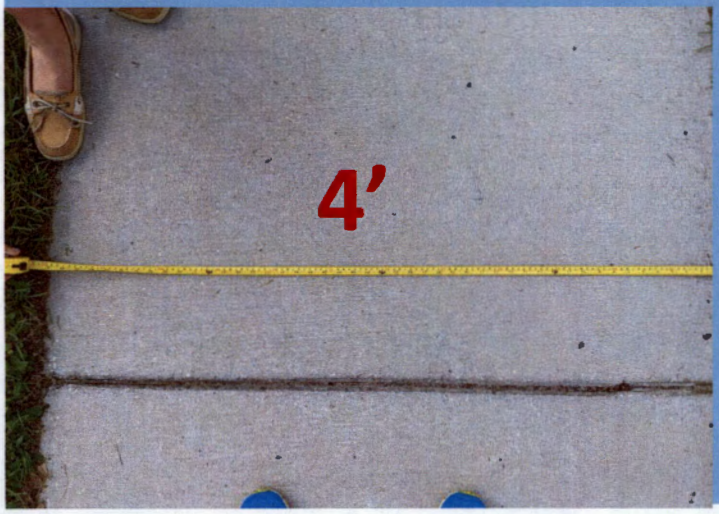
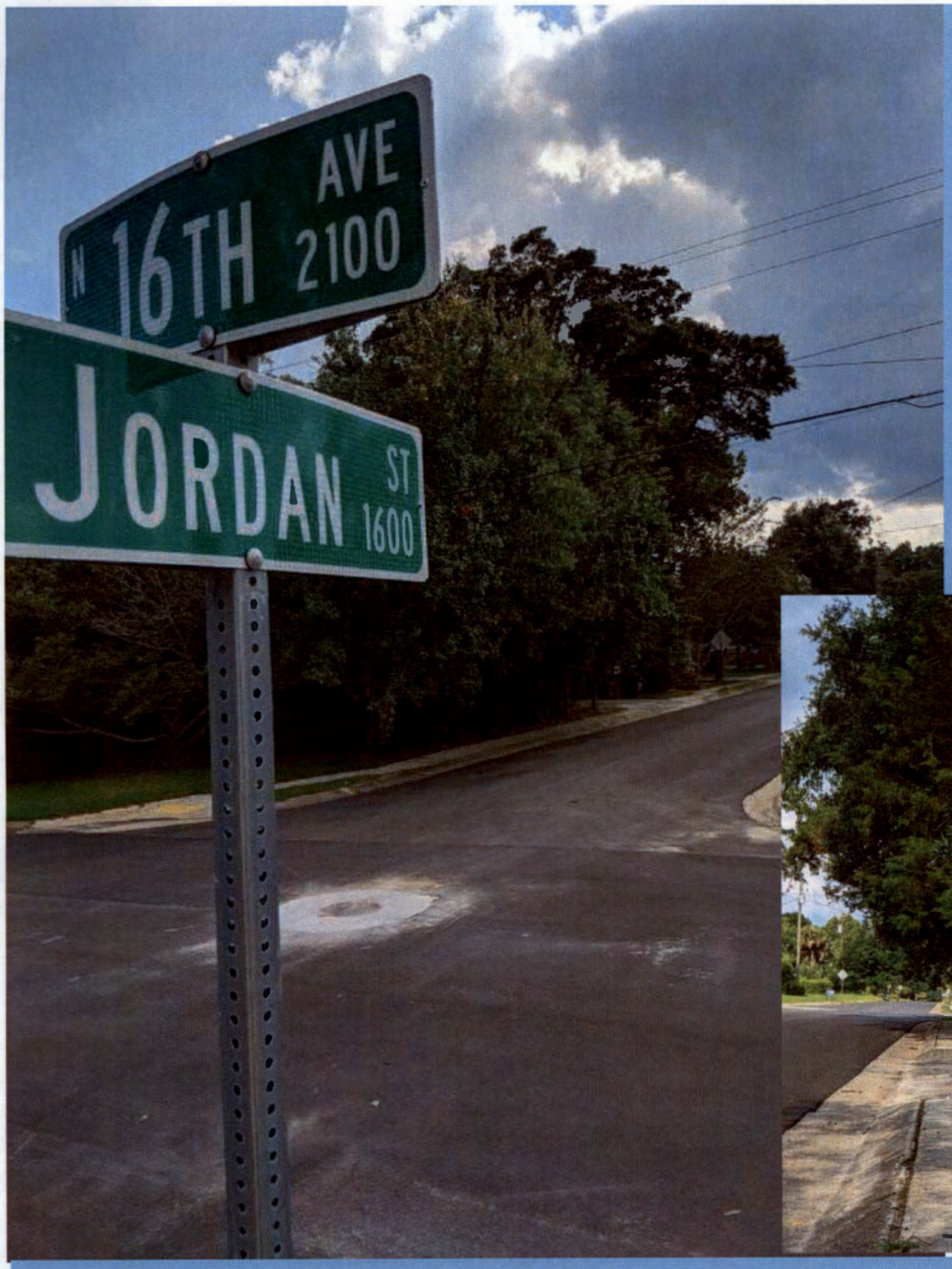
This is a new 4' sidewalk installed by the city that meets ADA and FDOT standards (see page 3). It is located one block from the proposed ROW vacation on a much busier road.

17th Avenue and Mallory Street



The ordinance you are voting on leaves enough ROW to install a similar sidewalk abutting the road on the 1600 block of 18th Avenue should the city develop continuous sidewalks in this area.



