	Amount
Bank 2 TAX CASH - CSB			
07/16/2026	4385	CHARLEVOIX COUNTY TREASURER	186,882.30
07/16/2026	4386	CHARLEVOIX PUBLIC SCHOOLS	406,110.24
07/16/2026	4387	CITY OF CHARLEVOIX - DDA	448,829.24
07/16/2026	4388	CITY OF CHARLEVOIX - TAXES DU	16,075.65
2 TOTALS:			
Total of 4 Checks:			1,057,897.43
Less 0 Void Checks:			0.00
Total of 4 Disbursements:			1,057,897.43

CHECK REGISTER FOR CITY OF CHARLEVOIX

CHECK DATE 07/27/2026 - 07/27/2026

BANK CODE: 2 - TAX CASH - CSB - CHECK TYPE: PAPER CHECK

Check Date	Check	Vendor Name	Amount
Bank 2 TAX CASH - CSB			
07/27/2026	4389	CHARLEVOIX COUNTY TREASURER	2,690.41
07/27/2026	4390	CHARLEVOIX DISTRICT LIBRARY	429.74
07/27/2026	4391	CHARLEVOIX PUBLIC SCHOOLS	733.78
07/27/2026	4392	CHARLEVOIX-EMMET ISD	1,771.76
07/27/2026	4393	CITY OF CHARLEVOIX - TAXES DU	5,118.63
07/27/2026	4394	LAKE CHARLEVOIX EMS AUTHORITY	597.04
07/27/2026	4395	RECREATIONAL AUTHORITY	132.96
07/27/2026	4396	STATE OF MICHIGAN	10,063.25
2 TOTALS:			
Total of 8 Checks:			21,537.57
Less 0 Void Checks:			0.00
Total of 8 Disbursements:			21,537.57

Charlevoix City Council

Consent Agenda

Title: City Band Request for Public Entertainment: \$5,000

Date: August 5, 2026

Presented By:

Background:

The City has long given funds to the City band in exchange for the benefit of public entertainment that they provide the community. They are again seeking \$5,000.

Recommendation:

Motion to approve the agreement with the City Band for \$5,000 for free public entertainment.

Attachments:

1. City Band Letter

To the City of Charlevoix,

The Charlevoix City Band has been a fixture in our community for over a century, providing summer musical entertainment for generations of tourists and year-round residents. Our band itself is a community, consisting of approximately 60 members, including professional musicians, high school students, and hobbyist musicians all joined together under a mutual love of performing. There are people from all professions, ages, areas of the country, and multiple generations of Charlevoix School Band members and directors. After our concerts I have spoken to audience members who have been coming to concerts for decades as well as those who just discovered us on their stroll downtown and were pleasantly surprised. We welcome all as we continue our history of excellent and fun performances.

We are very grateful for our current support from the City of Charlevoix, and humbly request a renewal of five thousand dollars for the 202~~7~~⁶ summer concert season.

The funds we receive from the city pay our directors and librarian, update our music library, and replace any needed equipment.

Thank you for your continued support of the Charlevoix City Band.

Sincerely,



Jake Bronson
Conductor



Evelyn Wujcik
President

Charlevoix City Band

Charlevoix City Council

Consent Agenda

Title: 2026 Election Excellence Grant Acceptance

Date: August 5, 2026

Presented By:

Background:

The City Clerk successfully applied for the nonpartisan 2026 Election Excellence Grant Program and received conditional funding approval for an amount of \$5,000. Administered by the U.S. Alliance for Election Excellence and funded via the Center for Tech and Civic Life (CTCL), this program provides financial support to U.S. election offices to optimize operations and meet national administrative standards. Formal Council approval is required to finalize the grant agreement and execute the purchase.

Project Objective

Grant funds will be used exclusively to enhance local ballot security by purchasing a dedicated, fire-safe file system for protected ballot storage.

Fiscal Impact

- Local Match Requirement: None.
- Funding Restriction: Funds must supplement, not supplant, previously budgeted municipal allocations.
- Compliance: The City must submit a final expenditure report by September 30, 2027.

Recommendation:

Motion to approve the acceptance of a \$5,000 grant from the [2026 Election Excellence Grant Program](#) and authorize the City Clerk to execute all necessary agreements.

Attachments:

None

Charlevoix City Council

Consent Agenda

Title: Electric Department Succession Planning

Date: August 5, 2026

Presented By:

Background:

Following the recent resignation of a Journeyman Lineman, the Electric Department successfully filled that vacancy after conducting a thorough interview process. During a review of the department's seniority structure, it became evident that another Journeyman Lineman will be retiring on April 1, 2027. To ensure continuity in operations and maintain a stable, experienced workforce, I am proposing the hiring of a second Apprentice Lineman now, selected from the same pool of highly qualified candidates recently interviewed.

Bringing on an additional apprentice at this time will allow both apprentices to advance through their training together and more importantly provide approximately seven months for the retiring Journeyman to transfer critical knowledge and technical expertise. This proactive approach supports long-term departmental strength and helps secure the experience pipeline needed for reliable service delivery.

1. Journeyman Lineman
 - Base Rate: \$51.69/hour
 - Fringe Benefits: \$40.32/hour
 - Total Compensation: \$92.01/hour
 - Annual Total: \$191,380.80
2. Apprentice Lineman
 - Base Rate: \$35.86/hour
 - Fringe Benefits: \$27.98/hour
 - Total Compensation: \$63.84/hour
 - Annual Total: \$132,787.20

I am requesting that \$34,000 be added to the Electric Department wage budget to fund the additional Apprentice Lineman position. Once the Journeyman Lineman retires in 2027, the wage difference between losing two Journeyman and replacing them with two Apprentice's will result in a net savings of approximately \$100,000 for next year over the current year wage budget.

Recommendation:

Motion to approve the hiring of an additional Apprentice Lineman.

Attachments:

None

Charlevoix City Council

Consent Agenda

Title: City Band Rehearsal at Odmark Pavilion

Date: August 5, 2026

Presented By: Kent Knorr, Recreation Director

Background:

Per our pavilion use policy, the City Band is requesting the ability to hold practice for an off shoot of their band in the Pavillion on Sunday August 16 at 2:00 PM. We have granted similar permission to the Fog Horn Jazz Band who have been practicing on Wednesday afternoons throughout the summer. The presence of those practices seem to be popular entertainment for those visiting the park.

Recommendation:

Motion to grant permission for City Band and/or it's off shoot to practice at the Odmark Pavilion on August 16, 2026 at 2:00 PM.

Attachments:

None

Charlevoix City Council

Reports and Communications

Title: City Manager's Comments

Date: August 5, 2026

Presented By:

Background:

A. Block Parties

We received a request for a block party on Dixon Avenue the afternoon of August 29. I have approved this in keeping with the Special Event Policy. It's very simple from the City preparation perspective and will provide free enjoyment for the residents of the neighborhood. Similarly, we received a request for the corner of Crain and Whitely for tomorrow evening; this will impact travel even less.

B. Venetian Report

From the City's perspective, the Venetian Festival was exceptionally smooth. The Police Department had no notable enforcement activities or calls for service. Public works staff felt the traffic closure implementation on Thursday morning was successful and did not conflict with Kid's Day set-up downtown. Our electric department staff were able to manage set-up activities and restore power at a blown transformer on Thursday morning; the transformer issue was due to a squirrel--not the festival. Finally, I heard many positive comments from business owners and residents who commended our staff from all departments for their assistance with activities and going the extra mile to make the event a success.

C. Sidewalk Cleaning

Our staff will begin the annual cleaning of downtown sidewalks next week. The timing of this is intended to occur after Venetian and work around the remaining summer events of Waterfront Art Fair and Sidewalk Sales.

D. Live on the Lake

The DDA's summer concert series kicks off tonight with support from J. Bird Provisions, The Weathervane Terrace Inn & Suites, the Charlevoix County Community Foundation and others who support individual events. Recreation Director Kent Knorr is again responsible for managing the events and organizing the series. Here is the full line-up:

July 30 - Traverse City Dance Project

August 6 - The Marsupials

August 13 - Jennifer Westwood and the Handsome Devils

August 20 - Julianne Ankley

August 27 - Cabaret Boreale

Jazz Session Weekend

September 3 - Foghorn Jazz Band

September 4 - Swingbone North

September 5 - Cat Daddy Trio

September 10 - TBA

September 17 - Silent Disco in partnership with the Great Lakes Center for the Arts

E. For your reading list...

Admittedly, I haven't read the entire article but our Zoning and Planning Director shared the article "Sidewalk Government" from the Michigan Law Review. You might find it interesting and it reflects many of the challenges we have in day-to-day regulation.

F. Elections

The primary election is on Tuesday. Early voting has been combined at the Charlevoix County building for the past week. Voters have a chance to vote there, by dropping off their absentee ballot up until Election Day, or in-person at City Hall on Tuesday. The City Clerk hosted a training for election inspectors last night and it included a security training by Chief McDonnell.

G. Goats

Normally we have the goats at Michigan Beach Park about this time but their handler advised of some issues and he is hoping to have them here later in the month.

Recommendation:

Attachments:

1. Sidewalk Government from Michigan Law Review

Sidewalk Government

Michael C. Pollack* | February, 2024

DOWNLOAD

This Article is about one of the most used, least studied spaces in the country: the sidewalk.

It is easy to think of sidewalks simply as spaces for pedestrians, and that is exactly how most scholars, policymakers, and laws treat them. But this view is fundamentally mistaken. In big cities and small towns, sidewalks are also where we gather, demonstrate, dine, exercise, rest, and shop. They are host to commerce and infrastructure. They are spaces of public access and sources of private obligation. And in all of these things, sidewalks are sites of underappreciated conflict. The centrality of sidewalks in our day-to-day lives is rooted in the fact that they are open to everyone and to all of these varied uses, every hour of every day, but it is that very vibrancy that risks being their undoing. As competing claims on sidewalks increase in both number and intensity due to cultural shifts, technological advances, climate change, and more, the sidewalks we take for granted may crumble—both literally and figuratively—under the weight of contradictory and self-defeating governing principles and uncoordinated governmental oversight.

This Article is the first to systematically examine the incoherence of the property law of sidewalks and of the fragmented regulatory architecture that municipalities have built to manage them. Drawing on insights from both property and local government law, as well as first-person interviews with current and former municipal officials, it

demonstrates how both legal regimes have in fact deepened sidewalk conflict and have confused and undermined accountability for the quality and accessibility of sidewalks. With these shortcomings in mind, this Article charts a new course and constructs from the ground up a new municipal agency to administer the sidewalks—one that would be better positioned to protect and foster the utility and vitality of these critical social, economic, and political spaces.

Introduction

In May of 2022, days after a leaked draft of the Supreme Court’s opinion in *Dobbs v. Jackson Women’s Health Organization* revealed that the Court would overrule *Roe v. Wade* and permit states to ban abortion,¹ a message appeared in chalk on the sidewalk in front of Senator Susan Collins’s home in Bangor, Maine.² The message called for Senator Collins to support the Women’s Health Protection Act, a bill to codify abortion rights at the federal level; it read, “Susie, Please . . . Mainers Want WHPA [] Vote Yes, Clean Up Your Mess.”³ A statement from Senator Collins indicated that she contacted the Bangor Police Department and Department of Public Works to complain about this “defacement of public property in front of [her] home.”⁴

Senator Collins was quickly and roundly mocked on social media for calling the police to complain about sidewalk chalk,⁵ but the incident neatly illustrates the almost universally messy relationship that property owners have with the sidewalk. Look carefully at the Senator’s statement: she describes the sidewalk as “public property,” but she pivots in the same breath to claim some sort of control, or even ownership, over that public property simply because it sits “in front of [her] home.”⁶ And while Senator Collins is presumably aware that people have a right to engage in certain expressive conduct on public property,⁷ her apparent proprietary feelings towards “her”

slice of the sidewalk led her to seek to control that space and to determine the conduct deemed permissible on it.

