PUBLIC WORKS AND FACILITIES COMMITTEE
MEETING REPORT
Wednesday, October 21, 2026 @ 6:00pm

Call to Order

Chair Callahan called the meeting to order. Present were Chair Callahan, Councilor Leming, Councilor Scarpelli, Vice President Lazzaro, and President Bears. Councilor Tseng was also present.

26-172 – Order to Place Adoption of M.G.L. chapter 40, Section 6C Before Voters in November 2027 (Regarding Liability on Private Ways)

Resolution:

Whereas, in *Gallagher v. City of Medford*, a resident brought suit against the City after suffering injuries caused by a defect on a private way; and,

Whereas, the City sought summary judgment, arguing it had no maintenance obligation over private ways; and,

Whereas, the Appellate Division of the District Court Department found that the City's informal maintenance on that private way — performed without the City having adopted M.G.L. c. 40 §6C — estopped the City from denying that way's public status under G.L. c. 84, §25; and,

Whereas, the Court stated directly: "It is undeniable that a city or town which has accepted G.L. c.40 §6C may remove snow and ice from a private way without risk that such services will constitute repairs cognizable under G.L. c.84, §25;" and,

Whereas, following the *Gallagher* ruling, the City has not acted to adopt G.L. c. 40 §6C; and

Whereas, the City of Medford continues to perform informal maintenance, sweeping, and snow and ice removal on all private ways; and

Whereas, Section 6C's liability carve-out only protects the City if the City has actually accepted it; and

Whereas, 39% of Medford roadways are designated private ways; and

Whereas, since 2020, the City has appropriated $0.00 for private way repairs; and

Whereas, no maintenance or upkeep services are provided but for the informal services outlined in *Gallagher*; and

Whereas, without acceptance, the City is unnecessarily exposing itself to full public-way tort liability; and

Whereas, acceptance of the measure requires a ballot question at the next regular City election; now, therefore:

By the Medford City Council that we hereby vote, pursuant to Massachusetts General Laws Chapter 40, Section 6D, to submit for acceptance to the registered voters of the City, at the next regular City election, the question of whether the City shall accept the provisions of Massachusetts General Laws Chapter 40, Section 6C.

Discussion:

Councilor Scarpelli emphasized that the intent of the resolution is to help clarify misconceptions and misunderstandings regarding private ways, and help residents understand what the City is doing, what it is able to do, and what residents' responsibilities are. His focus is on establishing a line item that identifies for the City Council what is available for private ways.

Chair Callahan invited Councilor Tseng to provide a summary of Mass General Laws Chapter 40, Section 6. Councilor Tseng reviewed his presentation titled "Snow Removal on Private Ways M.G.L. c. §40 6C," a copy of which is attached hereto.

Councilor Leming expressed that, whether or not it succeeds, having a ballot question will serve as a public education initiative to make residents more aware of the private vs. public way distinction. If it passes, it would allow the City to make progress on the issue, and if it were to fail, voters would understand that at least the City tried to address the issue.

Prior to the meeting, Commissioner of Public Works Tim McGivern sent an email to the Council addressing the topic of private ways, a copy of which is attached hereto. In the meeting, Commissioner McGivern thanked Councilor Tseng for his presentation. He clarified that Section 6C would address only snow and ice removal on private ways. He believes that a ballot initiative would pass since the City already does remove snow and ice on private ways as an emergency measure. He also clarified that private ways are not always owned by the abutters , but that under the state's Derelict Fee Statute, unless a deed specifies otherwise, ownership of and responsibility for a private way defaults to the abutters of the way. He stated that the City takes the position that the public has right of access on private ways, which includes dead-end private ways because public services still need the ability to access the end of the dead-end, and therefore property owners abutting a private way may not blockade the road.

Commissioner McGivern stated that, if the City were to adopt Section 6C, it would limit liability for the City for removing snow and ice from private ways, similar to the City's existing liability limits for snow and ice removal on public ways.

