

CITY OF MARCO ISLAND

ORDINANCE NO. 05-10

AN ORDINANCE TO AMEND CHAPTER 42, ARTICLE II OF THE CODE OF ORDINANCES OF THE CITY OF MARCO ISLAND, FLORIDA PERTAINING TO SIDEWALKS; AMENDING SECTION 42-32 RELATING TO THE PURPOSE AND INTENT OF THE SIDEWALK ORDINANCE; AMENDING SECTION 42-36 RELATING TO THE DUTY OF ABUTTING PROPERTY OWNERS TO CONSTRUCT AND MAINTAIN SIDEWALKS; AMENDING SECTION 42-39 RELATING TO ASSESSMENTS FOR WORK DONE BY THE CITY; ADDING SECTION 42-42 RELATING TO A PRIVATE RIGHT OF ACTION FOR INJURIES OR DAMAGES ARISING OUT OF A VIOLATION OF CHAPTER 42, ARTICLE II; PROVIDING FOR INCORPORATION, CONFLICT AND SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, to perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Council Island has previously determined that the promotion of the health, safety, and welfare of the residents and visitors will be accomplished by establishing requirements for the construction and maintenance of sidewalks; and

WHEREAS, said regulations relating to the construction and maintenance of sidewalks within the City were originally adopted by City Ordinance 99-2 and codified in Chapter 42, Article II of the Code of Ordinances of the City of Marco Island; and

WHEREAS, pursuant to the Charter for the City of Marco Island and Florida law, the City Council has the power to adopt ordinances as may be required for the good government of the City; and

WHEREAS, the City Council deems it necessary to make certain amendments to Chapter 42, Article II which was originally adopted by City of Marco Island Ordinance 99-2; and

WHEREAS, after considering the recommendation of the City staff and following a public hearing on the subject, the City Council has determined it is in the best interest of the City of Marco Island to approve those texts amendment to the Code of Ordinances contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MARCO ISLAND, FLORIDA:

SECTION ONE:

That section 42-32 of the Code of Ordinances is hereby amended to read as follows, with underlining indicating new text additions and strikeouts indicating deletions:

Section 42-32. Purpose and intent of article

The purpose and intent of this Article is to:

(1) Promote the health, safety and welfare of the residents and visitors of the city of Marco Island by establishing requirements for the installation and maintenance of sidewalks;

(2) Delineate the responsibility between the city and property owners in connection with the installation and maintenance of sidewalks;

(32) Improve transportation safety through the construction and maintenance of pedestrian ways;

(43) Provide physical and psychological benefits to persons desiring to walk within their neighborhoods or to and from commercial areas.

SECTION TWO:

That section 42-36 of the Code of Ordinances is hereby amended to read as follows, with underlining indicating new text additions and strikeouts indicating deletions:

Section 42-36. Duty of abutting property owners to construct and maintain sidewalks

(a) Generally. It shall be the duty of every each owner of abutting property to construct or reconstruct, maintain and keep in good condition and repair, sidewalks in front of or abutting upon each parcel of his the owner's property. It is unlawful for any owner, occupant or agent of any property to allow a sidewalk in front of or abutting such property to remain in a condition that renders it unsafe, dangerous or detrimental for the purpose for which it is intended. Any sidewalks damaged during new construction or renovation is presumed to be caused by the owner or his the owner's agent undertaking construction or renovation. It shall be the owner's responsibility to promptly repair or replace the damaged any sidewalk damaged during construction or renovation at the owner's expense.

(b) Duty to Inspect. A property owner, occupant or agent shall inspect all sidewalks in front of or abutting upon the owner's property for unsafe conditions. Where a sidewalk is in the public right-of-way and is in an unsafe condition, the property owner, occupant or agent thereof, or third party shall immediately notify the city of any unsafe condition by written notice. Upon investigation and determination by the city that the condition was not

caused by action of the owner, occupant or agent thereof, or third party, the city will not charge the owner, occupant, agent or third party if the city repairs the condition. If it is determined that the owner, occupant or agent thereof, or third party caused the damage, then the person who caused the damage shall be required to repair or replace the damage in the manner provided in this division for the construction of new sidewalks at said person's own cost; or pay the city to make such repairs or replacement. If the property owner, occupant or agent thereof fails to notify the city of any unsafe condition caused by a third party, the property owner, occupant or agent cannot raise the defense to a claim of liability that the unsafe condition was caused by a third party. If the owner, occupant, agent or third party does not repair or replace the damage or otherwise pay the city, the city shall assess the owner of the property for costs incurred by the city for repairs or replacement. Such assessment, if not paid within 30 days, shall become a lien against the property or as provided in this Code or state law.

(c~~b~~) Encroachments. It is the duty of each owner of abutting property to maintain the sidewalk and driveway apron in such a way that it is free of overgrowth of grass, weeds, sand, debris, and encroachments. A clearance zone encompassing the entire width of the sidewalk by seven and one-half (7½) feet in height shall be maintained. Vegetative encroachments are not permitted.

SECTION THREE:

That section 42-39 of the Code of Ordinances is hereby amended to read as follows, with underlining indicating new text additions and strikeouts indicating deletions:

Section 42-39. Assessments for work done by city

(a) If a sidewalk or driveway apron is constructed, reconstructed, repaired, or cleared of overgrown vegetation, debris, tree limbs, or other obstructions, at the expense of the City, the cost of said construction, including all administrative and engineering fees, shall be calculated. An invoice shall be mailed to the property owner for all costs associated with the design and construction of the sidewalk, including an administrative fee of no less than \$200 per parcel of property.