Risible though it may seem, however, Senator Collins is not alone. Owners of property commonly identify with the adjacent patch of sidewalk and often feel entitled to exercise some power over that space and those who use it.⁸ Even the headline of an article reporting the story calls the sidewalk “*Susan Collins’ Bangor sidewalk*”⁹—that casual possessive apostrophe denoting either ownership or, at least, an expected close association between the sidewalk and the person who happens to own the adjacent house.

Conflict between users of sidewalks, each laying incompatible claims to the space, and perhaps even each with a sense of ownership, plays out every day in big cities and small towns around the world.¹⁰ Sometimes, as it did on that street in Bangor, the conflict arises between an adjacent property owner and a member of the public. For example, the owner may operate a sidewalk café that limits the walking space available for pedestrians, or the public may protest on the sidewalk and interfere with the owner’s home or business.¹¹ But at other times the conflict may be between neighboring owners—one constructing sidewalk scaffolding or planting trees that block the other’s storefront—or between members of the public—vendors and buskers obstructing residents out for a jog. The list goes on. Indeed, whatever activities people may engage in on sidewalks—travel, commerce, speech, recreation, construction, exclusion, preservation, and much more—they necessarily collide with others engaged in their own activities in the same limited space.¹²

Sidewalks are unique because they are the only place where this collision takes place with such frequency and at such scale. Consider the other basic classes of space. The uses of private property are tightly controlled by its owner with an eye toward whatever goals the owner desires. The uses of public streets are controlled by the government for the sake of safe and efficient vehicle transportation. And while the various uses of public parks, fields, and squares

are less directed by government and may come closest to the cacophony of the sidewalk, they have no particular legal relationship with adjacent property owners. Indeed, the other, related reason why sidewalks are distinct is that they are a rare place where private individuals *are* often charged with obligations toward public space.¹³ For example, adjacent property owners in many municipalities must clear snow and obstructions from the sidewalk in front of their property.¹⁴ They owe no such obligation to nearby parks and squares, and they certainly owe no such obligation to the streets on which their property fronts. If one bears the burden of shoveling the snow on the sidewalk in front of one's home, perhaps it is understandable that one might think of that space as theirs and, in turn, feel they can limit the messages scrawled on it.

For some, it is this very complexity—the multiplicity of users and uses, the interactions between them, the jumbles of ownership and control—that makes the sidewalk so special. The “sidewalk ballet” that urbanist Jane Jacobs saw in New York City sidewalks made them, in her estimation, the city’s “most vital organs.”¹⁵ But for others, these conflicts are cause for concern. For anthropologist Margaret Mead, who is said to have remarked that “[a]ny town that doesn’t have sidewalks doesn’t love its children,”¹⁶ sidewalks are valuable as places for safe recreation. Bustling commerce and frequent protests, however, do not make for a child-friendly space. And for many urban planners, the importance of sidewalks rests primarily in their status as sites of transportation, which renders all of the other uses obstacles to be addressed rather than joys to be embraced.¹⁷

The consequences of all of these users and all of this contestation about what and whom sidewalks are meant for are predictable: confusion and poorly resolved conflicts that threaten to degrade the quality of the space and the experience of its users.¹⁸ This Article seeks to turn the tide and chart a course toward saving the sidewalk. Specifically, this Article evaluates sidewalks through the lenses of the two main legal systems that regulate them—

property law and local government law—and draws on interviews with municipal officials responsible for pieces of sidewalk life to demonstrate that sidewalk dysfunction arises primarily because too many people are partly in charge, but nobody is fully in charge.

In terms of property law, from clearing snow to repairing concrete and more, adjacent property owners have a number of owner-like obligations with respect to sidewalks.¹⁹ They also enjoy a number of owner-like privileges with respect to the space.²⁰ But while they may accordingly feel like owners, they are not the owners of the sidewalk, and they have neither the full set of obligations nor the full set of privileges that an owner would have. For their part, local governments bear the remaining obligations and enjoy the remaining privileges on behalf of the public. But, as this Article shows, authority and responsibility for sidewalks are often fragmented across a large number of municipal agencies.²¹ Uncoordinated, inconsistent regulation and gaps in problem-solving are the common result.

A few recent developments increasing the number and intensity of competing claims on sidewalks have made circumstances even more urgent. First, the COVID-19 pandemic reshaped people's uses and expectations with respect to the sidewalks in their communities. Where it was once relatively easy for most people to see a sidewalk as little more than a means for pedestrians to get from one place to another, the pandemic has led communities to see sidewalks in a new light—as places for gathering, for exercise and recreation, and, perhaps most controversially, for outdoor dining.²² Second, new technologies and a wave of sidewalk-oriented startups increasingly use sidewalks as sites of commerce disconnected from adjacent property ownership.²³ Scooter- and bike-share companies like Lime and Bird, battery-powered mobile convenience store kiosks developed by Blank Street and Tortoise, curbside electric vehicle chargers, and even autonomous delivery robots operated by Postmates, Amazon, and others presage a future where the range of uses of sidewalks only grows.²⁴ Third, climate change is accelerating

the need for municipalities to adapt to extreme weather and adopt more green infrastructure. Sidewalks may play an important role; for example, they may increasingly need to incorporate trees and rain gardens or bioswales, or host underground stormwater retention systems.²⁵

In short, it is high time to take a careful and critical look at how this crucial public resource is managed.²⁶ The answer: quite poorly. And yet, in large part *because* the topic falls between so many stools, sidewalks are taken for granted—not just by many of the people who use them, but by governments and legal scholars too.²⁷ Sociologists, geographers, and urban planners have devoted much more sustained and productive attention to understanding sidewalks, but their work has been more limited when it comes to offering legal analysis or legal solutions.²⁸ And when it comes to legal scholars, almost none have considered sidewalks either as a question of *property* or as a question that property law might help to solve.²⁹ Where property scholars do engage with sidewalks, it is often as an example or test case rather than as a subject deserving of its own sustained attention.³⁰ Finally, the local government law literature has largely overlooked the question of how municipal governments ought to be organized to most effectively and efficiently administer sidewalks.

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It is primarily toward these oversights that this Article is addressed. First and foremost, this Article shines a much-needed light on the uniquely large array of conflicts that inhere in sidewalks and exposes the tangled web of power and responsibility with respect to sidewalks that property law and municipal laws have created. Second, and closely related, it seeks to connect the two, demonstrating that these conflicts go inadequately resolved because there is nobody empowered with the wide-angle lens necessary to see and address all of them in a coherent fashion.

But this Article also offers a solution. Informed by the experiences of officials in the trenches and building on insights from the administrative law

literature, this Article provides a rough design for a new municipal agency called the Department of Sidewalks. Equipped with the vision and the tools needed to mediate among the myriad of users and uses, the Department of Sidewalks would be positioned to take on more responsibility—thus shifting power and costs away from adjacent property owners—and to direct and deploy its resources in a coordinated manner that would produce policies better informed by the needs and interests of the full panoply of sidewalk stakeholders.³²

This Article proceeds in three parts. Part I catalogs and categorizes the wide array of sidewalk users and uses. It then demonstrates at least some of the ways in which those uses necessarily come into conflict with one another. Part II assesses in-depth the two means by which law has sought to resolve those conflicts: the law applicable to adjacent property owners and the regulatory architectures that municipalities employ to regulate users of sidewalks. This Part reveals that, not only has law failed to govern sidewalks, but law has exacerbated sidewalks' governance problems and contributed to the confusion surrounding users' rights and privileges. Part III turns to solutions. After explaining why greater private control of sidewalks is a misguided, if tempting, prospect, this Part justifies and sets out a plan for the Department of Sidewalks. While this Article does not claim to offer a perfect, one-size-fits-all template for agency design in every municipality, it provides a starting point for a better way of ensuring that sidewalks everywhere remain a functional space for all manner of people and activities.

I. Sidewalk Life

The first step in grappling with sidewalk governance is understanding what sidewalks really are. Perhaps that seems straightforward; in the words of one federal court, a sidewalk is simply “an area for walking along the side of the road.”³³ Indeed, the earliest sidewalks—reportedly built in Ancient Anatolia

around 2000 BCE and later found in Ancient Rome—were precisely that: little more than an area for pedestrians separated from carriages and other vehicles.³⁴ American municipal law has taken the same position, simply assuming that “walking is the primary use” of a sidewalk and consequently building a regulatory architecture around ensuring the safe and smooth movement of traveling pedestrians.³⁵

But whatever the normative virtue of this vision of sidewalks—which Professor Nicholas Blomley has called *pedestrianism*³⁶—it is at odds with reality. Pedestrians are most assuredly an important set of sidewalk users, but they are not alone and their uses often revolve around and relate to numerous other distinct uses. This Part undertakes an in-depth description of sidewalks as they are actually used—both lawfully and unlawfully—focusing both on the nature of the activities and the identities of the users. It then explores the conflicts that arise between these uses and necessitate some form of sidewalk government.³⁷

A. Users and Uses

Beyond pedestrians, sidewalk users can be sorted into five categories of increasing scope: residents, property owners, nonowner commercial interests, communities, and governments and utilities. Though a given person or entity may fit into more than one category, each category corresponds to a set of distinct uses. In other words, a residential property owner engages in certain uses as a resident and others as an owner of property adjacent to the sidewalk—a reality that adds to the conflicts between users and uses discussed in the next Section.

1. Residents

The first category of sidewalk users is *residents*. By using the term “residents,” I mean to capture people using the sidewalk as an amenity of their neighborhood or even an extension of their living room.³⁸ Residents use sidewalks for leisure, for dog-walking, and for exercise—walking or jogging (or skateboarding or cycling, sometimes unlawfully) without a destination.³⁹ Particularly in urban areas where many residents lack yards or other outdoor spaces of their own, sidewalks also serve an important function as a space for friends and neighbors to chit-chat.⁴⁰ Sidewalks are a place for children to play, draw with sidewalk chalk, sell lemonade, or learn to ride a tricycle,⁴¹ and they are places for older residents who might be relatively less mobile to sit outside and get fresh air. And sidewalks can be a source of trees, shade, quality air, and stormwater absorption for residents of urban areas without other abundant greenery.⁴²

Another set of sidewalk users that falls into this category of residents is people experiencing homelessness. Though such people do not reside in formal homes, they are nonetheless functionally residents of the neighborhood and they are using the sidewalk as an amenity of that neighborhood: a place to rest, recreate, and sleep.⁴³ The ways in which municipalities and states regulate homelessness is discussed further below.⁴⁴ For now, however, it is critical to neither overlook the existence of people experiencing homelessness as residents of a neighborhood, nor to discount their contested and often fraught stake in the sidewalk.⁴⁵

2. Property Owners

The second category of sidewalk users is that of *property owners*. Of course, residents are often property owners and vice versa, but I mean to distinguish here between the use of sidewalks by people in their capacity as people (as a personal or family space, for example) and the use of sidewalks by people in their capacity as owners of land (as a resource associated with ownership of

adjacent real property).⁴⁶ Often, these uses are commercial in nature. For example, a commercial property owner may place advertising like sandwich boards on the sidewalk in front of its property, or it may use a projector mounted on its adjacent building to display a lighted logo on the sidewalk's surface.⁴⁷ Some commercial property owners may display some of their wares on the sidewalk in front of the shop door,⁴⁸ or place a bench or coin-operated ride in that space.⁴⁹ Similarly, restaurant, club, shop, and theater owners use sidewalks as spaces for guests to wait for a table or show, sometimes even with stanchions placed for the purpose.⁵⁰

A recently salient example of commercial sidewalk use by property owners is as a space for outdoor seating for adjacent cafés, bars, and restaurants. Sidewalk seating has long been a privilege associated with operating such an establishment, but the COVID-19 pandemic necessitated and popularized outdoor dining.⁵¹ Businesses relied on serving customers on the sidewalk and in erstwhile curbside parking spots as some municipalities banned or restricted indoor dining and as many customers became reluctant to partake in indoor dining even where it remained available.⁵²

Sometimes, these commercial property owners take a step further and form a Business Improvement District (BID). Authorized by state or local law,⁵³ these BIDs are quasi-governmental, quasi-private, nonprofit entities that finance and provide services within a defined geographic district.⁵⁴ Those services are generally funded through extra taxes or assessments imposed on the businesses within the district by the BID or by the municipality.⁵⁵ Among the more common BID services are sidewalk maintenance, beautification, cleaning, trash collection, and the like.⁵⁶ BIDs are thus an important piece of the tapestry of sidewalk users and regulators, and they are explored further in Section III.A.