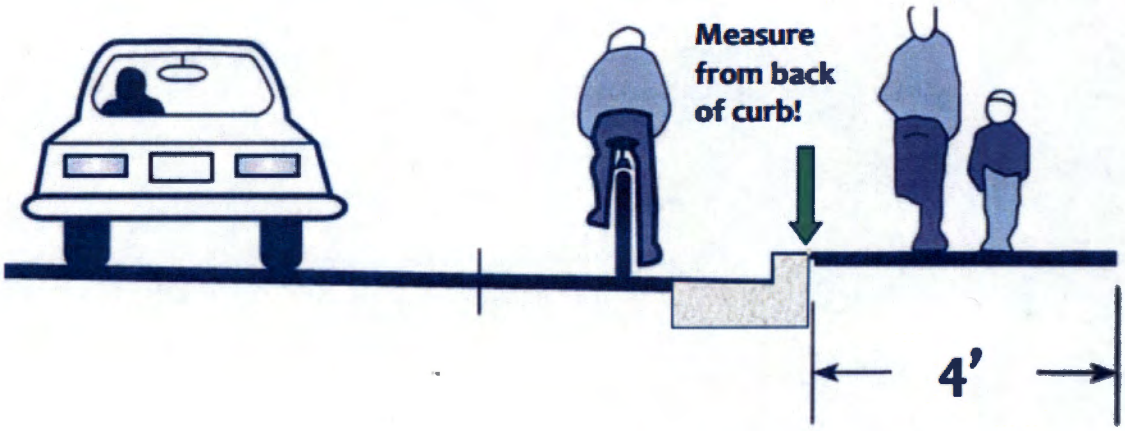
16th Avenue and Jordan Street in East Hill

Newly installed 4′ sidewalks meeting ADA and FDOT standards abutting Jordan Street are commonplace.

A 4' sidewalk abutting the roadway meets ADA standards according to Public Rights-of-Way Access Guidelines from the United States Access Board as well as FDOT design standards.

Pedestrian Access Route (PAR)

- R302.3 Continuous Width
  - The minimum continuous and unobstructed clear width of a pedestrian access route shall be 4 ft., exclusive of the width of the curb



2016 Design Training Expo

Sidewalks conforming to this standard are commonplace in East Hill. The ROW vacation request leaves nearly 5.5 feet from the curb.

2016 Design Training Expo

ADA* for Roadway Design

Incorporating PROWAG**

* Americans with Disabilities Act
** Public Rights of Way Accessibility Guidelines

Dean Perkins, Architect ADA Coordinator
Florida Department of Transportation

The adjectives "nice" and "very good" describing these sidewalks are part of Mr. Perkins' FDOT presentation, not our words!!!

Mr. Parry Malone
Southern Artisan Builders
56 Highpoint Drive
Gulf Breeze, FL 32561
June 26, 2018

Mayor Hayward and Pensacola City Council Members
222 West Main Street
Pensacola, FL 32502

Dear Mayor Hayward and Pensacola City Council Members,

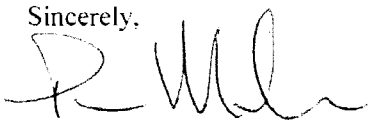
I am writing you to request that you grant the petition to vacate the right of way on 18th Avenue between Mallory and Moreno Streets. I recently purchased the property on the northeast corner of 18th Avenue and Mallory Street in East Hill and it is my opinion, the right of way on 18th Avenue is excessive and exceptionally larger than other right of way in the vicinity. As I understand it, the recommendation of City staff is to grant a 25 foot right of way to the homeowners. This still allows for a 75 foot right of way on 18th Avenue, a street with very little traffic. For comparison purposes, the right of way on 17th Avenue, a much busier street and a thoroughfare through East Hill, is only 70 feet. According to the GIS, many of the right of ways in East Hill are 50 feet with a few being as narrow as 40 feet.

Granting this request allows for land that is currently untaxable to generate income for the City. Because the property cannot be legally sold, that right of way is an asset for the City with no monetary value associated with it. If the property owners acquire this land, their property taxes will increase to reflect their acquisition of this additional land, thus generating new income for the City.

Additionally, this right of way is of no use to anyone except the property owners applying for its vacation. They are currently the ones responsible for its maintenance and upkeep. It isn't as if this land is a city park where neighborhood children play. In fact, to my knowledge, the public sidewalk on that land is not even utilized by the public. As long as public utilities sign off on the vacation request, I cannot see that there is any real justification for denying their request.

Thank you for your consideration of this matter.

Sincerely,



Parry Malone
Southern Artisan Builders
(850) 516-6986

Ms. Patricia Gavallas
1800 E. Moreno Street
Pensacola, FL 32503
June 26, 2018

Mayor Hayward and Pensacola City Council Members
222 West Main Street
Pensacola, FL 32502

Dear Mayor Hayward and Pensacola City Council Members,

I am writing you today to ask that you consider allowing my neighbors across the street at 1771 E. Mallory Street and 1774 E. Moreno Street obtain the right of way abutting their property and thus removing the sidewalk on that block.

I was raised in my home on the corner of 18th Avenue and Moreno. I have lived here my entire life and can tell you, until Mrs. Wiggins approached me about the right of way and the sidewalk, I had forgotten there was even a sidewalk on that property. With the growing popularity of East Hill, we have had an influx of young families move into the neighborhood. While I see them walking and pushing strollers down 18th Avenue all the time, I never see anyone using the sidewalk in question. I walk on 18th Avenue almost every single day and have never considered using that sidewalk. Because it does not connect to any parks or places of interest for the public, the sidewalk is impractical and unnecessary.

Additionally, I am concerned that if my neighbors were required to replace or move the sidewalk, it would look completely out of place. Because the sidewalk does not connect to any additional sidewalks on 18th Avenue, I am concerned that a brand-new sidewalk built closer to the road would stand out in contrast to the rest of the yards on 18th Avenue. It would look as though it were a mistake or the city ran out of funds before they were able to complete the project. The aesthetics of that would be out of character and would not fit with the current appearance of 18th Avenue. I am also concerned that moving or replacing the sidewalk would force the neighbors to take down trees that provide shade and move gardens that provide beauty to the neighborhood.

