



# CITY OF FERNDALE

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## VISTA RIDGE FREQUENTLY ASKED QUESTIONS

### **Why is the City taking this action/ what is the action that the City intends to take?**

The City is requiring that property owners within the Vista Ridge Neighborhood initiate repair of damage to sidewalks that are adjacent to private property within the neighborhood. The damage is a result of street tree roots that have expanded and caused cracking and buckling to areas of the sidewalk and is a public health and safety hazard.

Within the City of Ferndale, property owners are responsible for the sidewalk and street trees/vegetation directly abutting their properties. This includes not only making repairs to these facilities as a result of damage caused by the property owner, but also maintaining this infrastructure in good condition.

The City issued a letter to this effect and has recommended a process through which the Vista Ridge neighborhood would meet to determine neighborhood goals and desired outcomes, followed by discussions with the City to identify responsibilities, timelines, and the scope of work.

The City recognizes that the widespread nature of this issue will likely require the participation of the larger neighborhood rather than individual owners with abutting property. The City has a range of expertise and experience that may aid in these efforts and is willing to participate by attending neighborhood meetings and directing design efforts. The City Council has also authorized a limited expenditure of funds to support these efforts.

After the neighborhood's initial meeting and subsequent meeting with the City, a third party engineer or consultant will need to be engaged to develop a design or plan. It is the City's expectation that this consultant should be engaged no later than the latter half of 2022, with improvements taking place no later than 2023.

### **What has the City done thus far to address the issue?**

As it does throughout the city, City staff have been monitoring the condition of the sidewalks within the Vista Ridge neighborhood on a regular basis. In approximately 2014, City staff determined that root intrusion from adjacent street trees planted by the original developer was

beginning to impact sidewalk panels within the neighborhood. In 2015, following discussions with the City Council the City retained a contractor to grind panels in order to re-establish a level surface. Sidewalk grinding is a typical mitigation measure that may in some cases be a permanent solution, but may in other cases – such as this one – be temporary. Following this grinding, the City has continued to monitor the sidewalk panels, and has determined that the sidewalks continue to be impacted by expanding roots throughout the neighborhood. As grinding by nature eliminates sidewalk material, the City is limited by how much it can continue to mitigate the situation by grinding the sidewalks, and has now reached the point where the sidewalk itself may be compromised if additional grinding were to occur.

The City has determined that the tree species selected and planted by the original developer will continue to impact the sidewalks, and that a more-permanent solution has become necessary.

### **What are the City's overall objectives?**

The City's primary objective is to ensure that there continues to be a safe, ADA-accessible, and vehicle-separated pedestrian walking surface (a sidewalk) throughout the Vista Ridge neighborhood. The maintenance and preservation of a sidewalk represents a vital component of basic infrastructure, and is an important life-safety measure for pedestrians and bicyclists.

Street trees are also an important element in a neighborhood, creating a sense of place, increasing property values, moderating temperatures, and providing a range of environmental benefits. In the present case, the trees in question have reached a point of maturity that could not be quickly replicated. However, replacement with a different species of younger tree, together with sidewalk repairs or reconstruction could be a viable option for the community to consider.

With this in mind, the City has requested that the neighborhood meet to discuss its desired solution, which may differ from a City-generated solution that would seek first to recreate sidewalk safety, walkability, and durability, and second to consider property values, sense of place, and aesthetics.

### **When did the City first become aware of this issue?**

The City began to see evidence of root intrusion in approximately 2014, and performed work in an attempt to address the situation. The City has monitored the sidewalks on a regular basis since then, and in 2021, determined that the sidewalks had continued to deteriorate as a result of root intrusion. The City marked the sidewalk panels which had buckled or deteriorated at that time. In early 2022 the City determined that additional grinding was not an appropriate permanent mitigation measure, and that a more-comprehensive solution was necessary.

### **Does the neighborhood need to work together to develop a solution/ can individual property owners remedy the matter themselves?**

Due to the widespread nature and safety issues of the root intrusion, the advantages of distributing the costs amongst the neighborhood, the increased costs to hire multiple contractors

to perform work on individual sections, the need to recreate a continuous sidewalk path and consistency throughout the neighborhood, and the benefits to the entire neighborhood of a comprehensive repair, the City strongly encourages the neighborhood to work together to identify a solution for the neighborhood as a whole.