It is not just commercial property owners that use sidewalks as adjuncts of their ownership; residential owners also make significant use of the sidewalk.

For example, both sorts of owners use the sidewalk for vehicular entrance to and egress from their property, having created—with municipal permission—a dip in the sidewalk that enables a vehicle to cross it.⁵⁷ They therefore also use the sidewalk as an extension of a loading dock or even simply as a space to temporarily idle while loading or unloading passengers or items. Some owners may even be tempted to run electrical cables across the sidewalk in order to charge electric vehicles they have parked at the curb, thus creating an obvious tripping hazard for other users of the space.⁵⁸ Outside of the vehicle context, owners may post signs near the sidewalk purporting to forbid people from allowing their dogs to relieve themselves there,⁵⁹ or may claim some of the sidewalk to plant trees—either by requesting that a tree be planted by the municipality or by planting and paying for their own, as discussed further in Section II.B.⁶⁰ And, especially in New York City, owners use sidewalks to store trash and discarded items so they can be collected by sanitation workers⁶¹ or so neighbors can collect them as they pass by.⁶²

One final widespread example of residential and commercial property owners' use of sidewalks is as a site of scaffolding, awnings, stoops, and hatch-like doors that open down to cellars beneath the adjacent buildings. These projections into the public sidewalk are such common uses of the space that they often go unnoticed or unremarked upon until they cause a problem. For example, people have fallen to their deaths through improperly maintained cellar doors.⁶³ And in some places, scaffolding stays in place years after its city permits have expired, much to the frustration of residents and pedestrians alike.⁶⁴ Some property owners have endeavored to find a silver lining in the scaffolding foisted on them by other property owners and have taken over the underside of the scaffolding for art, faux flowers, and the like.⁶⁵ This, too, is a use of public sidewalk space by adjacent property owners. Relatedly, building construction generally entails the use of at least some of the sidewalk by adjacent property owners. Depending on the project, these owners may even block off access to a portion of the sidewalk altogether during the pendency of the work.⁶⁶

3. Nonowner Commercial Interests

A third category of sidewalk users encompasses *nonowner commercial interests*. I refer here to users that are engaged in commerce on the sidewalk but have no particular legal relationship with the adjacent property.⁶⁷

Common examples include food vendors like hot dog and ice cream stands, and seasonal vendors like sellers of Christmas trees.⁶⁸ Recently, they have also included pop-up COVID testing tents.⁶⁹ Musicians and performers,⁷⁰ film crews,⁷¹ and people selling books, magazines, umbrellas, and other wares on tables set up on the sidewalk all fall into this category too,⁷² as do messengers and delivery people riding bicycles or e-bikes (albeit sometimes unlawfully).⁷³ Many of these lawful uses are regulated by municipalities—a topic taken up in greater depth in Section II.B.

Entrepreneurship and technology have also joined forces in recent years to make new commercial uses of sidewalk space. For example, companies like Lime and Bird rent bicycles and scooters and have been notorious for permitting users to simply abandon rented scooters haphazardly on sidewalks.⁷⁴ Some other startups are working to innovate and expand vending kiosks with battery-powered carts and miniature stationary storefronts on sidewalks.⁷⁵ Even more dramatically, delivery robots have begun to emerge.⁷⁶ Amazon's Scout,⁷⁷ Postmates' Serve,⁷⁸ and other such services deploy autonomous boxes on wheels to roll down sidewalks to deliver orders.⁷⁹ A startup called Tortoise has even developed "remote-controlled robot[s]" that can roll down sidewalks toting various foods and other items for people to purchase on the spot.⁸⁰ A number of states have recently enacted laws authorizing these robots to travel on sidewalks, with Pennsylvania and Virginia going as far as deeming them "pedestrians"—albeit pedestrians that weigh up to 550 pounds and travel up to 12 miles per hour—with all of the rights and responsibilities that a pedestrian traveling the sidewalk would have.

4. Communities

A fourth category of sidewalk users are *communities*. At a small scale, communities often use sidewalks to gather together for block parties, festivals, cookouts, and the like.⁸² Some of these are officially licensed by a municipality, while others almost certainly are not.⁸³ But either way, sidewalks offer a natural space for neighbors to meet and enjoy each other and the physical space they inhabit. And while these gatherings often spill into streets too, that does not undermine their substantial use of the sidewalk.

Communities also engage in larger-scale events. Consider, for example, parades or music festivals that attract an entire city or even tourists from outside the city.⁸⁴ I refer as well to protests, signature-gathering, survey-taking, donation-collecting, and political activism geared towards governments and power centers or linked to causes broader than a specific neighborhood. Here, too, these events often involve use of the streets as well as the sidewalks, and this use of both is one that is deeply rooted in the nation's history and that has long been understood to be protected by—indeed, at the core of—the First Amendment.⁸⁵ But blocking vehicular traffic in the streets is often both more dangerous and subject to more significant legal penalties than using sidewalks for speech activities,⁸⁶ so sidewalks remain a critical space for protest and activism.⁸⁷ Thus, for example, while electioneering is often prohibited within a certain number of feet from the entrance to a polling place, supporters of candidates for office often station themselves on the sidewalk just outside the prohibited zone in order to make final appeals on behalf of their candidates.⁸⁸ Similarly, the sidewalks near healthcare facilities that offer abortion care are often sites of antiabortion protesting—called “counseling” by those engaged in it—though some states have imposed electioneering-style buffer zones around the entrances of those facilities.⁸⁹ Of particular salience in the last few years, sidewalks throughout the country were sites of protests in the summer of 2020 against police violence in the wake of the killings of George Floyd, Breonna Taylor, and

many other people of color.⁹⁰ And sidewalks were the site of celebrations in November of 2020 when Joe Biden clinched the presidency.⁹¹ Sidewalks are not just for Democrats, either; rallies in support of President Trump filled sidewalks too, so much so that meteorologists in Arizona warned Trump supporters not to sit on the sidewalk in the summertime because they could get burned.⁹²

5. Governments and Utilities

A fifth and final category of sidewalk users are *governments and utilities*. Governments and utilities use sidewalk space for infrastructure related to a number of their services. For example, public transit requires bus stops and subway entrances to be built on sidewalks. And, just as with entrances to shops and restaurants, bus stops entail people waiting and queuing, often in and around sheds or other physical enclosures built for that purpose on the sidewalk. Bike racks and bike-share docks are another type of transit infrastructure that occupies sidewalk space, and in most municipalities, these are established through government programs.⁹³ Fire hydrants and trash cans are also placed on sidewalks, which makes sidewalks a significant part of the infrastructure for municipal firefighting and sanitation. Utility boxes, poles for electric and telephone wires, lampposts, signs, wayfinding maps, parking meters, traffic lights, cellphone antenna towers, and telephone booths all likewise occupy sidewalk space and make the sidewalk part of the transit and utility infrastructure.⁹⁴ Electric and telephone cables and pipes for gas and water may also run beneath the sidewalk.⁹⁵ Trees planted by the government may dot the sidewalk.⁹⁶ And mailboxes owned and operated by the U.S. Postal Service are scattered on sidewalks across the country.

* * *

None of the foregoing is to say that pedestrians—a term that may refer strictly to people walking but that I intend here to also include people who use wheelchairs or other mobility assistance devices⁹⁷—are not an important set of sidewalk users too. But as ubiquitous as pedestrians are on sidewalks, and as much as sidewalks are designed with pedestrians in mind, pedestrians are not remotely the sidewalk's only constituency.⁹⁸ It is therefore essential to recognize all of these sidewalk users—to decenter pedestrians and to recognize that their relationship to the sidewalk is largely a byproduct of these *other* users' relationships with the sidewalk.

Finally, it is certainly the case that not every sidewalk features all of these categories of users or uses. Sidewalks in city centers are likely to carry nearly all of them every day; sidewalks in less busy urban neighborhoods will have some but not others, or will have more on some days than other days. Sidewalks in suburban communities might only include one or two on most days of the year. But in big cities and small towns alike, sidewalks carry at least the potential for all of these users to engage in all of these uses. And that potential invites conflict which necessitates some form of ordering.

B. Conflicts

With such a wide array of sidewalk users and uses, it should come as no surprise that conflicts between them are inevitable. But these conflicts are far more intricate and extensive than they might appear at a glance. This Section focuses on just a few salient and illustrative examples.

Property owners, residents, and pedestrians share a complicated relationship with respect to the sidewalk. On the one hand, there are valuable synergies: pedestrians use the sidewalk to travel to homes and businesses, residents enjoy the benefit of recreating on sidewalks well-maintained by property owners,

and both residential and commercial property owners enjoy the foot traffic of a pleasant neighborhood made more vibrant by pedestrians and residents.

But as much as each cannot thrive without the others, these uses necessarily conflict with one another. Consider owners of adjacent property. Every owner who lawfully puts piles of trash on the sidewalk or displays items for sale or allows customers to queue limits the walking space for pedestrians and makes the sidewalk a less desirable place for residents to spend time. Scaffolding dramatically limits the usability of sidewalk space, leaving less room for residents and pedestrians, while providing benefits to property owners and revenue to scaffolding companies.⁹⁹ Scaffolding also obscures business signage and eliminates daylight, harming the trees beneath and transforming the sidewalk space into a dark and often dank cubby that is unappealing for residents and property owners alike.¹⁰⁰ And scaffolding provides a shelter from the elements for people experiencing homelessness—a benefit for them but, for at least some residents or adjacent owners, a source of irritation or concern.¹⁰¹ Owners' curb cuts at least periodically turn every sidewalk into an encounter with vehicle traffic, thus interfering with use by pedestrians, residents, and other property owners. But flip the perspective, and residents who use the sidewalk for casual conversation occupy space that a property owner might want to use for seating or for vehicle access, and residents who walk their dogs on the sidewalk may fail to clean up after them and thus leave the sidewalk a messier and less attractive place for everyone.