(b) If the invoice is not paid at the expiration of a twenty (20) day period, the City Manager may assess such costs against such parcel. The assessment shall describe the land and show the cost of engineering, construction, maintenance, and administrative expenses, and shall include an additional administrative expense of \$200 per parcel. Such assessment shall be a legal, valid, and binding obligation which shall run with the property until paid. The assessment shall be due and payable twenty (20) days following the mailing of the Notice of Assessment after which interest shall accrue at the rate of twelve percent (12%) per annum on any unpaid portion thereof.

(c) The City Manager, or the City Manager's designee, shall mail a notice to the owner or owners of record of each of said parcels of land described in the assessment, at the last available address for such owner or owners that such costs have been assessed against the above property and shall become a lien on the property thirty (30) days after such assessment, ~~which notice shall be in substantially the following form:~~

City of Marco Island

_____ Legal Notice of Assessment of Lien, Date, Lien Number

_____ Legal Description:

~~You, as the owner of record of the property above described, are hereby advised that the City of Marco Island, Florida, did, on the _____ day of _____, _____, order the _____ of a sidewalk on the right-of-way adjacent to the property.~~

~~A copy of such notice has been heretofore sent to you or the owners of record at that time. Failure to comply with the sidewalk construction was abated by the City of Marco Island at a direct cost of \$ _____ and administrative costs of \$200, for a total cost of \$ _____.~~

~~Such costs have been assessed against the above property on _____, _____, and shall become a lien on the property thirty (30) days after such assessment. You may request a hearing before the Code Enforcement Board to show cause, if any, why the expenses and charges incurred by the City under this ordinance are excessive or unwarranted or why such expenses should not constitute a lien against the property. Said request for hearing shall be made to the Clerk of the Code Enforcement Board.~~

(d) Any owner of a parcel which has been assessed pursuant to this section may request a hearing before the Administrative Review Committee to show cause, if any, why the expenses and charges incurred by the City under this ordinance are excessive or unwarranted or why the expenses should not constitute a lien against the property. The request for a hearing before the Administrative Review Committee shall be made to the City Manager within twenty (20) days after receipt of the assessment notice from the City. The decision of the Administrative Review Committee shall be final subject to the right of the owner to appeal the decision of the Administrative Review Committee to the City Council. Any such appeal to the City Council shall be filed with the City Manager within ten (10) days after the hearing of the Administrative Review Committee.

(e) The City Council hereby creates the Administrative Review Committee for the purposes described in Section 42-39(d). The following provisions shall apply to the Administrative Review Committee:

1. Composition. The committee shall have three (3) members. The members of the committee shall be the then-current Finance Director, Public Works Director, and Purchasing & Contracts Manager.

2. Quorum. Meetings of the committee shall require the presence of all members.

3. Meetings. All meetings of the committee shall be public meetings and held at a location within the City of Marco Island.

(df) After the expiration of one (1) year from the date of recording of the Assessment of Lien, as provided herein, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted, and enforced in conformity with the Procedures for Foreclosure of Municipal Special Liens as set forth in F. S. Chapter 173, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.

(eg) The liens for delinquent assessments imposed herein shall remain liens, co-equal with the lien of all state, county, district and municipal taxes, superior in dignity to all other filed liens and claims, until paid as provided herein.

SECTION FOUR:

That section 42-42 of the Code of Ordinances is hereby added to the Code of Ordinances to read as follows:

Section 42-42. Private right of action

Any person, including the city, that is injured, aggrieved or against whom a civil action for damage, injunction or other relief is brought, to recover for injuries or damages arising out of a violation of Chapter 42, Article II, or to correct a condition in violation of Chapter 42, Article II, may bring a civil action in any court of competent jurisdiction against the adjacent or abutting property owner, occupant or agent of such property, or third party, who contributed to the violation of Chapter 42, Article II, for damages according to the percentage that the property owner, occupant, agent or third party's violation, negligence or wrongful acts or omissions contributed to any alleged injuries or damages. The City may assert as a defense to any action that a violation of Chapter 42, Articles II caused or allowed to be caused by an adjacent or abutting property owner, occupant or agent of such property, or third party reduces the City's liability in whole or in part by such property owner, occupant or agent of such property, or third party's violation, negligence or wrongful acts or omissions.

SECTION FIVE: INCORPORATION, CONFLICT AND SEVERABILITY

(a) It is the intention of the City Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Marco Island, Florida, and that the word "ordinance" may be changed to "section," "articles," or other appropriate word.

(b) All sections or parts of section of the Code of Ordinances of the City of Marco Island, all City Ordinances or parts of Ordinances, and all City Resolutions or parts of Resolutions in conflict herein are hereby repealed to the extent of such conflict.

(c) In the event this Ordinance conflicts with any other Ordinance of the City of Marco Island or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION SIX: EFFECTIVE DATE

This Ordinance shall take effect immediately upon adoption by the Marco Island City Council.

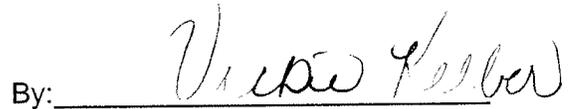
Passed in open and regular session through roll call vote by the City Council of the City of Marco Island, Florida this 19th day of September, 2005.

Attest:

CITY OF MARCO ISLAND, FLORIDA

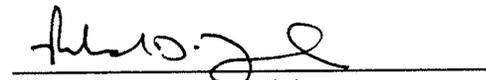


Laura Litzan, City Clerk

By: 

Vickie Kelber, Chairwoman

Approved as to form and
Legal sufficiency:



Richard D. Yovanovich
City Attorney