I appreciate that my neighbors want to improve their property as any improvements they make will increase the property value of my own home as well. As a taxpaying citizen and thus one of the current owners of that right of way, I see no valid reason that my neighbors should be denied their request or be required to replace a sidewalk that is never used to begin with.

Sincerely

Patricia Gavallas
1800 E. Moreno Street

From: Jody Braxton [mailto:jbraxton@expertservices.com]
Sent: Wednesday, July 25, 2018 10:24 AM
To: Sherri Myers <smyers@cityofpensacola.com>; Jewel Cannada-Wynn <jcannada-wynn@cityofpensacola.com>; Larry B. Johnson <ljohnson@cityofpensacola.com>; Brian Spencer <bspencer@cityofpensacola.com>; Gerald Wingate <gwingate@cityofpensacola.com>; Andy Terhaar <aterhaar@cityofpensacola.com>; P.C. Wu <pcwu@cityofpensacola.com>; Ashton Hayward <mayorhayward@cityofpensacola.com>; Sherry Morris <SMorris@cityofpensacola.com>; Don Kraher <DKraher@cityofpensacola.com>; Ericka Burnett <EBurnett@cityofpensacola.com>
Subject: Right of way on 18th ave

Dear Mayor Hayward and Members of the City Council,

I am writing you today because of a Bike Pensacola post I saw on Facebook regarding a vote you took at your last council meeting about the vacation of a right of way on 18th Avenue. As a homeowner in East Hill, I have very strong opinions about both the post and your decision and I feel the need to share them with you.

I feel confident I am not the only one to reach out to in response to this Facebook post as that was the intent of Bike Pensacola when they posted it. I found what was written to be misleading and inaccurate at best and a targeted attack on good neighbors at worst.

Bike Pensacola called into question your commitment to "Vision Zero" which they say is a strategy to eliminate all traffic fatalities and severe injuries, while increasing safe, healthy, equitable mobility for all. Let's talk about that for a second. How does a disconnected, non-ADA compliant sidewalk on one block of East Hill meet the mission of Vision Zero? The road this sidewalk is on, 18th Avenue, has very little traffic; so little, in fact, that pedestrians use the street as a sidewalk and can walk for blocks without even seeing a car. I don't see how this sidewalk to nowhere, that is not even used by pedestrians, is not handicap accessible, and is on a quiet street in East Hill, is helping to eliminate traffic fatalities and severe injuries or increasing safe, healthy, equitable mobility. Your vote did nothing to impact Vision Zero because it doesn't impact the mission of Vision Zero.

Bike Pensacola went on to point out that the council did not require the sidewalk to be replaced and only left enough space for a new sidewalk right next to the street. Again, this was the right call by the council. If you drive down 17th or 12th Avenues (notably busier streets than 18th Avenue) where the city has recently and rightfully installed new sidewalks just within the past year, you will see that these sidewalks are built right on the curb. If the city felt that those sidewalks were safe enough on busy streets, why would the city feel that more protection is necessary on a street with little to no traffic? Additionally, why should the homeowners be asked to replace sidewalks the city didn't install in the first place, are never used, and by my understanding, none of the surrounding neighbors want?

Finally, I want to say something about the applicants of this request. When Ryan and Jonathon Wiggins moved back into their home in East Hill, the neighborhood was better for it. Within a year of moving back into their home, they saw a need and started and currently maintain a neighborhood watch group to help protect their neighbors and increase safety in East Hill. They planted a butterfly garden on the right of way in question for the enjoyment and education of their neighbors. They would give you the shirts off their backs if asked. They are the types of neighbors who stand up for people and for what's right in this neighborhood, which is one reason I am standing up for them now.

You are to be commended for the vote you took on July 19th. It was the right thing to do. East Hill is the home of the disjointed sidewalk to nowhere. These sidewalks serve no purpose for public safety as they are non-continuous. I ask that you don't let the vocal minority, most of whom do not even live in East Hill, make you question your sound decision. Please give more weight to the opinions of the immediate neighbors who are really the only ones directly be impacted by your vote. I humbly request that you continue to show leadership on this issue and stand by your decision on August 9th.

Sincerely,
Jody Braxton
917 E. Bobe Street

Jody Braxton | Senior Client Manager | 850-473-2516
www.ims-expertservices.com
IMS ExpertServices®

Gmail **Ryan Wiggins <ryan.n.wiggins@gmail.com>**

18th Right of Way

Kevin Fox <foxkevint@gmail.com> Mon, Jun 25, 2018 at 11:13 PM
To: smorris@cityofpensacola.com, mayorhayward@cityofpensacola.com
Bcc: ryan.n.wiggins@gmail.com

Dear Mayor Hayward & City Council Members,

I am writing you this email to express my support of the Wiggins, property owners at 1771 E Mallory St in their petition to acquire the right of way abutting their property. As the property owner of 1800 E Mallory Street I believe by allowing the Wiggins to acquire the right of way allowing them to improve their property creates a beneficial situation for both private citizen and city government. Property improvements will not only increase my property value as well as my surrounding neighbors, but also allow for additional tax revenue on land that currently is not generating any income for the city.

I fully understand that in order for the right of way to be granted the current sidewalk that is on the spoken land will need to be removed. Having lived across the street since 2016 the sidewalk stays abundantly vacant. I have witnessed it only being used by the applicants requesting right of way vacation. Removal of the sidewalk will have no impact on safety, as current road safety standards are being met with adequate stop signs, as well as yield signs. Our intersection at 18th is very safe for pedestrians and cyclist. The sidewalk is one block, public perception is the one block sidewalk is more of inconvenience if anything. It does not serve a purpose, there are no businesses, public spaces, or parks the sidewalk serves at that location.