Depending on the solution arrived at by the neighborhood, there may be the ability for individual property owners to contract some or all of the work themselves. However, the City cannot guarantee that such work will result in a cost savings to those individuals, or the neighborhood in general, as each element will require City inspection.

### **Is the City going to participate in future neighborhood meetings about this issue?**

Absolutely. Following the first neighborhood meeting (scheduled for June 9<sup>th</sup> at the Pioneer Pavilion), the City will work with event organizers to review questions asked and direction provided at the first meeting. This will help to inform the agenda at subsequent meetings, and to initiate potential design and cost estimates and to delegate responsibility for initiating the work.

### **Is the City requiring removal of the trees? Is this a tree issue or a sidewalk issue?**

The City is not requiring the removal of the trees. However, the tree species in question has not yet reached a point of maturity; even after maturity is reached it is likely that the individual tree roots will continue to expand as they seek an underground water source. Therefore, even if the sidewalk is replaced and the existing trees remain, the City expects that the issue will re-occur and will have to be addressed by the property owners, possibly at a greater cost.

There is the potential for the sidewalk to be relocated a greater distance from the existing trees; however, this approach may in some cases impact the front yards of adjacent properties. Further, relocation of the sidewalk may require the dedication of property to ensure the sidewalk remains within City Right-of-Way. There are also scenarios in which new, street-tree appropriate species of trees are planted in combination with “root barriers” that are designed to prevent or slow the spread of tree roots.

### **How can individual property owners understand the level of work that might be associated with the trees abutting their property?**

That will depend on decisions reached at the neighborhood meetings. In general, the sidewalks within Divisions I and II of the subdivision have experienced the most significant impacts. The City believes that this is due partly to the fact that these street trees are slightly older, but most likely because the trees planted in Division III are of a slightly different species, which may be more appropriate for street trees.

The level of work that might be associated with individual properties depends greatly on the solution that the neighborhood desires. The sidewalk itself must be repaired, and in most cases will need to be replaced. As noted, the City believes that replacement/repair of the sidewalk must include steps to minimize the likelihood of future root impacts, and this may necessitate the removal of trees/roots and their replacement.

### **Has a report been created per Ferndale Municipal Code 12.16.020?**

No report has been created as part of the current neighborhood notification; however, a report was previously presented to Council in May of 2014. Ferndale Municipal Code 12.16.020 requires that the Public Works Director create such a report when the City receives a written complaint. This code section is intended to ensure that the City responds to written complaints, and seeks to verify that the complaint is legitimate. In this case, the City is unaware of any recent written complaints that have been submitted to the City related to this issue.

### **The City Council Public Works Committee met to discuss this issue in 2014. What resulting from this meeting?**

The City Council did meet to discuss this issue; at that time the City Council Committee learned that there were 88 sidewalk panels requiring replacement, and 44 trees that would require removal, or were impacting the sidewalks, as well as eight curb sections. The City Council directed City staff to take temporary action to grind compromised sidewalks, and to follow up with adjacent property owners in order to develop a more-permanent solution. The City subsequently ground the sidewalks, at its cost, which was intended only to mitigate the issue until such time as a permanent solution could be put in place. The City has continued to monitor the sidewalk condition, and in 2021 determined that the root upheaval had continued and had now reached a condition where a permanent solution is now necessary. Based on this determination, the City sent a letter to all property owners in 2022.

### **Did the City plant these trees? If not, who did?**

No. The original property development company Homestead NW Development was responsible for identifying the location and type of street trees to be used. Homestead subsequently purchased and installed the trees. City records from the time include requirements that such trees be appropriate for street tree installation, and cited potential concerns related to inappropriate tree species, and their potential to cause impacts to sidewalks and other infrastructure. It was the responsibility of the developer to ensure that the tree species used was appropriate for its location.

### **Is the City participating in covering the costs for repair?**

The City expects to participate in some of the costs for the repair and replacement of the sidewalk, including the costs of design, and hiring a consultant to perform such design. However, the City will not be responsible for the full repair costs of the sidewalk, and anticipates that the neighborhood will pay for all or the majority of the costs associated with sidewalk repair and the removal or replanting of street trees, should this become necessary.

The City Council has budgeted \$50,000 in the 2022 budget for this purpose. 2022 expenditures will likely be limited to design. The City Council may consider additional funding as part of the 2023 budget, but in making such a decision must also continue to comply with the Ferndale Municipal Code and the Revised Code of Washington, which require that adjacent property owners be responsible for the maintenance and repair of adjacent sidewalks, and the

Washington State Constitution which prohibits gifting of public funds: were the City to absorb the full cost of the maintenance and repair of Vista Ridge sidewalks, it would create a precedent wherein the collective taxpayers are responsible for the maintenance and repair of all sidewalks, which would likely result in an increase in property taxes or a diminishment of services and could also create constitutional gifting issues.