Commissioner McGivern noted that the City has an existing ordinance under Chapter 40, Section 6N which allows a municipality to make temporary repairs to private ways, but highlighted that public obligations come first. The City owns and operates a public way network of roads, and all property owners pay taxes into that public way network regardless of whether they live on a private way or a public way. City taxes pay to upkeep. As a result, the City has not been making use of the ordinance because the City's obligation for public road upkeep is so large. However, some funds are spent on private way repairs currently, and those repairs are included in the highway operation budget appropriated each year, although the amount expended on private ways is not tracked separately.

With respect to trees on private ways, Commission McGivern explained that, while the paper being discussed was focused on the provisions of Section 6C for snow and ice removal on private Ways, unless a tree is publicly protected under Chapter 87 of Mass General Laws, the

obligation to maintain a tree runs with the land and falls to the title holders of the land. However, the City does assist with trees on private ways in public emergency situations where a tree poses an immediate threat to the public. He acknowledged that the City has worked on trees on private properties in the past, and there has not always been clarity of what the Department of Public Works is and is not able to do, but they are working to clarify what the policies are.

Addressing the Council:
Paul Gerety
Jean Diskin
Sharon Deyeso

Motion by President Bears to refer the matter to a future Regular Meeting of the City Council, as amended by Councilor Scarpelli to request legal counsel provide clarification on the liabilities for snow removal on private ways, seconded by Councilor Scarpelli. Approved on a Roll Call Vote of Five in favor, Zero opposed.

26-182 - Resolution on Routine Maintenance and Upkeep of Private Ways

Resolution:

WHEREAS, Chapter 90 funds are state aid, restricted for use on public ways only;

WHEREAS, on average Medford's annual Chapter 90 aid hovers around $990k;

WHEREAS, the City Administration, in its annual budget since 2020, relies solely on Chapter 90 funds for the maintenance and upkeep of City roads;

WHEREAS, the City Administration has a policy of refusing to perform certain routine maintenance and upkeep of private ways, citing the restrictions of Chapter 90 funds;

WHEREAS, the use of revenue generated through taxation is not restricted for use on public ways only;

WHEREAS, a taxation override for the purpose of funding a dedicated Road & Sidewalk Crew, allocated $500,000 annually to establish a permanent, in-house DPW repair division specifically

WHEREAS, these override funds are not restricted by the provisions of Chapter 90;

WHEREAS, the City Administration, since 2020, has appropriated $0.00 for the maintenance and upkeep of private ways;

WHEREAS, 39% of the streets in the City are private ways, that do not receive their fair share of funding for roadway maintenance and upkeep;

WHEREAS, the use of tax revenues for the purpose of maintaining and upgrading our private ways is not precluded by state statute; and

WHEREAS, appropriating tax revenues for the purpose of funding for maintenance and upkeep of private ways is a budgetary decision of the City Administration; and

WHEREAS, the City Administration has failed to make equitable delivery of public works services a priority;

Be it therefore RESOLVED that the City Administration create and assign a specific account and line item for the purpose of funding Private Way Upkeep and Maintenance.

Discussion:

Councilor Scarpelli stated it was important for residents to understand the legalities of what the City can and cannot do on private ways, and to understand the process for converting private ways to public ways. The City's Chapter 90 funds may only be used on public ways, and because of the large portion of Medford's roads that are private ways the amount of Chapter 90 funding the City receives is impacted. Many residents are not aware that they live on a private way and are therefore confused when the City notifies them that they are responsible for their road. The intent of this paper is therefore to start a dialogue to understand funding and responsibilities for private ways and Councilor Scarpelli implored the Mayor and the City's communications team to find an avenue to distribute information about private ways both on paper and on the City's website. Councilor Scarpelli would also like to see a line item established in the City's budget for emergency work on private ways, which could be used to fill potholes or remove a tree causing an imminent threat.

President Bears noted that the question of private ways is a perennial concern because of the scale of the issue in the City, with the potential cost to the City to adopt all the private ways as public ways potentially being as much as $500 million. He stated that the City has been let down by decisions made by people 50-100 years ago who laid out the City. Councilor Bears recommended that a centralized Frequently Asked Questions (FAQ) page be created on the City's website consolidating all of the information on private ways, to which the City can refer residents.