Without the city making the decision to expand the sidewalks down 18th Avenue, I cannot see the benefit of allowing the sidewalk to stay, outweighing the benefit of allowing the Wiggins the right of way in order to improve their property. As a property owner and full time resident I hope that all parties can understand that removal of the sidewalk and allowing the Wiggins the right of way to the land creates a positive outcome for the neighborhood, its citizens, and the City of Pensacola.

Sincerely,

Kevin Fox
1800 E Mallory Street
(850) 288-1222

To Whom It May Concern

July 5th, 2018

Re- Attached Notice of Public HEARING.

Wendy Warren
1736 N. 18th Ave
Pensacola FL 32503

I have lived a block from the area of
1600 BLK North 18th Ave.

I'm outside walking, running. I have raised three children - two of them walked to school directly past this area

And, NEVER have I used this little section of sidewalks. Nor, have I ever seen anyone use this little area of side walk.

18th Ave does not have a side walk. However it is still widely used by runners & walkers. But, it would be unnecessary to walk one-block on a side walk.

Thank you. Wendy Warren

Mr. Butch Cook
1801 E. Mallory Street
Pensacola, FL 32503
June 26, 2018

Mayor Hayward and Pensacola City Council Members
222 West Main Street
Pensacola, FL 32502

Dear Mayor Hayward and Pensacola City Council Members.

I have lived at 1801 East Mallory Street for over five years. During that time, I have never seen anyone use the sidewalk on the west side of 18th Avenue between Moreno and Mallory Streets except, perhaps, for the two owners of the two homes on that short block. What I do see are pedestrians and perambulators, cyclists and skateboarders by the score, and they all travel on the street. They cannot bike or skate on the sidewalk, and they certainly can't run on the sidewalk as they push their babies in sleek strollers designed to be used on long, flat surfaces, not on a single, inaccessible, short length of sidewalk.

As for "men who dream by day" who would have us believe that government must be legally blind in its vision of a completely accessible and connected urban environment, even when that accessibility or connection serves no purpose whatsoever, I would remind them that government should be about the people they serve, not a blind adherence to the latest socially engineered imperative.

My neighbors want to improve their properties, make a better life for themselves and stay in the home and neighborhood they love. As people served by your governance, they deserve your support and your approval of their sensible and personal request.

Sincerely,

Butch Cook

Butch Cook
1801 E. Mallory Street
(850) 281-6577

June 22, 2018

Mayor Hayward and Pensacola City Council Members
222 West Main Street
Pensacola, FL 32502

Dear Mayor Hayward and City Council Members,

As a resident of the 18th block of Mallory/Moreno streets, I support my neighbors at 1771 E. Mallory Street and 1774 E. Moreno Street in their petition to obtain the right of way abutting their properties. The removal of the sidewalk on this right of way will in no way impact my quality of life or my safety in the foreseeable future.

Lauren Patchanian 1758 E. Moreno St.
Michael GARTMAN 1717 E. Mallory St.
Katherine Cartman 1717 E. Mallory St.
LOWELL + DEBORAH BASSETT 1746 E. Moreno St.
Linda Price 1700 E. Moreno St
Michael Buist 1700 E. Moreno St.

Submitted by Council Member Myers

East Hill Neighborhood Association
P.O. Box 6164
Pensacola, Florida 32503
http://www.easthillpensacola.org

To: Councilwoman Sherri Myers

Dear Councilwoman Myers,

Last night, at our regularly scheduled East Hill Neighborhood Association Board meeting, we brought up the matter of the City Council approving the vacation of right-of-way to individuals requesting the same.

We, the board members of the East Hill Neighborhood Association vehemently oppose any such action of the vacation of any right-of-way within the City of Pensacola but particularly within the boundaries of East Hill.

There are several reasons we oppose this action. This will set a very dangerous precedent for many individuals to come before the city in the future requesting this same action on their behalf. This will allow larger structures to be built much closer to the street thus disrupting our neighborhoods and the efforts we are undertaking to keep our structures historically accurate to their neighbor's properties in their immediate area as well as the larger community.

Also, this will remove sidewalks that we are again in favor of maintaining. We are actually, and have been for many years, looking for the City to start infilling these sidewalks. These sidewalks will in fact allow us to have a more walkable neighborhood that all urban planners have strongly suggested we move forward to achieve.

The last reason is the value of the real estate you would give to anyone to whom you vacate a right-of-way for. This is a sizeable value when you look at the cost of lots in East Hill.

East Hill Neighborhood Association is committed to making East Hill a better place to live. This includes adhering to recommendations for growing and cultivating a walkable, diverse, history-aware neighborhood. We ask, by delivery of this letter, that the Council take into account what the EHNA Board is voicing.

David Del Gallo
For the Board

CC: EHNA Board Members

Submitted by Council Member Myers

From: Joe Vinson <joe@akabaka.com>
Date: August 8, 2018 at 11:58:50 PM CDT
To: ljohnson@cityofpensacola.com, smyers@cityofpensacola.com, aterhaar@cityofpensacola.com, jcannada-wynn@cityofpensacola.com, bspencer@cityofpensacola.com, pcwu@cityofpensacola.com, gwingate@cityofpensacola.com
Subject: Please vote no on Ordinance 12-18

Pensacola City Council members:

I'm writing to urge you to vote against Ordinance No. 12-18, which would vacate a portion of the public right-of-way on the 1600 block of North 18th Avenue.

I was recently made aware of this proposal, and after reading the vacation application, the minutes of the planning board (which recommended approval) and the last meeting of the city council (which approved the ordinance on first reading), I remain in strong opposition to this request and any similar request.