The proliferation of outdoor dining is perhaps the most newsworthy owner-based sidewalk conflict of the past few years. In New York City, for example, a vocal minority opposed making outdoor dining programs adopted during the COVID-19 pandemic permanent.¹⁰² And while much of that opposition centers on sheds built in street parking spots rather than on dining tables placed on the sidewalk, complaints from residents span the two and often center around the noise, clutter, and rodents that sidewalk dining tends to attract—and, of course, the people it draws.¹⁰³ Moreover, it is sidewalk dining

rather than street dining that poses the greatest conflict with pedestrians—especially those who use mobility assistance devices—who must navigate spaces made narrower and more crowded by tables, chairs, and congregating people.¹⁰⁴

Nonowner commercial interests—vendors, performers, bicycle and scooter rentals—likewise rely on residents and pedestrians for business while simultaneously coming into conflict with them. For every pedestrian who wants to stop at a hot dog stand or to watch a street performer, there are other pedestrians that want to get to their destination unimpeded by those very same entities. And for every resident that might value the character brought to their neighborhood by vendors and performers, there are others that may find them a nuisance. Bicycle and scooter rentals provide opportunities for mobility to residents and pedestrians alike, but they also obstruct the sidewalk—sometimes, in the case of scooters in particular, quite dangerously.¹⁰⁵ And while some residents might enjoy receiving deliveries from autonomous delivery robots, those robots may pose a threat to the safety of pedestrians and residents alike in their use of the shared sidewalk.¹⁰⁶

These nonowner commercial interests also conflict with property owners, while often providing less value to them than they do to pedestrians and residents. For many property owners, these interests are nuisances at best and threats to property values at worst.¹⁰⁷ Few owners of residential property likely view a home's proximity to a sidewalk hot dog stand as a selling point,¹⁰⁸ and while proximity to bike-share docks might be seen as an amenity, many property owners have not welcomed them at the start.¹⁰⁹ For commercial property owners, concerns might include competition from sidewalk vendors engaged in the same business.¹¹⁰ Few restaurants, for example, would welcome a food cart on the sidewalk just outside. Few bookstores and sellers of magazines welcome vendors engaged in the sale of the same periodicals on the sidewalk.¹¹¹ Short of competition, commercial property owners might find sidewalk performers to alienate customers or

make it more difficult for customers to access shopping and restaurants, and they might resent the space lost to bicycle and scooter rentals.¹¹²

Community uses like parades and festivals may offer synergies for some pedestrians and residents (who appreciate or attend the event) and for some property owners and nonowner commercial interests (who find a market for their goods there), but they also may detract from those same groups by creating noise and crowds, occupying space, competing with business, and interfering with ordinary activities. Protests and political activism do the same: while some may value the opportunity to easily engage in or observe speech activity, others are likely to find it a threat to their assorted uses of the sidewalk. Indeed, often the very purpose of protest is to interfere, so it is no surprise that the activity conflicts with the array of other sidewalk users.¹¹³ The so-called “counseling” protests that opponents of abortion engage in near clinics that offer abortion care are a striking example: the use of the sidewalk for political activity clashes dramatically with the property owner’s use (as a safe entrance point to a health care facility) and with the pedestrian’s use (as a safe path to medical care).¹¹⁴

For their part, government and utility uses support every other category of uses. Residents and property owners benefit from utilities and from firefighting infrastructure like fire hydrants. And along with pedestrians, they benefit from lamp posts, trash cans, crossing signals and traffic lights, public transit, and mailboxes. Even nonowner commercial interests and communities benefit from this same infrastructure. But at the same time, all of these instances of government and utility use of sidewalks take space from every other user. And, if they are poorly maintained by the government or utility, they can endanger other users’ enjoyment of the sidewalks and, in the case of property owners, their own properties.

For example, trees—whether planted by the government or by adjacent property owners—raise a host of their own conflicts. While they are enjoyed

by residents, owners, and communities as critical environmental resources, trees also dirty the sidewalk with dropped fruit and leaves.¹¹⁵ Trees even damage the sidewalk with roots that may buckle the pavement, creating a hazard for other users.¹¹⁶ Trees can also block signage and visibility for commercial property owners and nonowner commercial uses, thus threatening their business interests.¹¹⁷ Indeed, sometimes the purpose of planting a tree may be to eliminate space for vendors thought to pose a threat to other sidewalk users.¹¹⁸ And, if not properly pruned and cared for, trees can suffer damage or die and risk falling into adjacent owners' buildings or nearby utility lines, or hurting people on the sidewalk.¹¹⁹

Another cross-cutting source of sidewalk conflict has to do with people experiencing homelessness. They may quite literally require spaces like sidewalks in order to exist and to carry out necessary life functions,¹²⁰ but in doing so they may obstruct pedestrians, particularly those with mobility limitations,¹²¹ or lead them (rightly or wrongly) to feel unsafe.¹²² They may also interfere with government and utilities' use of the sidewalk by occupying spaces like bus stops, subway entrances, benches, telephone booths, and the like. Further, while some residents and owners might appreciate or not mind the presence of such people on sidewalks,¹²³ others may feel that people experiencing homelessness interfere with their varied uses of the sidewalk—whether by harassing customers, diners, celebrants, or people in conversation, or by simply existing and making others feel unsafe or uncomfortable (again, perhaps for reasons either unfair or worse).¹²⁴ Those who work as vendors on the sidewalk may, as noted above, compete with the businesses operated by adjacent property owners—and vice versa—which is a significant part of why commercial property owners seek to root out such vendors.¹²⁵ At the same time, vending is certainly of great value to the vendors themselves. Some even argue that, as a means of self-support, vending might “help [people experiencing homelessness] to stabilize their lives” and thus address the other ways in which their uses might conflict with those of others.¹²⁶

Finally, there can of course be conflict *within* groups of sidewalk users too. Adjacent property owners may vie for space for dining, for queuing customers, for displays, and the like. Or, for example, one property owner's sidewalk bar may conflict with the outdoor seating for the quieter, upscale restaurant next door. Conflict abounds between nonowner commercial interests like vendors, who compete fiercely for prime sidewalk space.¹²⁷ Protests and counter-protests seek space on sidewalks as part of their respective expressive functions.¹²⁸ And residents and pedestrians alike compete with one another for sidewalk space.

Indeed, sidewalks have served as microcosms of broader social and civil rights battles throughout American history. So-called "respectable" women were long expected not to walk the sidewalks unescorted lest they be ogled and insulted by male pedestrians or perceived as sex workers.¹²⁹ But as women entered the workforce and used public sidewalks more freely, those sidewalks became a space for feminist empowerment and social change.¹³⁰ Even so, many women continue to be made to feel unsafe by male sidewalk users who harass or seek to harm them.¹³¹ The record is perhaps even starker when it comes to race. White residents and pedestrians historically "used the distinctions between the sidewalk and the gutter or the roadway to enforce social status," relegating Black residents and pedestrians to the less clean and more dangerous gutter and roadway.¹³² They did this both by social convention,¹³³ and, in some Southern cities, under laws that expressly forbade Black people from "stand[ing] on a sidewalk to the inconvenience of [white] persons passing by" and which required Black pedestrians to yield at all times to white pedestrians.¹³⁴ In 1883, a dispute over racial dominance among passing pedestrians on a sidewalk in Danville, Virginia even came to blows and ultimately "escalated into a massacre when a white mob shot into a crowd of unarmed [B]lack men, women, and children."¹³⁵

* * *

In ways ranging from the exceptionally fraught to the mundane, sidewalks have long been and remain sites of contestation and conflict to an extent largely unparalleled in any other municipal space. And yet, the law has not effectively caught up to this reality. Until it does, these conflicts will only continue to threaten the utility and the equitable accessibility of this centrally important space.

II. Sidewalk Law

Ordinarily, when we are faced with this sort of conflict in the use of space, we tend to resolve or manage it with the help of property law, public regulation, custom and norms, or some mix of all three. Consider as a rough metaphor the oft-invoked “tragedy of the commons.”¹³⁶ In its classic formulation, goods or lands of finite consumability (“rivalrous” in economic terms) that are open to all (“nonexcludable”) will tend to be overused and depleted.¹³⁷ The traditional solution is the introduction of private property rights and, with them, the right of the owner to exclude others altogether or to manage others—for example, by charging a fee for entry, by imposing rules, or by otherwise compelling users to maintain the shared resource.¹³⁸ Another solution is for government to impose regulations and rules that govern the use of the resource and that are designed to prevent uses that harm others’ consumption or that harm the resource itself.¹³⁹ And a third possibility, promoted by scholars like Elinor Ostrom and Carol Rose, is that informal social norms may suffice to govern the use of the resource.¹⁴⁰

But while custom and norms might suffice in smaller neighborhoods, in many if not most municipalities, the communities are too vast and insufficiently close-knit for custom to effectively govern the space at scale. As Professor Ostrom herself has explained, custom is most promising as a means of resolving commons problems in spaces where users share similar stakes, face low enforcement costs, exhibit high degrees of reciprocity and trust, and make

up a small, stable, and relatively homogenous group.¹⁴¹ As the foregoing discussion in Part I demonstrates, most sidewalks are not such spaces. We are thus left with property law and public regulation. But as both currently stand, neither is up to the task. In fact, both risk adding to the tension and deepening rather than resolving the conflicts that risk jeopardizing the quality and accessibility of the sidewalks.

A. Property Owners

Strictly speaking, in some municipalities, sidewalks are at least presumptively public property—existing by definition beyond the edge of the property lines of the adjacent lots.¹⁴² In others, even though the adjacent property owner's lot line may extend into the sidewalk and indeed into the street as well, the public owns an easement over that land—the right to access and use it in all of the ways discussed in Part I.¹⁴³ Either way, nobody is endowed with the *property* right to exclude people from the sidewalk or to manage its use. But worse, the ways that that ownership actually manifests on the street—whether the public owns fee title or an easement—blur the line between public and private, distort accountability for the maintenance of the space, and tend to accentuate the conflict among uses and users.

Because of the long influence of pedestrianism and its association of sidewalks with the transportation of people, sidewalks were originally understood as benefiting the adjacent lots—the places from which people would leave or to which people would travel—rather than as benefiting the general public.¹⁴⁴ Construction of the earliest sidewalks was, therefore, paid for by the adjacent property owners and often begun at the request of those owners.¹⁴⁵ It was only in the 1900s that municipalities began to pay for sidewalk construction, and yet again, pedestrianism reigned: municipalities approached that mission with the purpose of achieving smooth pedestrian mobility.¹⁴⁶

But even as many municipalities took responsibility for the creation and ownership of sidewalks, the owners of adjacent lots were left with numerous responsibilities for those sidewalks.¹⁴⁷ Indeed, perhaps counterintuitively, even where adjacent lot owners *do* own fee title to the sidewalk, the existence of the public easement would ordinarily place the responsibilities of maintaining those sidewalks on the public. This is because, under the common law of property, the obligation to maintain an easement generally rests with the person who has the right of access, *not* with the person who owns title to the underlying land.¹⁴⁸ It therefore does not matter whether sidewalks are public land or whether they are private land bearing a public easement. Either way, basic property law principles would neither impose obligations on adjacent property owners (beyond an obligation to refrain from obstructing the public's access) nor offer those owners any particular powers of exclusion with respect to the space.¹⁴⁹ And yet, contrary to these property law principles, municipal laws across the country provide that adjacent property owners *do bear* sidewalk responsibilities akin to those an ordinary private landowner would have and *do enjoy* at least some of the some sidewalk privileges an ordinary private landowner might have—but not all of them.¹⁵⁰

One such responsibility is keeping the sidewalks clear. So, whenever snow accumulates above a specified amount, most municipalities—large and small, across the country—obligate each owner of adjacent property to clear the portion of the sidewalk in front of their lot within a specified amount of time or else face financial penalties.¹⁵¹ These are not new obligations, either: as early as 1833, the city of Boston required adjacent property owners to remove snow from the sidewalk or else face a fine “not less than one dollar, and not more than four dollars, for each and every day” the snow remained unshoveled.¹⁵² Even in places that do not see snow, it remains the obligation of adjacent property owners to keep the portion of the public sidewalk in front of their lot “clear of obstructions.”¹⁵³ Indeed, the language of some ordinances does not differentiate between obstructions created by the

adjacent property owner and obstructions created by others: clearing both remains the obligation of the adjacent property owner.¹⁵⁴

Another important set of specific obligations that adjacent property owners bear with respect to public sidewalks has to do with trees. As noted above, even when the government plants sidewalk trees, it is often the responsibility of adjacent property owners to request that those trees be planted.¹⁵⁵

Moreover, once they are planted, some of the maintenance of those trees may fall on adjacent property owners rather than on the municipality.¹⁵⁶ Indeed, cities ranging from Lawrence, Kansas to Los Angeles, California to Hoboken, New Jersey require that adjacent property owners commit to watering a tree before the city will issue a permit allowing a tree to be planted.¹⁵⁷ And when those trees' roots cause the sidewalk terrain to buckle, it can be the responsibility of adjacent property owners to repair the sidewalk.¹⁵⁸ On top of the ways in which this allocation of responsibility places public costs onto private shoulders, one particularly troubling result of this arrangement is that lower-income neighborhoods end up with fewer trees than wealthier neighborhoods,¹⁵⁹ which leads to less shade, less clean air, less attractive blocks, and less healthy communities.¹⁶⁰