Chair Callahan asked whether having a line item in the budget for repairs to private ways could pose a legal issue by creating liability for the City.

Commissioner McGivern stated that allocation of specific money for private ways should go under Section N in the City's ordinances for capital projects. However, he is concerned about doing that because of the lack of funding for a line item, and he believes the City should wait a few years before moving forward with creating a separate line item for private ways.

Commissioner McGivern stated that there are different types of ownership on a private way and therefore the City cannot publish a list of private ways, but instead could provide a list of the public ways that are under the care and control of the City to assist residents in determining whether their property is on a public way. Commissioner McGivern also emphasized the importance of residents who are buying a house to investigate the title for the property to understand whether it is on a private way. The City is already in the process of drafting a map of all of the City's public ways, and the DPW is also drafting a document providing guidance on the responsibility of caring for trees on private ways. The City also does currently work with residents on private ways. For example, on Hall Ave, which is a cut-through private way, Todd Blake, the City's Director of Traffic and Transportation, is working with the residents on traffic improvements.

Commissioner McGivern noted that some private ways would require tens of millions of dollars of work to bring them up to the required standards to be adopted as public ways. It is the property owners along a private way that pay the cost to bring the way up to public standards so that the City can accept it for care and control as a public way. That includes making sure all the utilities are installed properly, that there is granite curbing, and that there are sidewalks that are the correct width to comply with the ADA. In the 1980s, the City had a poll and levy system where there would be a poll of all of the property owners on a private way, and if they were all in agreement about the way being adopted as a public way, the City would levy a tax on those individual parcels.

Councilor Scarpelli clarified that the line item would be intended to address emergency situations but that he understood that the City would need to have a more clearly defined policy for use of the funds. He recommended that the Council seek a legal opinion on the liability if the City were to establish a line item. Also, in addition to the map of public ways, he requested that the website include an explanation of what it means if a street is not listed as a public way.

Motion by Councilor Scarpelli to keep the paper in Committee, to discuss in the Committee information that the Council will request to be added to the City's website regarding private ways, and to request guidance from legal counsel on having a line item in the City budget for maintenance of private ways. Seconded by President Bears. Approved on a Roll Call Vote of Five in favor, Zero opposed.

Adjournment:

Motion by Councilor Bears to adjourn, seconded by Councilor Lazzaro. Approved on a Roll Call Vote of Four in favor, One opposed (Councilor Leming).

Respectfully submitted,

Laurel Siegel

Laurel Siegel
City Clerk

COMMITTEE ON PUBLIC WORKS AND FACILITIES

Snow Removal on Private Ways

What M.G.L. c. 40, § 6C allows, how voters would decide, and what it means for the City's responsibility for private streets

Order 26-172 · Medford City Council · October 21, 2026

BACKGROUND

First, two kinds of streets

Public way

A street the City has formally accepted. The City must keep it in repair and clear of snow.

If a defect causes an injury, a person can bring a claim against the City, within limits set by state law.

Private way

A street the City has never accepted. Its owners, usually the neighbors along it, are responsible for it.

Many private ways are still open to anyone to drive or walk on.

39% of Medford's roadways are private ways, according to 26-172.

OVERVIEW

The short version

1. **§ 6C lets the City spend money to plow private ways.** Only Medford voters can adopt it.

2. **It covers snow and ice only,** not potholes, patching, or other repairs.

3. **Plowing under § 6C won't count as a "repair"** that makes the City responsible for the street.

4. **Repairs fall under a different law, § 6N.** Medford already has a § 6N ordinance, Sec. 74-91, and the Council can update it without a ballot vote.

THE LAW

What § 6C does, and doesn't do

If voters adopt § 6C…	Answer
Can the City spend money to clear snow and ice from private ways open to the public?	Yes
Does the City Council choose which private ways get plowed?	Yes
Is plowing kept from counting as a "repair" of the street?	Yes
Does it cover potholes, patching, sweeping, or other repairs?	No
Must the City plow every private way?	No
Does any private way become a public street, or change owners?	No

Source: M.G.L. c. 40, § 6C

THE LAW

How Medford would adopt § 6C

STEP 1 · NOW

Council puts it on the ballot

This is what Paper 26-172 would do.