I live in East Hill near a new development of houses (on 12th Avenue between Gadsden and Jackson Streets) that received approval to change the right-of-way setbacks, removing the existing sidewalks and replacing them with much narrower sidewalks closer to the street. The result is a much less pedestrian-friendly streetscape. I'm concerned that vacating this right-of-way would result in a similarly negative change.

The crux of the request you are considering is this: one of the property owners wants to build a home addition and pool in their backyard, which would not leave them enough space to *also* build a garage and guest apartment within the bounds of their property. The other property owner says they didn't realize their circular driveway, which was constructed by a previous owner in the right-of-way, wasn't actually part of the property. To my mind, these are not compelling enough reasons to give away more than 8,000 square feet of land that belongs to the public, and it would set a bad precedent for future requests.

My family and I live on a lot with ample right-of-way. We maintain the grass and have planted trees and flowers, but we understand that the land doesn't belong to us. We, like many of our neighbors, have a garage on our property for off-street parking — space that could conceivably be used for a pool or Airbnb rental unit. If, instead of building a garage, the previous owner had placed our driveway entirely within the right-of-way, or fenced in a portion to the street's edge, would that entitle us to private ownership of it? If the city is willing to give away land for garages and other private uses, why should any homeowner feel obligated to fulfill those functions within the boundaries of their property?

The purpose of the right-of-way is to preserve land for public use, for pedestrians who use it every day and for future purposes that we may not foresee at present. There should be a compelling reason to permanently cede such land to a private owner — a reason that clearly overrides the public's interest — and this request does not meet that standard.

With warm regards,

Joe Vinson
joe@akabaka.com
(850) 292-7025

CIL Disability Resource Center

Center for Independent Living of Northwest Florida, Inc.

Dear Pensacola City Council Members,

Thank you again for your recognition of the importance of the Americans with Disabilities Act and on July 19, 2018 recognizing with a resolution to make July 26th, 2018 ADA Awareness Day. I was disheartened to find out, that same evening, after the Center for independent Living had left the Council's meeting, the Council took an action that is considered a violation of the Americans with Disabilities Act (ADA) and a loss for all community members. This information is submitted on behalf of the broader disability community an the Center for Independent Living Disability Resource Center.

At the July 19, 2016 meeting, the council voted to vacate 29.5' of public right-of-way along the west side of the 1600 block of N. 18th Ave. That action will significantly alter the dimensions of the public right-of-way and result in the loss of an existing public sidewalk as that facility (the current public sidewalk) will then be located on private property that can no longer be accessed by the public. In addition, the council action did not include a requirement to replace the existing sidewalk that will be lost as part of this action, or even to leave space that would allow for its proper replacement in keeping with local, state, and national standards.

Title II of the Americans with Disabilities Act (ADA) of 1990 prohibits public entities--including local governments--from discriminating on the basis of disability in the entities' services, programs, or activities, including access to the public right-of-way. The Act requires local governments to maintain and enhance public facilities (including the public right-of-way and sidewalks) so that the existing level of service is maintained and improved. In this case, alteration of the public right-of-way through the transfer of land to adjacent private entities and the resultant loss of an existing city sidewalk without provision for proper replacement is a discriminatory action that will reduce the accessibility of the city's sidewalk network.

Alterations to public facilities are specifically outlined in Title 28 › Chapter I › Part 35 › Subpart D › Section 35.151 of the Code of Federal Regulations:
(b)Alterations.
(1) Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992.

Alterations are defined in the standards as "a change in a building or facility that affects or could affect the usability of a building or facility or portion thereof."

Under the ADA, an alteration to a sidewalk creates an additional obligation to include curb ramps in the scope of the project. From the Title II regulation:

3600 North Pace Boulevard, Pensacola, FL 32505
850-595-5566 Voice/TTY ~ 850-595-5560 Fax ~ 1-877-245-2457 Toll Free
www.cil-drc.org

Furthermore, in order to ensure that the replacement sidewalk is constructed in a manner that protects public safety, state and national standards for sidewalk design should be followed. Chapter 8 of the Florida Department of Transportation's *Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways* (commonly referred to as the "Florida Greenbook") is one such source.

The Greenbook recommends sidewalk widths of 5' and a planting strip (landscaped area between sidewalk and curb) of at least 6' to "improve public safety." This recommendation closely corresponds with comments presented at the July 19 meeting from the city public works director and city administrator, both of whom stated that the city's standard is to maintain at least 10' of roadside right-of-way to allow for proper placement of a sidewalk.

Additionally, the center has been contacted by a community member with disabilities who directly stated that the removal of this sidewalk will decrease his access to utilize the community. As well, this area has also been photographed with property owners having both vehicular and trash cans in the way of its utilization by the community. That is also a violation of the ADA as those are barriers to safe and accessible travel on that public facility.

I have provided you with a Joint Technical Assistance Supp Q and A (12.1.15) from The Department of Justice (DOJ)/Department of Transportation (DOT) for your reference in this matter. Please adhere to both the law and best practices to ensure our community's accessibility and inclusion are at minimum sustained and maintained. Please set precedent for following the law and strive for a community with universal access and universal design to be the way things are done in the City of Pensacola.

For further discussion or assistance, I can be reached by email at carolyn@cil-drc.org or by phone at 850-595-5566 ext 16.

Respectfully Submitted,

Carolyn L. Grawi, MSW, LMSW, ACSW, ADAC
Executive Director

U.S. Department of Justice
Civil Rights Division
Disability Rights Section

U.S. Department of Transportation
Federal Highway Administration

QUESTIONS & ANSWERS

Supplement to the 2013 DOJ/DOT Joint Technical Assistance on the Title II of the Americans with Disabilities Act Requirements To Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing

The *Department of Justice (DOJ)/Department of Transportation (DOT) Joint Technical Assistance on the Title II of the Americans with Disabilities Act [ADA] Requirements to Provide Curb Ramps when Streets, Roads, or Highways are Altered through Resurfacing (Joint Technical Assistance)* was published on July 8, 2013. This document responds to frequently asked questions that the Federal Highway Administration (FHWA) has received since the technical assistance document was published. In order to fully address some questions, the applicable requirements of Section 504 of the Rehabilitation Act of 1973 that apply to public entities receiving Federal funding from DOT, either directly or indirectly, are also discussed. This document is not a standalone document and should be read in conjunction with the 2013 Joint Technical Assistance.