More generally, municipalities often place on adjacent property owners a broad duty to maintain the public sidewalk in good repair.¹⁶¹ In many cities, this duty even includes installing, repaving, and repairing the sidewalk concrete itself—"at [the adjacent owner's] own cost and expense" and to whatever specifications the city may set—in the case of cracks, loose pavement, trip hazards, or other defects.¹⁶² If an adjacent owner fails to do this repair work within a specified period of time, the city will often do the work itself and bill the owner for it; nonpayment of that debt constitutes a lien on the adjacent property.¹⁶³ These costs can pile up into the thousands of dollars,¹⁶⁴ and an owner's failure to pay their sidewalk repair bill could result in foreclosure of their property.¹⁶⁵ In addition to the burden on the property owner, there is an issue of equity here too: naturally, communities with less

wealth have less money to spare for these repairs, so the quality of the sidewalks in those communities declines.¹⁶⁶

In most jurisdictions, these sorts of fines and liens are the extent of the consequences for an adjacent owner who fails to meet their obligations. That is, in most jurisdictions, municipal law does not go as far as imposing tort liability on adjacent owners for injuries occurring on sidewalks.¹⁶⁷ But a few jurisdictions do exactly that.¹⁶⁸ Some have for over a century,¹⁶⁹ while others have more recently made that turn. In 2003, for example, New York City made adjacent property owners liable in tort for injuries occurring on sidewalks that are proximately caused by “the failure of such owner to maintain such sidewalk in a reasonably safe condition.”¹⁷⁰ New York City even expressly exempts itself from such liability.¹⁷¹ This bears underscoring: when it comes to New York City sidewalks, adjacent property owners may be liable for injuries occurring on land they neither own nor control, to the exclusion of any duty on the municipality that may actually own the public property in question.¹⁷²

The one context in which municipalities do often maintain legal responsibility and liability is compliance with laws having to do with accessibility. Sidewalks present a number of challenges for people with mobility limitations.¹⁷³ Chief among the laws aimed at remedying these challenges is the Americans with Disabilities Act (ADA), which prohibits discrimination in the provision of “the services, programs, or activities of a public entity” on the basis of disability status.¹⁷⁴ But “no matter who builds a sidewalk and without regard to its location in a town, city, county, or state right-of-way, the obligation to keep the sidewalk accessible within the ADA falls upon the local jurisdiction of the community in which it is located.”¹⁷⁵ So, for example, the regulations promulgated to implement the ADA impose on states and municipalities the obligation to develop a plan to provide curb cuts in existing sidewalks and to ensure that new sidewalks are constructed with curb cuts in place.¹⁷⁶ Accordingly, a number of municipalities have faced

lawsuits filed by people who use mobility assistance devices alleging a range of deficiencies in sidewalk conditions.¹⁷⁷

But in spite of laws like the ADA, municipalities still find ways to push many of these obligations back onto property owners. Some of the greatest threats to accessibility are uneven pavement and uncleared snow, ice, treefall, and general debris—the responsibility for which falls on municipalities under the ADA, but which municipalities in turn have placed in the hands of adjacent property owners, as just discussed.¹⁷⁸ And when those property owners are ineffective or slow to meet their obligations, the consequence can be an accessibility crisis for which there is little recourse or accountability. Indeed, even when ADA plaintiffs prevail, actual remedies on the ground have proven slow in coming, in large part because municipalities claim to lack the money or resources to make all of their sidewalks accessible.¹⁷⁹

The logic behind all of these owner responsibilities for sidewalks is that they make life easier for municipal governments. As early as 1887, the New York Court of Appeals contended that municipalities should not be expected to employ people to take care of sidewalks because such caretaking “may be effected more swifty [sic] and easily by imposing that duty upon the citizens.”

¹⁸⁰ As Professor Larissa Katz has explained with the example of snow removal, “coupling [these] duties with private ownership immediately provides the city with an army of snow shovelers, who are in place before any snow falls.”¹⁸¹

The consequence is that property ownership becomes, in Katz’s words, “a sometimes dangerously convenient mechanism for the state to offload some of the burdens of government onto the shoulders of individuals.”¹⁸²

The reality that the city’s own convenience is ultimately the fundamental attraction is made clear by the fact that merely owning adjacent land and being near the sidewalk does not necessarily make one a good sidewalk caretaker. And it certainly does not provide or entail the rights, powers, and capacities necessary to carry out those responsibilities.¹⁸³ For example, while

many property owners in suburban communities may find it easy to clear snow from the sidewalk in the course of shoveling their own driveways, property owners in urban communities would not otherwise have the occasion to engage in much snow shoveling at all but for their responsibility for the sidewalk. And even in suburban communities, property owners who are older or who have disabilities are not well-suited to shoveling snow. Moreover, these obligations are hardly limited to snow. Happening to own property does not necessarily mean that one has the financial resources, for example, to tend trees or to repair sidewalk damage one had no hand in causing. The efficiency logic that might justify owner obligations for snow in some communities runs out when the issue is instead cracked and unsafe concrete.

As noted above, this outsourcing of governmental responsibility is one important reason why the quality of sidewalks is unequally distributed across municipalities: it takes what should be public services provided equally to all and turns them into private services contingent on one's community's ability to provide them.¹⁸⁴ After all, insofar as the sticking point is that municipalities likewise lack the resources to do these jobs effectively, that problem could be solved by funding municipalities more or by reallocating municipal funding priorities.¹⁸⁵ Instead, we compel individuals to devote their own private resources to these tasks. Moreover, this assignment of responsibility tangles the lines of public oversight and accountability. Adjacent property owners are not subject to the will of the voters, while those who are so subject can shirk responsibility for shortcomings in these public services by claiming—correctly, in fact—that those services are not their job to provide.¹⁸⁶

Nearly nowhere else in the realm of public property have we made this choice. Consider the public roads. Maintenance and cleaning of those public roads is the responsibility of the municipality itself.¹⁸⁷ It is difficult to imagine a modern municipality, particularly a big city, instead requiring adjacent owners to clear snow from—or, better yet, repave—the part of the street

directly in front of their property on the basis that they happen to live near the problem.¹⁸⁸ Public parks need maintaining too, and yet we generally do not require those who live near them to take turns mowing the grass or picking up trash, even if such an arrangement would be “easier” for government.¹⁸⁹ To be sure, there certainly could be local conditions under which a community might conclude, for example, that owners shoveling sidewalks is an efficient and appropriate way to get the job done—just as it might conclude, for that matter, that nearby owners tending to parks makes sense in light of that community’s circumstances. But the ubiquity of this outsourcing across jurisdictions both urban and suburban, as illustrated throughout the preceding pages, suggests that it is not the result of community-sensitive choice. And in any event, no matter how understandable such a choice may be, it carries significant consequences for accessibility, accountability, equity, and the full cast of sidewalk users—consequences which are too rarely carefully considered.¹⁹⁰

Thus far, the discussion has focused on owner-like burdens, but the same problems arise when considering the benefits that adjacent property owners receive with respect to the sidewalk. Perhaps the most valuable of the privileges of ownership are the rights to use and exclude.¹⁹¹ Adjacent property owners cannot entirely exercise these rights with respect to the sidewalk, as noted at the beginning of this Section, but they can exert incomplete yet significant versions of them. One noteworthy historical example is that, at common law, “[c]ourts would hold that a person who stopped on the sidewalk in front of a man’s house and addressed that man abusively was committing trespass—although the speaker stayed on the public sidewalk.”¹⁹² That is, for purposes of this tort, courts treated the sidewalk as if it was the private property of the adjacent landowner and extended to him the power to exclude some of the public.

Today, examples of similar adjacent-owner power abound. In places like New York City where sidewalk trash bag piles are common, those piles are a

privilege of owners of adjacent property.¹⁹³ Only adjacent owners may place their trash on the sidewalk in front of their building; if anyone else does so, it is unlawful littering.¹⁹⁴ Similarly, the privilege of appropriating sidewalk space to use for curb cuts, advertising, displays, or restaurant seating is only enjoyed by owners and tenants of adjacent property.¹⁹⁵ Along with these use privileges also comes, for example, the power to exclude from the dining space those whom the establishment wishes to exclude—perhaps people who are not patrons, who are disruptive, or who are engaged in panhandling.¹⁹⁶ Consider sidewalk vendors too. Much of the municipal regulation of sidewalk vendors discussed below either exists at the behest of adjacent property owners urging the city to protect “their” sidewalk or expressly delegates to those owners the power to regulate their slice of the public sidewalk.¹⁹⁷ For example, some municipalities require sidewalk food vendors not to operate within a certain distance from brick-and-mortar restaurants unless they can secure the support of those restaurants.¹⁹⁸ And in New York City, sidewalk Christmas tree vendors must secure the permission of the owner of the adjacent property before lawfully setting up their shops.¹⁹⁹ Thus, owners of adjacent property sometimes even have the right to exclude from public property at least some of those whom they wish not to be present on that public property. Critically, though, adjacent property owners are accountable to no one when they make these decisions about use and exclusion with respect to the sidewalk—decisions which have no reason to be public-regarding and every reason to be self-interested.

Of course, merely having owner-like obligations or privileges with respect to public space does not necessarily lead people to consider that space privately held or controlled.²⁰⁰ But perceptions are complex, and some people *do* report feeling as if adjacent owners “own[] the sidewalk.”²⁰¹ This is certainly not to say that such owners *always* act as or consider themselves to be owners of the sidewalk space, but rather to underscore the fluidity of concepts like ownership and control with respect to the sidewalk.

In this, sidewalks are a somewhat unique liminal space. Often, if a space is for the public to enjoy, it is generally the public's obligation (in the form of a government accountable to the public) to care for and maintain that space. And if a space is private, it is the private owner's dominion to enjoy and from which to exclude others, and it is generally the private owner's obligation to maintain.²⁰² But when it comes to the sidewalk, we have a curious and distinct amalgam. The government has outsourced the obligation to maintain public space to private individuals who are not accountable to the public, and it has granted private individuals some owner-like rights to exclude others from the public space for their own private benefit rather than for the public good. But at the same time, those obligations and rights are not exhaustive. The general public *does* have the right to walk on sidewalks, to recreate there, to speak there, and to protest there without the permission of the adjacent owner.²⁰³ The government has the right to build utility infrastructure on sidewalks without compensating the adjacent owner for the intrusion.²⁰⁴ And so on.

So, rather than fully shifting sidewalks into private hands and endowing private parties with all the rights and responsibilities of ownership,²⁰⁵ we have chosen to straddle property concepts.²⁰⁶ But even worse, in doing so, we have deepened the conflict, undermined accountability for the quality and accessibility of the resource, and abandoned some core property law principles by giving some people a heightened sense of power and control over the space and its users.²⁰⁷

B. Municipal Agencies

With the property law of sidewalks a jumble of obligations and privileges that do not neatly track ownership, it becomes all the more important for municipalities themselves to resolve conflicts among users and to conserve the shared resource. But here too, our most common regimes fall short.