### **Will the property owners be responsible for the entirety of the costs?**

The property owners are responsible for the maintenance and repair of adjacent infrastructure, including the sidewalk and street trees in question per City code. However, the City recognizes that the level of complexity and the scope of the project exceeds typical repair and replacement expectations. As such, the City is prepared to provide logistical support and reasonable financial support for consulting and design work for sidewalk repair and replacement, as the City retains an interest in ensuring that sidewalks are safe, walkable and ADA-compliant. While the City supports the planting of street trees and other vegetation, it is strictly limited in its ability to participate financially in the replacement of street trees, especially if a street tree replacement program were to exceed the minimum standards of the Ferndale Municipal Code.

### **Explain why the property owners, and not the City, are responsible for these costs?**

Upon the recording of the final subdivision that created the individual lots within the Vista Ridge subdivision, the responsibilities of the original developer were transferred to their successors in interest – the collective homeowners. These responsibilities include, but are not limited to, sidewalks and street trees, private alleyways, community tracts, and more. In turn, the City inherited maintenance responsibilities for roadways, street lights, the Vista Ridge park, and more. These provisions are contained within the Ferndale Municipal Code, the neighborhoods Covenants, Codes, and Restrictions (CC&R's), and the original subdivision approval documents.

### **Does the City have any responsibility to participate in repairs under the provisions of the Revised Code of Washington (RCW) 35.69.020?**

RCW 35.69.020 places the responsibility for maintaining and improving sidewalks on the abutting property owners, but it provides two exceptions. The first exception limits the total cost burden that can be placed on a property to less than 50% of the assessed valuation of the adjoining property. The second exception applies if the reconstruction is "required to correct deterioration of or damage to the sidewalk that is the direct result of actions by the city or its agents or to correct deterioration of or damage to the sidewalk that is the direct result of the failure of the city to enforce its ordinances."

The costs of reconstruction should not exceed fifty percent of the assessed value of any property within the subdivision; therefore, the first exception does not apply.

As to the second exception, the deterioration of the sidewalks is not a direct result of actions by the City or its agents. Instead, the sidewalk deterioration is caused by an inappropriate species of street tree planted by the original property developer, acting as their own agent. It was the

responsibility of the developer to ensure that the tree species used was appropriate for its location. Further, the City has (and is) enforcing its ordinances through this and previous actions.

**What other neighborhoods have had similar experiences? Did the City take the same approach in those situations?**

The City is not aware of any other neighborhood that has experienced root intrusion and compromised sidewalks, to the extent occurring in Vista Ridge. As stated, the City believes that the Vista Ridge experience is based primarily on the planting of an inappropriate tree species by the original developer of the subdivision, and this issue appears to be relatively unique to this neighborhood.

Other neighborhoods have experienced a smaller number of root intrusion or compromised sidewalks; in these cases the City has successfully performed sidewalk grinding, and/or the City and property owner have removed or replanted trees. The City is currently in the process of completing an "ADA Transition Plan," which analyzes sidewalks and street infrastructure throughout the City in order to identify barriers to accessibility, including compromised sidewalks. It is likely that this plan will identify other locations that will require action, although no other neighborhood has been identified that has an issue of this magnitude. This analysis is expected to be completed in 2022.

It should also be noted that the Vista Ridge subdivision was created in the mid/late 1990's, a point of time in which the City was transitioning from an era in which street trees and even sidewalks were not necessarily a requirement of development. By the early 2000's, the City had established additional controls to ensure that street trees were adequately spaced, sized, and located within a subdivision, partly to protect against the inappropriate location and placement of street trees within a neighborhood, similar to what is seen in the Vista Ridge development. At the time Phase I and Phase II of Vista Ridge received final approval, the City code did not include a street tree ordinance, thus the developer was charged with ensuring the appropriateness of tree species planted as street trees.

**Does the City have a cost estimate for repairs?**

The City has not prepared a cost estimate for the sidewalk repairs.

**This is a significant unexpected expense and neighbors may have different abilities to pay. Is there any way to arrange a payment plan with the City?**

The City is forbidden from extending credit by the Washington State Constitution.