Q1: ***When a pavement treatment is considered an alteration under the ADA and there is a curb ramp at the juncture of the altered road and an existing sidewalk (or other prepared surface for pedestrian use), but the curb ramp does not meet the current ADA Standards, does the curb ramp have to be updated to meet the current ADA Standards at the time of the pavement treatment?***

A1: It depends on whether the existing curb ramp meets the appropriate accessibility standard that was in place at the time it was newly constructed or last altered.

When the Department of Justice adopted its revised title II ADA Regulations including the updated ADA Standards for Accessible Design (2010 Standards,[1] as defined in 28 CFR 35.151), it specified that "(e)lements that

have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the 1991 Standards or in the Uniform Federal Accessibility Standards (UFAS) ... are not required to be modified in order to comply with the requirements set forth in the 2010 Standards." 28 C.F.R. 35.150(b)(2)(i). As a result of this "safe harbor" provision, if a curb ramp was built or altered prior to March 15, 2012, and complies with the requirements for curb ramps in either the 1991 ADA Standards for Accessible Design (1991 Standards, known prior to 2010 as the 1991 ADA Accessibility Guidelines, or the 1991 ADAAG) or UFAS, it does **not** have to be modified to comply with the requirements in the 2010 Standards. However, if that existing curb ramp did not comply with either the 1991 Standards or UFAS as of March 15, 2012, then the safe harbor does not apply and the curb ramp must be brought into compliance with the requirements of the 2010 Standards concurrent with the road alteration. *See* 28 CFR 35.151(c) and (i).

Note that the requirement in the 1991 Standards to include detectable warnings on curb ramps was suspended for a period between May 12, 1994, and July 26, 1998, and again between December 23, 1998, and July 26, 2001. If a curb ramp was newly constructed or was last altered when the detectable warnings requirement was suspended, and it otherwise meets the 1991 Standards, Title II of the ADA does not require that the curb ramp be modified to add detectable warnings in conjunction with a road resurfacing alteration project. *See* Question #14 however, for a discussion of the DOT Section 504 requirements, including detectable warnings.

Q2: ***The Joint Technical Assistance states that "[r]esurfacing is an alteration that triggers the requirement to add curb ramps if it involves work on a street or roadway spanning from one intersection to another, and includes overlays of additional material to the road surface, with or without milling." What constitutes "overlays of additional material to the road surface" with respect to milling, specifically, when a roadway surface is milled and then overlaid at the same height (i.e., no material is added that exceeds the height of what was present before the milling)?***

A2: A project that involves milling an existing road, and then overlaying the road with material, regardless of whether it exceeds the height of the road before milling, falls within the definition of "alteration" because it is a change to the road surface that affects or could affect the usability of the pedestrian route (crosswalk). *SeeKinney v. Yerusalim*, 9 F.3d 1067 (3rd Cir. 1993). Alterations require the installation of curb ramps if none previously existed, or upgrading of non-compliant curb ramps to meet the applicable standards, where there is an existing pedestrian walkway. *See* also Question 8.

Q3: ***If a roadway resurfacing alteration project does not span the full width of the road, do I have to put in curb ramps?***

A3: It depends on whether the resurfacing work affects a pedestrian crosswalk. If the resurfacing affects the crosswalk, even if it is not the full roadway width, then curb ramps must be provided at both ends of the crosswalk. *See* 28 CFR 35.151(i).

Public entities should not structure the scope of work to avoid ADA obligations to provide curb ramps when resurfacing a roadway. For example, resurfacing only between crosswalks may be regarded as an attempt to circumvent a public entity's obligation under the ADA, and potentially could result in legal challenges.

If curb ramp improvements are needed in the vicinity of an alteration project, it is often cost effective to address such needs as part of the alteration project, thereby advancing the public entity's progress in meeting its obligation to provide program access to its facilities. *See* Question 16 for further discussion.

Q4: ***When a road alteration project triggers the requirement to install curb ramps, what steps should public (State or local) entities take if they do not own the sidewalk right-of-way needed to install the required curb ramps?***

A4: The public entity performing the alteration is ultimately responsible for following and implementing the ADA requirements specified in the regulations

implementing title II. At the time an alteration project is scoped, the public entity should identify what ADA requirements apply and whether the public entity owns sufficient right-of-way to make the necessary ADA modifications. If the public entity does not control sufficient right-of-way, it should seek to acquire the necessary right-of-way. If a complaint is filed, the public entity will likely need to show that it made reasonable efforts to obtain access to the necessary right-of-way.

Q5: ***The Joint Technical Assistance is silent on when it becomes effective. Is there an effective date for when States and local public entities must comply with the requirements discussed in the technical assistance?***

A5: The Joint Technical Assistance, as well as this Supplement to it, does not create any new obligations. The obligation to provide curb ramps when roads are altered has been an ongoing obligation under the regulations implementing title II of the ADA (28 CFR 35.151) since the regulation was initially adopted in 1991. This technical assistance was provided to respond to questions that arose largely due to the development of a variety of road surface treatments, other than traditional road resurfacing, which generally involved the addition of a new layer of asphalt. Although the Joint Technical Assistance was issued on July 8, 2013, public entities have had an ongoing obligation to comply with the alterations requirements of title II and should plan to bring curb ramps that are or were part of an alteration into compliance as soon as possible.