STEP 2 · NOV. 2027

Voters decide

If a majority votes yes at the city election, § 6C takes effect.

STEP 3 · BEFORE WINTER

Council picks the streets

The Council names which private ways get plowed and sets aside funds.

Why a ballot vote?

State law (§ 6D) says a city must ask its voters. The Council can't adopt § 6C on its own. The next regular city election is November 2027.

WHAT VOTERS WILL SEE

"Shall the city vote to accept the provisions of section six C of chapter forty of the General Laws, which authorize cities and towns to appropriate money for the removal of snow and ice from private ways therein open to public use?"

Source: M.G.L. c. 40, § 6D

WHAT A VOTE WOULD MEAN

Today vs. a yes vote vs. a no vote

	Today	If voters say yes	If voters say no
Can the City pay to plow private ways?	It plows now, but state guidance says it needs § 6C to pay for it	Yes, on streets the Council picks	No clear authority; harder to justify
Could plowing make the City responsible for a street?	Unclear: a court could call it a “repair”	No: § 6C says plowing isn’t a repair	Unclear, same as today
Do repair rules change?	No	No	No
Does any street become public?	No	No	No

In short: a yes vote puts plowing on solid legal footing; a no vote leaves it uncertain.

State guidance: Division of Local Services letter to Wellfleet, December 2, 2005

LIABILITY

How the City's liability works today

PUBLIC STREETS

If a defect causes an injury, a person can bring a claim against the City.

State law limits these claims: damages are capped at $5,000, and the injured person must notify the City quickly.

PRIVATE STREETS

Normally, the City isn't responsible.

But if the City **repaired** the street in the six years before an injury, a court can treat it like a public street.

The key point: every repair the City makes on a private way can bring liability with it.

Sources: M.G.L. c. 84, §§ 15, 18, 25

LIABILITY

What a yes vote changes for liability

Protected

Plowing and salting the private ways the Council picks. These won't count as a "repair."

Not protected

- Filling potholes and patching
- Street sweeping and other upkeep
- Damage from careless plowing, such as to a car or fence (a separate law, c. 258, applies)

§ 6C is permission to pay for snow and ice removal, plus one narrow protection. Repairs need a different fix: § 6N.

Sources: M.G.L. c. 40, § 6C; c. 84, § 25; c. 258

REPAIRS

§ 6N: the law for repairing private ways

What it does

It lets a city adopt an ordinance setting the rules for temporary repairs on private ways.

No ballot vote is needed. The Council can adopt or change the ordinance itself.

The ordinance must decide…

1. What repairs are allowed
2. Whether drainage is included
3. Whether repairs must be a public necessity
4. How many neighbors must ask for repairs
5. Whether neighbors share the cost (betterments)
6. **The City's liability limit for damage from repairs**
7. How long the street must have been open to the public
8. Whether a cash deposit is required

Source: M.G.L. c. 40, § 6N

REPAIRS

Medford's ordinance: Sec. 74-91

What § 6N says to decide	What Sec. 74-91 says	Status
What repairs are allowed	Broad: includes reconstruction and resurfacing	Covered
Whether drainage is included	Drainage may be included	Covered
Public necessity	Not addressed; left to the mayor	Missing
How many neighbors must ask	51% of neighbors who live on the street	Covered
Whether neighbors share the cost	Not addressed	Missing
City's liability limit	Not addressed	Missing: key gap
Years open to the public	Five years or more	Covered
Cash deposit	Not addressed	Missing

Sources: M.G.L. c. 40, § 6N; Medford Code Sec. 74-91 (adopted 1986, last amended 2008)

REPAIRS

Updating Sec. 74-91

Why it needs an update

No liability limit: City repairs can still make it responsible for a street.

Unused: per the order, $0 has gone to private-way repairs since 2020, so patching happens outside it.

Very broad: “temporary” repairs include reconstruction and resurfacing.