Specifically, they fall short because they reflect significant fragmentation of the municipal agencies responsible for various aspects of sidewalk life. Each municipal official I interviewed voiced the same observation,²⁰⁸ born from collective decades of experience in sidewalk governance: this fragmentation—what former New York City Transportation Commissioner Janette Sadik-Khan called a “multi-jurisdictional crossroads”—makes it difficult for municipalities to coherently and effectively govern the sidewalk in all of its diverse functions, and it creates challenges for regulated entities seeking to understand their obligations and make lawful and socially beneficial use of the space.²⁰⁹

Consider just a few of the uses and users discussed in Part I. I will use New York City as a guiding example here, but many municipalities share a similar regulatory landscape.²¹⁰ As Professors Evelyn Blumenberg and Renia Ehrenfeucht have observed, “in most cities, no single agency or task force regulates sidewalks. Instead, they are governed by numerous and diverse offices—such as city planning, public works, consumer affairs, engineering, transit, redevelopment, the district attorney, and the police.”²¹¹

Suppose first that a patch of sidewalk is unsafe or unstable. Though the obligation to repair that sidewalk often falls on the adjacent owner,²¹² it is the job of the Department of Transportation—the regulator of the physical terrain of the sidewalk—to enforce that obligation.²¹³ Suppose instead that a sidewalk is in need of trees, or that the sidewalk has a tree that is in danger of falling. For these concerns, the Parks Department is responsible.²¹⁴ What if trash is piling up, or is put out for collection on the wrong days, such that it attracts pests or blocks the sidewalk? That falls within the purview of the Department of Sanitation.²¹⁵ In New York City, enforcement of snow clearing obligations likewise is in Sanitation’s purview, but in other municipalities, we would find ourselves back under the umbrella of the Department of Transportation.²¹⁶ Bike racks are under the oversight of the Department of Transportation.²¹⁷ Curb cuts require permits from the Department of Transportation *and* the Department of Buildings.²¹⁸ Scaffolding? Putting it up and taking it down

requires a permit from the Department of Transportation,²¹⁹ but *having* it up requires a permit from the Department of Buildings.²²⁰

Residents and property owners who want to know what they must do, or to whom to complain when these regulations need to be enforced, must navigate a tangled thicket of various municipal agencies, none of which have global authority with respect to the space. Equally important, none of these agencies are obligated to coordinate when exercising their respective powers. And it is not as if their powers have no need to interact: trees, trash, snow, scaffolding, and curb cuts all interact with one another and with the multitude of other sidewalk users and uses discussed in Part I—in ways both likely and unlikely to be contemplated by these agencies. Scaffolding, for example, impacts restaurants and shops operated by adjacent property owners, as well as residents eager to recreate on the sidewalk,²²¹ but none of these users are central to the organizational missions of the Departments of Transportation or Buildings. Scaffolding, as noted above, also provides shelter for and thus attracts people experiencing homelessness, but these sidewalk users are likewise not at the core of those agencies' expertise or responsibility.²²² Meanwhile, agencies like the Department of Homeless Services, which are responsible for that set of users, are not part of the scaffolding regulatory process at all. In these ways, the absence of coordination both fails to resolve conflicts in the use of sidewalks and indeed *creates* additional conflicts.

Now suppose we add more users and uses to the mix. The Department of Consumer Affairs tends to adjudicate applications for permits to use sidewalk space for commercial uses like outdoor dining and café seating.²²³ If alcohol will be served, the State Liquor Authority must sign off.²²⁴ If a heater will be employed, the Department of Buildings must approve it and the Fire Department must issue an “open flame” permit.²²⁵ Even candles at sidewalk cafés require open flame permits from the Fire Department.²²⁶ Vendors that wish to sell food on sidewalks tend to require licenses and permits from the Department of Health.²²⁷ Buskers or musicians that want to perform on

sidewalks may require a permit from the Police Department if they want to use a sound device like a speaker or boombox.²²⁸ A separate Film Office may require a permit from productions filming movies on sidewalks.²²⁹

Communities require permits from the Police Department to hold parades or moving protests,²³⁰ but need permits from the Street Activity Permit Office to hold stationary protests or block parties.²³¹ Much municipal transit infrastructure on sidewalks is within the purview of the Metropolitan Transit Authority (a state entity),²³² but bus stop shelters fall within the city Department of Transportation's umbrella,²³³ as does bike share.²³⁴

Finally, people experiencing homelessness on sidewalks navigate a wide and complicated range of municipal agencies like the Departments of Homeless Services, Health and Mental Hygiene, and Transportation; the Parks Department; and, perhaps most controversially, the Police Department.²³⁵ Moreover, while some of these interactions may be voluntarily or beneficial for the people in question, many others may be neither.²³⁶ This reality, particularly as it impacts an immensely vulnerable group, only further complicates matters.

Again, we see a fragmented web of both siloed and interdependent authority with little coordination.²³⁷ And again, the absence of that coordination both leaves conflicts unresolved and risks creating further conflict. Sidewalk cafés and vendors impact pedestrians and recreating residents in ways both desirable and undesirable, but the Departments of Consumer Affairs, Health, and Media, and the Fire Department, are not well-positioned to expertly evaluate those collateral interactions. For example, while the Department of Consumer Affairs does demand that sidewalk cafés keep a pedestrian path clear,²³⁸ it does not have the wide-angle lens to evaluate the impact of a given sidewalk café on the walkability and character of an entire block or neighborhood. Perhaps a given area sees few pedestrians and could therefore accommodate a larger café; perhaps the residents, adjacent property owners, and nonowner commercial interests would like to attract *more* pedestrians,

and a larger café presence could help draw them in; perhaps those interests take the opposite view, which might counsel in favor of an even smaller café presence than would otherwise be allowed.²³⁹ This regulatory process is also not suited to evaluate and resolve potential conflicts *between* businesses—not just competition, but incompatible noise levels, for example.²⁴⁰ The list goes on: how will a given parade or block party—primarily within the purview of the Police Department—interact with businesses and residents? With trees? Will more vendors be permitted (to allow them to capitalize on a business opportunity and to provide food and drinks to attendees) or fewer (to keep paths clear)?²⁴¹ How attuned is the Parks Department going to be to the risks trees may pose to business visibility or to the space those trees may take away from vendors?²⁴²

As if that were not enough complexity, business improvement districts (BIDs) possess their own quasi-regulatory authority over the sidewalks within their jurisdictions. By providing and directing supplemental policing, sanitation, and capital improvements, BIDs can influence who may use sidewalk space and how they may use it.²⁴³ But perhaps more importantly, BIDs can indirectly shape those uses and users by affecting how the various municipal entities just discussed create and enforce their own rules and processes. Indeed, municipalities often regulate sidewalks with the interests of BIDs—and the commercial entities they represent—in mind.²⁴⁴ For example, BIDs have often “adamantly opposed” street vendors because they compete with the store owners who make up the BID,²⁴⁵ and municipalities in turn often limit the possibilities and locations for sidewalk vending.²⁴⁶ But BIDs by design tend not to represent the interests of residents, nonowner commercial interests, or communities, so insofar as BIDs regulate or drive regulatory decisions, they may do so with a singular perspective in mind rather than with an eye towards harmonizing uses.²⁴⁷

Finally, beyond creating and failing to resolve conflicts among users and uses, this pervasive fracturing of authority and oversight has two additional

consequences. First, it results in significant challenges for everyone seeking to make use of the sidewalk, particularly those with the fewest resources to devote to navigating the maze. Insofar as those uses are socially desirable, complex and confusing red tape creates the risk that society will lose out on their benefits—whether a café, a parade, a bike rack, a vendor, a tree, or a neighborhood gathering. Second, fracturing is likely to result in suboptimal governance. As Professors Jody Freeman and Jim Rossi have powerfully illustrated, “fragmented and overlapping delegations of power” lead to “redundancy, inefficiency, and gaps.”²⁴⁸ To be sure, complex problems may require complex solutions beyond the ability or expertise of any one entity to achieve.²⁴⁹ But complexity that emerges from inertia or from power politics and budget grabs does not serve any public purpose.²⁵⁰ And when that complexity leads to budgetary waste, responsibility hot potatoes, or information hoarding, the ability of government to offer good and prompt solutions to problems—particularly problems borne by those with relatively less political power—declines.²⁵¹ Fragmentation also generates, as discussed above, “profound *coordination* challenges” that similarly interfere with government’s ability to respond to problems.²⁵² Moreover, divisions of authority are apt to lead to divisions of opinion about whether a particular use is a challenge or an opportunity—that is, whether a given use is socially desirable or not. And while each agency may have special expertise to bring to bear on that question, the value of those unique competencies can be lost in the absence of a coordinating authority, particularly if turf wars erupt that lead agencies to inefficiently ignore or devalue each other’s input.²⁵³ In short, effective regulation requires that there be someone able to “see the whole picture,” and when it comes to sidewalks, there is often nobody in a position to see it, let alone respond to it.²⁵⁴

III. Sidewalk Administration

Some degree of conflict among users and uses of any shared space is likely unavoidable, and the sidewalks are no exception. But the foregoing analysis has demonstrated that the degree of conflict on the sidewalk and the risks that conflict poses for the quality of the shared resource are particularly salient. This is not to say that sidewalks everywhere face the same degree of danger; many communities certainly feature sidewalks that are working at least well enough for their various users. But in many other communities—particularly those in dense or less wealthy areas, or both—things are not so rosy. Moreover, even communities that have muddled through decently enough thus far could still benefit from *improving* the administration and use of their sidewalks to make them more efficient and more equitably welcoming. And nearly all communities are likely to see changing and increasing demands on the space as technology and climate change both advance.²⁵⁵

One fundamental obstacle to effective and equitable sidewalks is that nobody fully “owns” the sidewalk. From a property law perspective, the features of ownership held by municipalities, adjacent landowners, and the public are a jumble of contradictions and mismatched obligations. From a regulatory perspective, the diffusion of administrative responsibility results in a quagmire of siloed, uncoordinated decisionmaking that is a hallmark of suboptimal governance. These spaces have thus been effectively administered neither by property rights nor by government intervention.

For some observers, all of these uses, and all of the conflict between them, is a large part of what makes cities so great. Jane Jacobs waxed poetic about the “ballet of the good city sidewalk” in which “the individual dancers and ensembles all have distinctive parts which miraculously reinforce each other and compose an orderly whole”—a “complex order” that “never repeats itself from place to place, and in any one place is always replete with new improvisations.”²⁵⁶ Sociologist William H. Whyte likewise longed for a vibrant, bustling sidewalk full of “amiable disorder”—even if achieving it meant loosening or eliminating regulations of many users.²⁵⁷

The more extreme version of the embrace-the-chaos approach to the sidewalk is both shortsighted and unrealistic. It is shortsighted because, while disorder can be exciting and even generative for a time, in the long run, it risks degrading and depleting the resource until it ceases being desirable or useable. And it is unrealistic because most users of sidewalks will not tolerate a policy of truly unbridled disorder for very long. But at the same time, Jacobs is likely right that few users of sidewalks desire the opposite extreme. Antiseptic, “disneyfied,” characterless sidewalks are likely not places that most people want to visit or spend time in, or that will attract customers to businesses.²⁵⁸ Without people milling around—what Jacobs called “eyes upon the street”—communities may feel less safe and property values may decline as one gets the sense nobody wants to be there.²⁵⁹ In any event, the First Amendment compels municipalities to allow at least some speech and some gatherings to take place on sidewalks.²⁶⁰

The difficult question is thus how to manage the sidewalk effectively, coherently, and responsibly. While this Article does not claim to have all of the answers to each and every question that sidewalks pose, it does contend that the first step is to put someone in charge of answering those questions. In short, because the problem is that nobody “owns” the sidewalk, the solution lies in giving someone that ownership. That is, after all, what the classic analyses of the “tragedy of the commons” counsel: either privatize the space or govern the space in the public interest.²⁶¹

This Part explores both paths. True sidewalk privatization—actually giving individuals and businesses ownership and the full bundle of property rights, including the power to exclude—is likely to be a catastrophe, but there remains something to be said for properly regulated hybrid arrangements, business improvement districts, public-private partnerships, and the like. Even so, these arrangements can only achieve so much and can only do so under limited conditions. That leaves sidewalk government. And as long as regulation is the most plausible way of preserving the long-term quality of the

space and resolving the panoply of unavoidable conflicts among users, the municipal regulatory architecture needs to be enhanced, streamlined, coordinated, and consolidated so that Jacobs's sidewalk ballet has the choreographer it badly needs.