Q6: ***Is the curb ramp installation work required to be a part of the Plans, Specifications and Estimate package for an alteration project or can the curb ramp work be accomplished under a separate contract?***

A6: The curb ramp installation work can be contracted separately, but the work must be coordinated such that the curb ramp work is completed prior to, or at the same time as, the completion of the rest of the alteration work. *See* 28 CFR 35.151(i).

Q7: ***Is a curb ramp required for a sidewalk that is not made of concrete or asphalt?***

A7: The Joint Technical Assistance states that "the ADA does not require installation of ramps or curb ramps in the absence of a pedestrian walkway with a prepared surface for pedestrian use." A "prepared surface for pedestrian use" can be constructed out of numerous materials, including concrete, asphalt, compacted soil, decomposed granite, and other materials. Regardless of the materials used to construct the pedestrian walkway, if the intent of the design was to provide access to pedestrians, then curb ramps must be incorporated where an altered roadway intersects the pedestrian walkway. *See* 28 CFR 35.151(i).

Q8: ***If an existing curb ramp is replaced as part of a resurfacing alteration, is there an obligation to address existing obstacles on the adjacent sidewalk at the same time?***

A8: No. The Joint Technical Assistance addresses those requirements that are triggered when a public entity alters a roadway where the roadway intersects a street level pedestrian walkway (28 CFR 35.151(i)). Public entities are required to address other barriers on existing sidewalks, such as steep cross slopes or obstructions, as part of their on-going program access and transition plan obligations under title II of the ADA and Section 504 and in response to requests for reasonable modifications under the ADA or reasonable accommodations under Section 504. *See* 28 CFR 35.105, 35.130(b)(7), and 35.150(d); *see also* 49 CFR 27.7(e), 27.11(c)(2).

Q9: ***Several pavement preservation treatment types are not listed in the technical assistance. If the treatment type is not specifically on the list of maintenance treatments, is it an alteration?***

A9: New treatments are always being developed and the best practice is for the City or other local public entity conducting the work, the State transportation agency, and FHWA to work together to come to an agreement on a reasonable determination of whether the unlisted treatment type is an alteration or maintenance and document their decisions. If the new treatment can be deemed to be the equivalent of any of the items listed as alterations, it is a reasonable interpretation that they are in fact alterations and should be treated as such.

Q10: ***When does a combination of two or more 'maintenance' treatments rise to the level of being an alteration?***

A10: The list of the pavement types that are considered maintenance, as stated in the 2013 Joint Technical Assistance document, are Chip Seals, Crack Filling and Sealing, Diamond Grinding, Dowel Bar Retrofit, Fog Seals, Joint Crack Seals, Joint Repairs, Pavement Patching, Scrub Sealing, Slurry Seals, Spot High-Friction Treatments, and Surface Sealing. The combination of two or more maintenance treatments may rise to the level of being an alteration.

The best practice is for the City or other local public entity conducting the work, the State transportation agency, and FHWA to work together to come to an agreement on a reasonable determination, document their policies, and apply that determination consistently in their locality.

Q11: ***When will utility trench work require compliance with ADA curb ramp requirements?***

A11: The answer to this question depends on the scope and location of the utility trench work being done. If the utility trench work is limited to a portion of the pavement, even including a portion of the crosswalk, repaving necessary to cover the trench would typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Public entities should note that the ADA requires maintenance of accessible features, and as such, they must ensure that when the trench is repaved or other road maintenance is performed, the work does not result in a lesser level of accessibility. *See* 28 CFR 35.133(a). If the utility work impacts the curb at a pedestrian street crossing where no curb ramp exists, the work affecting the curb falls within the definition of "alteration," and a curb ramp must be constructed rather than simply replacing the curb. *See* 28 CFR 35.151(b) and 35.151(i).

If a public entity is unsure whether the scope of specific trench work and repair/repaving constitutes an alteration, the best practice is for the public entity to work together with the State transportation agency and the FHWA

Division to come to an agreement on how to consistently handle these situations and document their decisions.

Q12: ***Is full-depth pavement patching considered maintenance?***

A12: The answer to this question depends on the scope and location of the pavement patch. If the pavement patch work is limited to a portion of the pavement, even including a portion of the crosswalk, patching the pavement would typically be considered maintenance and would not require simultaneous installation or upgrading of curb ramps. Public entities should note that the ADA requires maintenance of accessible features, and as such, they should ensure that when the pavement is patched or other road maintenance is performed, the work does not result in a lesser level of accessibility. *See* 28 CFR 35.133(a). If the pavement patching impacts the curb at a pedestrian street crossing where no curb ramp exists, the work affecting the curb falls within the definition of "alteration," and a curb ramp must be constructed rather than simply replacing the curb. *See* 28 CFR 35.151(b) and 35.151(i).

If a public entity is unsure whether the scope of specific full-depth pavement patching constitutes an alteration, the best practice is for the public entity to work together with the State transportation agency and the FHWA Division to come to an agreement on how to consistently handle these situations and document their decisions.

Q13: ***Do any other requirements apply to road alteration projects undertaken by public entities that receive Federal financial assistance from DOT either directly or indirectly, even if such financial assistance is not used for the specific road alteration project at issue?***

A13: Yes, if a public entity receives any Federal financial assistance from DOT whether directly or through another DOT recipient, then the entity must also apply DOT's Section 504 requirements even if the road alteration project at issue does not use Federal funds. *See* 49 CFR 27.3 (applicability of DOT's Section 504 requirements) and 27.5 (definition of "program or activity").

DOT's Section 504 disability nondiscrimination regulations are found at 49 CFR Part 27. These regulations implement Section 504 of the Rehabilitation Act of 1973 (Section 504). In 2006, DOT updated its accessibility standards by adopting the 2004 Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG[2]) into its Section 504 regulations at 49 CFR 27.3 (referencing 49 CFR Part 37, Appendix A). These requirements replaced the previously applicable ADA Standards for Accessible Design (1991) (formerly known as 1991 ADAAG). At that time, DOT's regulation adopted a modification to Section 406 of the 2004 ADAAG which required the placement of detectable warnings on curb ramps.