Possible changes

1. Set a limit on the City’s liability for damage caused by repairs
2. State that repairs don’t make a street public or promise future repairs
3. Have neighbors who request repairs agree to cover related claims
4. Decide on cost-sharing, public necessity, and deposits
5. Add a simple process for small safety fixes, like potholes

> The Council can make these changes by ordinance.

Source: M.G.L. c. 40, § 6N

NEXT STEPS

If voters say yes: what comes next

Choosing streets

The Council names which private ways get plowed. Criteria and a street list should be ready before the first winter.

Which streets qualify

Only ways “open to public use.” Streets posted private or used as driveways may not qualify.

Funding

§ 6C allows spending but doesn’t provide money. The Council would set aside funds each year.

For residents: City plowing won’t make your street public, and it isn’t a promise of paving.

Source: M.G.L. c. 40, § 6C

Chair Callahan and President Bears,

I look forward to discussing 26-172 and 26-182 about private ways with you and the other Councilors later today. I'm in favor of adopting Section 6C, so I'm glad to see that. I want to get a few corrections or clarifications on the record in writing, but I can also bring them up later to discuss.

It is mentioned that the City has "*appropriated $0 for private way repairs*". This is not true. Filling potholes is a type of repair, and it is appropriated annually into the Highway operations budget. Private ways tend to need a lot of pothole asphalt, so we also occasionally "box out" patch areas that do not accept pothole repairs any longer due to pavement degradation.

It is mentioned that the City Admin relies "*solely on Chapter 90 funds for the maintenance and upkeep of City roads*". We have relied heavily on Chapter 90 for capital projects at the level of milling and overlays and other preventative maintenance activities on the public way network. This year, the City Council recently appropriated money for $1.3 Million in milling and paving, which is more than matching Chapter 90 funding. This type of annual commitment, likely more, is needed to maintain or increase our public way network pavement condition index (PCI) over time.

It is mentioned that the City Admin has a "*policy of refusing to perform certain routine maintenance and upkeep of private ways, citing the restrictions of Chapter 90 funds*". We do not have such a policy, and the only services we refuse are capital improvements. We are following well established Mass General Law, including public obligations to the public way road network. We provide minor repairs (potholes), plow and de-icing services, and sweeping. These activities, and investments, are all a part of maintenance and upkeep and are provided to private ways in Medford.

It is mentioned the "*override funds are not restricted by the provisions of Chapter 90*". That is true, however, they are restricted to public obligations, including some limited maintenance and upkeep of private ways as previously mentioned. The override funds our Highway Operations, which covers the municipal public ways and the private ways.

It is mentioned that the "*City Administration, since 2020, has appropriated $0 for the maintenance and upkeep of private ways.*" This is not true. As stated above, we appropriate money every year into the Highway budget for limited upkeep and maintenance services which are allowed on private ways. 2020 is relevant since we have been tracking our PCI for the public way network since that time. That annual assessment helps clearly advise on our obligations to the public way road network.

The City has an Ordinance, Temporary repairs of private ways, Section 74-91. It allows frontage holders of private ways to petition the City for "temporary repairs" subject to appropriation and approval from the Mayor and City Council and recommendation from myself and the City Engineer. This is further defined to be activities up to reconstruction. This Ordinance has not

been used since understanding the condition of the public way road network after completing our first pavement assessment. Since the public way road network is an obligation of the City and the DPW, we have not been in a position to recommend funds be spent on private ways. This will likely be the case until we have a stable PCI at an acceptable level for the public way road network. At that future time, we could consider additional funding for private way capital improvements.

And lastly, it is good to be aware that there already exists a process to have a private way become a public way. Most roads partake in this evolution, but some do not for a variety of reasons. The process requires investment in one way or another from the frontage holders of the road. In the past, the City has performed proactive poll and levy style conversions/takings of private ways, and private way owners are always allowed to improve their own road and petition the City for acceptance. It is not cheap, but if you own a parcel on a public road, a previous owner of your parcel paid for the improvements either in the initial sale price of their home, or later when the road was upgraded when funds became available. Some private ways need minimal investment to become public way standard, but others would need to be re-built and possibly widened.

I hope this information is helpful for tonight's discussion. Happy to expand on any of this and discuss.

Regards,
Tim