A. Privatizing Sidewalks

First, the case for imposing private property rights on sidewalks. Here, I do not mean to refer to those circumstances where an adjacent owner's lot line simply extends into the sidewalk space. As discussed above, the public owns an easement over that land and therefore should bear the burden, under the common law, of maintaining it.²⁶² The foregoing discussion of the conceptual and practical confusion surrounding sidewalk obligations and privileges applies all the same regardless of where the lot lines happen to fall. Nor do I mean to refer to the ad hoc privileges discussed in Section II.A that adjacent owners exercise with respect to sidewalks. Rather, I refer to the appetite in some corners to move toward truly *private* sidewalks: the privatization of at least some otherwise public sidewalk land.²⁶³

These private sidewalks could theoretically provide the order, conflict resolution, and efficiency of use that sidewalks too often lack. By endowing someone with the full panoply of both responsibility and rights—with the powers to exclude and to maintain order, and with the incentive to exercise those powers efficiently in order to maximize the value of their space—privatization can protect the resource from overuse and misuse.²⁶⁴ Similarly, privatization could perhaps generate a sense of pride and an appetite for caretaking that would enhance the quality of the sidewalk.

One common example of this sort of privatization outside the sidewalk setting is the "POPS" or "privately owned public space." In the POPS context, a private landowner sets aside some of their space—an atrium, garden, plaza, or

the like—and makes it available to the public on terms negotiated with the municipality and subject to listed rules of behavior.²⁶⁵ A landowner will offer a POPS most frequently as a condition for receiving approval to construct a building otherwise not permitted by local zoning rules.²⁶⁶ POPS might be considered a win-win in the following sense: they are a mechanism for the provision of high-quality and well-maintained public space at lower cost to taxpayers, and the landowners who provide and care for those spaces enjoy privileges with respect to that space and are afforded extra privileges with respect to the rest of their private space.²⁶⁷ One could therefore find some cause for optimism in adapting some version of the POPS model to the sidewalk. That is, we could give adjacent property owners *more* rights and *more* responsibilities than they already have with respect to the sidewalk—or perhaps offer those additional rights and responsibilities in exchange for some development bonus—and achieve a better and more efficiently maintained resource with clearer lines of accountability and responsibility, and without the regulatory fracturing that currently plagues sidewalks.²⁶⁸

The problem, however, is that POPS are generally considered not to have delivered on their promises. Though there are a large number of them throughout the country, their quality does not match their quantity.²⁶⁹ Professor Jerold Kayden conducted an empirical study of four decades' worth of POPS in New York City and concluded that nearly half of these spaces are “nothing more than empty strips or expanses of untended surface,” featuring “locked gates, missing amenities, and usurpation by adjacent commercial activities, in contravention of the spirit or letter of applicable legal requirements.”²⁷⁰ In this sense, POPS are a cautionary tale about the prospect of solving sidewalk quality problems with privatization: the enforcement necessary for municipalities to keep private owners to their end of the bargain and to prevent them from sliding into *too much* exclusion or slipping into the sense of having *too much* private ownership is very burdensome—evidently too burdensome—for municipalities to handle. Indeed, even when they work “well” in the sense that they are well-maintained and not closed off to the

public, POPS are criticized as being “sterile,” underused, “exclusionary,” “diminish[ing] opportunities for free speech,” and failing to replicate the sort of organic encounters with others in a shared community that truly public space affords.²⁷¹

Turning sidewalks into true POPS would mean placing them under the wholesale ownership and control of private property owners and opening them to the public only in accordance with contractual arrangements made with the municipality. This would likely be especially disastrous. For one thing, it could mean that there would effectively be as many distinct legal regimes as there are parcels of sidewalk-adjacent land in the city. The legal contours of one’s rights to stroll, chat, vend, gather, speak, and protest might change every few feet—and perhaps with discriminatory effects—which would be a recipe for chaos and conflict even beyond the status quo.²⁷² For another, it would be more difficult for governments and utilities to place sidewalk infrastructure if they had to negotiate anew with each adjacent owner.²⁷³ And finally, privatizing sidewalks would not actually solve one of the most significant current problems—namely, that individual owners are accountable to no one, have no incentive to account for the impact of their activities on their neighbors, and have no reason to exercise their power in the public interest. All of this means a state of affairs that would be ripe for abuse by adjacent owners, just as POPS have proven to be.²⁷⁴

In short, the problem with privatization is that a commons ceases to be a commons after the resource has been preserved by the imposition of private ownership. Property rights solve the tragedy of the commons by eliminating the commons, not by eliminating the tragedy. This may be a fair approach when the value of the resource in question exists simply in its ability to be consumed, but it loses much of its allure as soon as there is *also* value in the experience of the collective use itself and in the equality of access to that experience.²⁷⁵

That said, there remains some room for tame forms of privatization to assist with the preservation of sidewalks. One is a version of the status quo in rural or suburban residential areas that have fewer people and therefore generally low-intensity, low-conflict sidewalks. The fewer the conflicts, the more effective and efficient it may be to outsource some responsibilities to adjacent owners—even if doing so results in some territorial behavior and privileges that may be undesirable in areas with higher-conflict sidewalk use. That is, in areas where the primary users and beneficiaries of sidewalks are just the adjacent owners and few others, there may be little harm—and meaningful efficiency benefits—in leaving those owners generally in charge of the space. But even in such a community, it is important that there be a reliable backstop for owners unable to equitably bear these responsibilities in light of economic constraints, physical limitations, and the like.

More urban areas might benefit from pieces of privatization too. Consider business improvement districts (BIDs). As explained above, BIDs are private entities with responsibility for a given area that are funded by businesses or property owners within that area and often governed primarily by representatives of those businesses or property owners.²⁷⁶ So, for example, many BIDs handle sidewalk renovation, plantings, trash-collecting, snow-clearing, and the like, and they may install amenities like lighting, seating, or information booths to make the area attractive and to increase business revenue.²⁷⁷ In this way, BIDs fill some of the governance gap left by the fractured public regulatory architecture discussed above. They consolidate the provision of necessary upkeep and other services, they can help ensure that those functions are carried out in a consistent and coherent manner, they can manage at least some of the conflict among users (particularly among or with the commercial users), and they are accountable to constituents in the area (at least to some of them).

Professor Vanessa Casado Pérez is much more skeptical about the role of BIDs in governing sidewalks. She argues that because BIDs are often controlled by

representatives of property owners, and particularly commercial property owners, BIDs are not accountable to the full suite of sidewalk users.²⁷⁸ This is true. And worse, BIDs are often hostile to the interests of marginalized people—along both racial and socioeconomic lines—and of competing nonowner commercial interests like vendors.²⁷⁹ These are all urgent reasons to ensure that any role BIDs might serve in managing sidewalk space be restrained, overseen by government, and carefully delimited in scope. But they need not be reasons to abandon BIDs entirely.

For Casado Pérez, the more fundamental problem seems to be that BIDs “redefine our sidewalks’ public nature” and approach those sidewalks as commodities from which to generate profit rather than as public resources.²⁸⁰ But that is precisely where BIDs’ value might be said to lie. In other words, one version of the problem in the status quo is that the resource of the sidewalk risks depletion by conflict because the sidewalk is *too* public.²⁸¹ A properly designed, limited, and overseen BID could offer some of the resource-preserving benefits of property rights—for the benefit of *all* the sidewalks’ users—without generating the harms that would be associated with a POPS-style, fully private regime. Public-private partnerships and other arrangements that deploy voluntarily rendered private resources within relatively accountable supervisory frameworks can do the same, particularly for sidewalks on major thoroughfares or in dense commercial zones.²⁸²

Even so, all of these arrangements can only do so much. At present, their roles are relatively thin, their existence fairly ad hoc, and their capacity too dependent on the resources of the property owners in their area.²⁸³ And Casado Pérez is right that the more we might ask or permit BIDs to do—the more we move down the spectrum towards privatization—the more dangerous they might become. So while owners and BIDs ought not be discounted as partners in certain settings, privatization is decidedly not the first-best method for administering most sidewalks.

B. The Department of Sidewalks

The first-best method of sidewalk administration thus requires moving in the opposite direction: toward more, and better, governmental responsibility. The fracturing of duties and powers that presently exists both within government and between government and adjacent property owners is untenable and will only become increasingly untenable as populations grow, as new technologies and startup ventures seek to make increasingly large demands on sidewalk space, and as climate change makes more urgent the need to construct spaces for resilience to extreme weather.²⁸⁴ Patching up those fissures requires making two moves: first, relocating burdens currently borne and benefits currently enjoyed by property owners into the hands of municipalities, and second, reimagining how municipalities design their bureaucratic and policymaking structures in order to better and more efficiently meet the challenges of the modern sidewalk.

First, privatizing sidewalk responsibility would create a better match between the caretaker of the space and the nature of the space. As discussed above, adjacent property owners are charged with maintaining space over which they enjoy few formal property rights. Beyond the odd fit with property theory and doctrine, there is an important practical problem: those owners tend to have few structural incentives to act as responsible stewards for the space. Again, this may be less of an acute problem in rural and suburban residential areas where, as noted, the adjacent owners tend to be the sidewalk's primary users. And it may be less of a problem where, for example, the adjacent owner uses the sidewalk for private benefits like operating a business. But as technology advances, as the array of users widens, and as the obligations become more burdensome, the misaligned incentives of adjacent owners become more problematic. So, in dense areas where those owners may not be able to internalize—or at least exclusively internalize—many of the rights or benefits with respect to the space, those owners are likely to devote as few resources as possible to it.

With norms able to play only a limited role in large and heterogeneous groups,²⁸⁵ the primary remaining incentive such property owners have for meeting their sidewalk obligations is the coercion that comes from the municipality's power to impose penalties. But this means that, to be effective, the municipality must deploy resources, not to address or fix sidewalk problems, but to monitor and punish a vast array of agents who are often unaware of or minimally willing to serve that role. The inefficiencies are plain.

Imagine instead a world in which a municipality in this position simply *did the job* itself—whether maintaining trees or repairing cracks or clearing snow. Rather than spending taxpayer dollars to (metaphorically) send a city employee to point at a problem and tell a homeowner to fix it, the municipality could draw on taxpayer money—recognizing that taxpayers all use and benefit from sidewalks, in all the ways explored in Part I—to pay that same employee to do the job themselves.²⁸⁶ Consider snow. Rather than demand that hundreds of individual property owners spend time and money shoveling small patches of the sidewalk in an uncoordinated and disconnected manner, the municipality could capitalize on technology and untapped economies of scale and employ a single person to clear an entire block's sidewalk of snow at once. Individual property owners have no reason to invest in anything more than a shovel given the relatively small scale of their own operations, but a municipality with its much larger scale could reasonably invest in a small fleet of motorized sidewalk snowplows.²⁸⁷ With one plow and one driver, this municipality could clear whole blocks of sidewalk snow more efficiently, more effectively, and in less time than can a few dozen disconnected property owners of varying ages and physical abilities armed with shovels. And the municipality could, without skipping a beat, also address sidewalks adjacent to unoccupied properties or properties that rarely get cleared of snow due to absent or inattentive owners. Indeed, this is exactly the logic to which nearly all municipalities turn when they employ municipal snowplows to clear the roads of snow.²⁸⁸

Getting adjacent property owners out of the sidewalk business—or at least significantly minimizing their role—should not only generate more efficient maintenance of the space, but it should also improve accountability and, with it, quality. Presently, people or entities that suffer due to poorly maintained sidewalks have no direct path to effectively address those shortcomings. And those shortcomings have significant costs.²⁸⁹ People with limited mobility, people with strollers, people with neither—to say nothing of delivery robots—are all placed in potential danger by the patchwork of sidewalk responsibility, and yet they have no line to the person in charge.²⁹⁰ Rather, they must work to get the municipality's attention and to enlist its help to prod or punish its property-owner agent into fixing the problem. Putting the city in charge instead would close the loop and enable people to get help and attention from the very entity obligated and able to do something about the problem. Moreover, if neighborhoods consistently have sidewalks that are poorly maintained, there is presently no elected official for residents to vote out of office. It is not as if one can vote out one's neighbors.²⁹¹ Municipal responsibility would mean that there would be a council member accountable to their constituents who could engage in oversight or agitate for more funding and attention to their district, and whom their constituents could vote against if they fail to do so.²⁹²

Three other potential salutary benefits of deprivatizing sidewalk responsibility are worth noting. The first is that doing so could reduce adjacent owners' territorial feelings towards the public space that happens to abut their property. Perceptions of ownership are complex and socially constructed, and the less that law implies a relationship between property owners and sidewalks, the less that owners and others might infer such a relationship.²⁹³ None of this is to say that residents would not be able to gather or recreate on the sidewalks in front of their homes, or that restaurants would not be able to set up dining tables on the sidewalks in front of their businesses.²⁹⁴ Instead, breaking down the legal connections between sidewalks and property owners could serve to reduce the tendencies of adjacent owners—like Senator Collins,

to return to the anecdote at the start of this Article²⁹⁵—towards owner-like exclusion and control, and conversely could promote a proper vision of the sidewalk as a shared and vibrant public space.