The revised DOT Section 504 regulation also provided a "safe harbor" provision (similar to the ADA provision discussed in Question 1) that applies to curb ramps that were newly constructed or altered by entities receiving Federal financial assistance from DOT and that were in compliance with the 1991 ADAAG requirements prior to November 29, 2006. If the "safe harbor" applies, these curb ramps are still considered compliant and do not have to be modified to add detectable warnings unless they are altered after November 29, 2006. The DOT "safe harbor" provision is found at 49 CFR 37.9(c). DOT's Section 504 regulations (49 CFR 27.19(a)) require compliance with 49 CFR Part 37.

The Section 504 safe harbor does not apply, however, if, at the time of the road alteration project, the existing curb ramp does not comply with the 1991 ADAAG and at that time it must be brought into compliance with the current DOT Section 504 requirements (2004 ADAAG) including detectable warnings.

Q14: ***Does the Section 504 safe harbor apply to curb ramps built in compliance with 1991 ADAAG during the time period when the requirement for detectable warnings was suspended and the roadway is now being resurfaced where it intersects the pedestrian walkway?***

A14: If the curb ramps that were built or altered prior to November 29, 2006 were fully compliant with 1991 ADAAG at the time that the detectable warnings requirements were suspended, then the DOT Section 504 safe

harbor applies to them and the recipient does not have to add detectable warnings as a result of a resurfacing project.

Q15: ***In addition to the obligations triggered by road resurfacing alterations, are there other title II or Section 504 requirements that trigger the obligation to provide curb ramps?***

A15: In addition to the obligation to provide curb ramps when roads are resurfaced, both DOJ's title II ADA regulation and DOT's Section 504 regulation (applicable to recipients of DOT Federal financial assistance), require the provision of curb ramps if the sidewalk is installed or altered at the intersection, during new construction, as a means of providing program accessibility, and as a reasonable modification under title II or a reasonable accommodation under Section 504.

New Construction and Alterations

DOJ's title II ADA regulation provides that newly constructed or altered streets, roads, and highways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level pedestrian walkway. In addition, the regulation provides that newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. *See* 28 CFR 35.151(i). These curb ramps must comply with the 2010 Standards.[3]

DOT's Section 504 Federally assisted regulation also requires the provision of curb ramps in new construction and alterations. *See* 49 CFR 27.19(a) (requiring recipients of DOT financial assistance to comply with DOJ's ADA regulation at 28 CFR Part 35, including the curb ramp requirements at 28 CFR 35.151(i)); 49 CFR 27.75 (a)(2) (requiring all pedestrian crosswalks constructed with Federal financial assistance to have curb cuts or ramps).

Program Accessibility

Both DOJ's title II ADA regulation and DOT's Section 504 regulation require that public entities/recipients operate each service, program, or activity so that

the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This obligation, which is known as providing "program accessibility," includes a requirement to evaluate existing facilities in the public right-of-way for barriers to accessibility, including identifying non-existent or non-compliant curb ramps where roads intersect pedestrian access routes (sidewalks or other pedestrian walkways). After completing this self-evaluation, a public entity/recipient must set forth a plan for eliminating such barriers so as to provide overall access for persons with disabilities. *See* 28 CFR 35.150, and 49 CFR 27.11(c).

Since March 15, 2012, the DOJ title II regulation requires the use of the 2010 Standards for structural changes needed to provide program access. However, in accordance with the ADA safe harbor discussed in Question 1, if curb ramps constructed prior to March 15, 2012 already comply with the curb ramp requirements in the 1991 Standards, they need not be modified in accordance with the 2010 Standards in order to provide program access, unless they are altered after March 15, 2012.

Similarly, DOT's Section 504 "safe harbor" allows curb ramps that were newly constructed or altered prior to November 29, 2006, and that meet the 1991 ADAAG to be considered compliant.[4] Elements not covered under the safe harbor provisions may need to be modified to provide program access and should be incorporated into a program access plan for making such modifications. 49 CFR 27.11(c)(2).

Under Section 504, self-evaluations and transition plans should have been completed by December 29, 1979. Under the ADA, transition plans should have been completed by July 26, 1992, and corrective measures should have been completed by January 26, 1995. While these deadlines have long since passed, entities that did not develop a transition plan prior to those dates should begin immediately to complete their self-evaluation and develop a comprehensive transition plan.

Reasonable Modification /Accommodation

In addition to alteration and program accessibility obligations, public entities may have an obligation under title II and Section 504 to undertake curb ramp

construction or alteration as a "reasonable modification/accommodation" in response to a request by, or on behalf of, someone with a disability. Such a request may be made to address a non-compliant curb ramp outside of the schedule provided in the public entity's transition plan. A public entity must appropriately consider such requests as they are made. 28 CFR 35.130(b)(7); 49 CFR 27.7(e).

1 The 2010 Standards can be found on DOJ's website athttp://www.ada.gov/2010ADAstandards_index.htm.

2 In 2004, the United States Architectural and Transportation Barriers Board (U.S. Access Board) published the Americans with Disabilities Act Accessibility Guidelines (2004 ADAAG), which serve as the basis of the current enforceable ADA standards adopted by both DOT and DOJ.

3 The 2010 Standards include a provision on equivalent facilitation that allows covered entities to use other designs for curb ramps if such designs provide equal or greater access. *See* section 103 of the 2010 Standards.

4 The DOT "safe harbor" provision is found at 49 CFR 37.9(c). DOT's Section 504 regulations (49 CFR 27.19(a)) require compliance with 49 CFR Part 37.