

“My Sidewalk has a section lifted up. Who’s supposed to fix it for me?”

The short answer: the homeowner whose property is adjacent to the portion of the sidewalk with the issue is responsible for fixing it.

The long answer: an issue with the sidewalk adjacent to a homeowner’s property creates more than just the responsibility to repair it. It also creates a potential injury liability for the homeowner and the opportunity for Washington County to levy a fine.

There are a number of issues leading to this, but they are all the result of the Allenbach Acres Homeowners Association’s Covenant, Conditions and Restrictions (CC&R) document. The Sidewalks section on page 8 states “Purchaser of the building sites shall install, at purchaser’s cost, concrete sidewalks to county standards long front property lines, and side property lines in the case of corner lots, and concrete driveways from the edge of the finished surface of the county street to the property line and then concrete to connect with the paved surface of the

floor of the garage.” **Each homeowner owns the sidewalk in front of their property because they paid for it as part of the purchase of the property.**



The root system of a tree on a property on NW Deerbrook Court lifted a square of sidewalk concrete on which a mailbox structure sits. The problem is simultaneously simpler and more complicated than it looks.

Nearly all sidewalk issues similar to the one in the photo below are the result of tree roots lifting up a section of sidewalk. The AAHOA CC&Rs require each property to have at least two trees planted in the front of the property (Landscaping section, pg. 8: “All front yard landscaping must include two deciduous trees two inches in diameter at the base.”) Since AAHOA CC&Rs require the planting of the tree that damaged the sidewalk, why isn’t AAHOA responsible for the cost and execution of sidewalk repairs caused by trees the AAHOA CC&Rs require?

If AAHOA carried responsibility for sidewalk repairs, AAHOA would be required to carry liability insurance for

all the sidewalk surfaces in the neighborhood. That liability insurance would be duplicitous on every homeowner’s property insurance; why pay additional HOA fees for an insurance policy that duplicates each homeowner’s existing policy? In addition, HOA would need to collect an additional fee to fund a purpose-specific account for paying for repairs.

Homeowners own the sidewalk in front of their properties. So homeowners are responsible for repairing issues with the sidewalk. OK, fine. Someday the sidewalk will be repaired.

Except Washington County is empowered by Oregon Law ORS 368.910 to enforce the repair of residential sidewalks. Any County citizen can report the need for a sidewalk repair to the County. ORS368.910 enables Washington County to identify a sidewalk in need of repair and notify the responsible party to repair the sidewalk within 30 days of the notice date. If the

responsible party does not comply with the notification, the County can choose to assign a work crew to repair the sidewalk and put a lien on the responsible party's property for the County's cost. That cost will likely be well in excess of what the homeowner would have paid to repair the sidewalk themselves.

Even though Washington County does not take responsibility for repairing sidewalks, it does regulate their repair. A homeowner is required to get a Sidewalk Repair Permit <https://www.co.washington.or.us/LUT/Divisions/Operations/Permits/row-permits.cfm> from the County before starting work. Mercifully, there is no fee for the Permit.

Let's say the section of sidewalk at issue has a mailbox for USPS services mounted on it (as does the one in the photo). Does USPS need to be involved in the repair? Does USPS need to approve or permit the temporary removal of a mailbox? Is it a federal offense to temporarily remove a mailbox without USPS approval?

Thankfully, the USPS is not involved with such a repair for a simple reason: USPS doesn't own the mailboxes in the neighborhood. The cost of mailboxes and their installation was absorbed by the developers who built the homes in Allenbach Acres and passed on to homeowners at the time of purchase.

The issue in the photo creates an opportunity for community development: the homes served by the mailbox can come together and share the cost of repairing the sidewalk and doing the labor for the repair. Allenbach Acres homeowners could choose to have the HOA take responsibility for sidewalk repairs by amending the CC&Rs. However, the annual cost to each homeowner for passing on the responsibility for sidewalk repairs is larger than the cost to the homeowners affected by the sidewalk issue simply coming together and sorting it out themselves.