The second is that private responsibility for sidewalks makes the quality of the space contingent on the resources of the people who happen to live around them. Communities with wealthier people who can afford to maintain more trees, promptly clear snow, and repair damaged sidewalks end up with better sidewalks; communities with people who cannot afford to do so end up with spaces left in disrepair.²⁹⁶ Decoupling duties for public space from the identities and wallets of the people who live near those spaces could improve the quality of those spaces and would make for more equitably safe and healthy communities.²⁹⁷

The third is that effective maintenance of the sidewalks generates significant positive externalities—and ineffective maintenance generates significant negative externalities. In other words, each person who fails to repair or to shovel their designated piece of the sidewalk contributes to degrading the quality and usability of a whole block's sidewalk and perhaps even a broader neighborhood's economy and wellbeing.²⁹⁸ But happily, to draw on Professor Carol Rose's elucidation of synergies or "network effects," with every additional piece of the sidewalk that is well-maintained and well-shoveled, the overall quality and usability—and actual *use*—of the sidewalk increases.²⁹⁹ Relatively small government investments in sidewalk maintenance could therefore have multiplier-effect payoffs on communities, their residents, and their economies, particularly when it comes to already underresourced communities.

To be sure, achieving these goals by deprivatizing sidewalk responsibilities would cost municipalities money.³⁰⁰ Outfitting a municipality with a fleet of sidewalk snowplows has a price tag, as does hiring people to drive them. Same for a dedicated corps of concrete-layers or arborists. But the key point is that

this money is already being spent, and often inefficiently so. Residents already pay to meet their private obligations—either because they pay someone to carry them out, or because the cost is folded into their rent payments, or because they do the jobs themselves and their time has value. Given economies of scale, the marginal cost of a property tax increase to fund municipal maintenance of sidewalks could even result in a net *savings* for residents and property owners.³⁰¹ And while it is certainly true that municipalities sometimes have been and often remain bad at doing their jobs, or that they have privileged wealthier and whiter neighborhoods in the course of doing their jobs,³⁰² property owners are just as capable of being bad at or discriminatory in doing these jobs.³⁰³ Moreover, nothing would stop a community from, for example, shoveling its own sidewalks if it felt doing so was necessary. The difference would be that, in a world of municipal responsibility, they could turn that act into a political statement about being abandoned and could demand accountability from their elected representatives rather than having to accept it as the way things are.

Indeed, swaths of the public appear to be recognizing that they would be better off with less private responsibility and more municipal responsibility for sidewalks, even if it costs some money. The people of the city of Denver voted in November 2022 to make the city, rather than property owners, responsible for maintaining sidewalks, even though that would mean owners would be charged a fee of up to \$9 per month to fund citywide maintenance work.³⁰⁴ For their part, Chicagoans have been gathering signatures demanding that the city of Chicago take responsibility for removing sidewalk snow and ice in light of the dangers for pedestrians, especially people with limited mobility.³⁰⁵ And in July 2023, the Chicago City Council adopted a pilot program that would do just that.³⁰⁶ New York City officials, including Council Member Tiffany Cabán, have likewise recently called for “public snow removal from sidewalks” in light of the dangers that flow from inconsistent private responsibility.³⁰⁷ And some cities like Rochester, New York and Duluth, Minnesota have borne the responsibility of clearing snow from

sidewalks for years, sometimes contracting with farmers with plows to spare to do the job each winter.³⁰⁸

Whether viewed as questions of efficiency, accountability, or equity, public responsibility for public space *makes sense* in many communities and would go a long way toward more coherent, less fractured regulation and maintenance of the sidewalk.

But the public-private fracture is far from the only problem facing sidewalks. The intra-governmental fissures must also be resolved—whether or not municipalities take on more sidewalk responsibilities. As the discussion in Section II.B demonstrates, uncoordinated authority and decisionmaking already fail to coherently and consistently mitigate the web of conflicts among users and uses set out in Part I. It also makes doing business costly and difficult, and it risks inconsistent or needlessly duplicative processes for the whole range of sidewalk users. Indeed, for all of their flaws, what BIDs have going for them is that they consolidate powers, responsibilities, and accountability and can therefore be effective stewards of space. This is what municipalities are missing: a single agency with the authority to manage sidewalks, the obligation to do so with an eye towards all of the sidewalks' users and uses, and the expertise and wide-angle lens necessary to understand all of those interlocking demands and make them cohere.

A single municipal Department of Sidewalks could play this role and exercise coordinated authority over all facets of sidewalk life.³⁰⁹ It would handle many of the currently private obligations like maintenance and snow removal, but perhaps even more important, it would consolidate governmental responsibility for trash, trees, scaffolds, buskers, cafés, bike racks, scooter rentals, delivery robots, food carts, parades, block parties, protests, rallies, people experiencing homelessness, and so on. So rather than carve up and distribute these responsibilities to the various agencies mapped out in Section II.B, a Department of Sidewalks would manage the space in a more

coordinated and holistic manner.³¹⁰ Moreover, a single identifiable commissioner would be responsible and accountable for the state of the sidewalks, rather than seeing accountability ineffectively dispersed across numerous officials.³¹¹

In short, a Department of Sidewalks would house the responsibilities currently borne by adjacent property owners as well as the various responsibilities and regulatory and permitting powers currently held in bits and pieces across municipal government. And in less dense communities where it may make sense for some adjacent owners to continue to shoulder some sidewalk responsibilities,³¹² a town's Department of Sidewalks could expertly evaluate where in the town that is the case and where it may not be—the commercial “main drag” with shops and restaurants, for example. The Department would then distribute and assume responsibility in light of its community's context and needs.

Of course, a Department of Sidewalks would not solve every problem or displace every other actor. It would still need to work with other municipal agencies and with people and businesses, just like any other agency does. But by giving sidewalks a dedicated regulatory home, a Department of Sidewalks would be able to provide the sidewalks and the whole slew of interests that rely on them with centralized responsibility and with the attention and respect they need. Fragmented as their regulation is now, sidewalks are treated as an administrative afterthought when, given their primacy in the lives of municipalities and their people, they warrant being treated as anything but.

Presently, in many municipalities including New York City, the Department of Transportation tends to take the lead in managing the fractured regulatory system for sidewalks.³¹³ In fairness, then, there is something of a “leader” when it comes to regulating the sidewalk. But with due respect to the hardworking individuals at Departments of Transportation, that agency is the wrong leader for the sidewalk. The transit- and pedestrian-centric focus of

Departments of Transportation (i.e., “transporting” people and things) produces and reinforces the pedestrianism and “traffic logic” that Professor Blomley identified as driving so much of sidewalk policy.³¹⁴ But, for all the reasons discussed throughout this Article, sidewalks are in fact about and must be about so much more than transportation. Sidewalks serve not only pedestrians, but the full cast set out in Part I. A Department of Sidewalks at the center of sidewalk policy, designed to consider all of these users as its constituents, could better balance transportation alongside the numerous other uses of sidewalks.³¹⁵

Former municipal officials in New York City concur. Without necessarily endorsing every facet of a Department of Sidewalks, every official I interviewed agreed that the status quo approach to sidewalk governance—in New York City and elsewhere—is inefficiently fragmented and in need of greater coordination and centralization.³¹⁶ They emphasized the desperate need for a master plan or planner—a holistic and thought-through approach to the sidewalk space, rather than the necessarily ad hoc and reactive approach that the current regulatory architecture encourages.³¹⁷ Some former officials thought that could be accomplished within current structures,³¹⁸ but when asked, more tended to agree it would be worthwhile to reimagine institutional design along lines similar to those proposed here.³¹⁹

Reshaping municipal government in these ways is, to be sure, a potentially tall order. It might be beyond the fiscal or political means of many municipalities, large and small, and it might generate concerns of excessive bureaucratic expansion. But there are intermediate steps along the same lines that municipalities can take that would still represent vast improvements over the status quo and that might serve as proof-of-concept steps towards a Department of Sidewalks. For example, a “sidewalks czar” located in a municipality’s mayor’s office could represent one path forward,³²⁰ though one ought to be wary of locating too much power in the mayor’s hands, removed from the expertise of subject-matter experts and at the whim of

shifting political winds.³²¹ A more promising option would be to establish sidewalks working groups.³²² Rather than create a new agency or reshuffle responsibilities, municipalities could require existing agencies whose portfolios touch the sidewalks to meet and confer on policies. According to Kristopher Carter, former Co-Chair of the Mayor's Office of New Urban Mechanics in Boston, the city of Boston found success with exactly this approach during and after the onset of the COVID-19 pandemic.³²³ Owing to the increase in both users and uses of the city's sidewalks, Boston recognized the need for greater regulatory attention and coordination, so it required its web of relevant agencies to work together to manage that space.³²⁴ More municipalities of all sizes could benefit from following that lead, and Boston should continue in that vein after pandemic-related considerations fade into the background. Similarly, New York City Mayor Eric Adams has proposed an interagency working group on "public spaces," including but not limited to sidewalks, as part of his pandemic recovery plan.³²⁵ While this would be an important step in the right direction if it materialized, not all types of public spaces are the same (parks are quite different from sidewalks, for example) and their coordination problems will outlast the current moment.³²⁶ More durable, sidewalk-specific attention is necessary in New York City and elsewhere.

Second, municipalities could make the sidewalk permitting process simpler. In addition to leading to inefficient or ineffective policymaking, the regulatory fracturing that currently exists also makes it costly for businesses and individuals to work with government with respect to sidewalks.³²⁷ Indeed, it imposes inequitable burdens on those with the least time and fewest resources to devote to navigating the municipal labyrinth. A one-stop shop for all manner of sidewalk permits would reduce costs for businesses and for residents, and it would promote more a coherent permitting environment in which all relevant agencies know what the others are doing. Making permitting simpler is an idea that has already become attractive outside the sidewalk context: Kathryn Garcia and Andrew Yang both made some version

of a one-stop permitting shop part of their platforms in the New York City mayoral primary in 2021,³²⁸ and cities ranging from Lexington, Kentucky to Oakland, California have recently announced similar efforts.³²⁹ The sidewalks are a promising place for municipalities like these and many others to focus.

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Whether with these smaller steps or with the bigger step of a Department of Sidewalks, cities and suburbs alike can reshape the architecture of sidewalk regulation, right-size their reliance on private property owners, and prevent the depletion of the sidewalk as a useable public resource now and into the future.

Conclusion

Sidewalks are critical public resources. Unique among public spaces, sidewalks are home to an incredibly wide array of users and uses, all of which contact and conflict with one another in numerous ways. Sometimes these encounters enhance the users' experiences and produce happy collaborations; often, they detract from those experiences and risk producing a chaos that degrades the space for everyone. Management and coordination are sorely needed. But municipalities have chosen to achieve those goals by imposing fractured responsibilities on a tangled web of governmental agencies and on an unaccountable and often unprepared swath of individuals who happen to own adjacent property. The outcome is a sidewalk regulatory landscape that is inadequate, inefficient, and often counterproductive. Preserving and improving sidewalks in the interests of all of their users requires consolidating and coordinating responsibility for these vital spaces in a municipal agency specifically designed for the task.

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