

ORDINANCE NO. 20-04

AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA PROVIDING THAT THE BELLE ISLE LAND DEVELOPMENT CODE BE AMENDED BY REVISING CHAPTER 50, ARTICLE II, SECTION 50-36 RELATING TO IMPROVEMENTS CONCERNING THE SPECIFICATIONS TO BE USED FOR CONCRETE SURFACES; AMENDING CHAPTER 50, ARTICLE III TO CREATE A NEW SECTION 50-77 PROVIDING FOR THE PRIVATE INSTALLATION OF PAVER SIDEWALKS AND DRIVEWAYS IN RESIDENTIAL AREAS UNDER CERTAIN CONDITIONS; ESTABLISHING CRITERIA FOR CONSTRUCTION AND MAINTENANCE OF PAVER SIDEWALKS AND DRIVEWAYS; PROVIDING FOR SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Belle Isle (“City”) has authority pursuant to Chapters 163 and 166, Florida Statutes, to make and enforce its land development code and enact land use and planning regulations; and

WHEREAS, the City’s Land Development Code, Section 50-36, generally relates to improvements and specifically describes the development standards for driveways and sidewalks; and

WHEREAS, the City’s Land Development Code currently does not allow for paver sidewalks or driveways; and

WHEREAS, notwithstanding the non-allowance of pavers for sidewalks or driveways, City residents have installed pavers within the public rights-of-way; and

WHEREAS, the City Council has determined that paver sidewalks and driveways can be a beneficial aesthetic feature in a neighborhood, may increase property values, and are otherwise desirable by property owners; and

WHEREAS, the property owners are responsible for residential minimum maintenance according to Chapter 10, Article V, of the Belle Isle Municipal Code, which includes maintenance of sidewalks and driveways; and

WHEREAS, the failure to properly construct or maintain paver sidewalks across and/or through driveways within the right-of-way increases liability for which homeowners should be responsible; and

WHEREAS, maintenance obligations and a private right of action is hereby created against property owners who install or previously installed paver driveways, which includes but is not limited to sidewalks; and

WHEREAS, the City Council has determined that the Land Development Code be

amended to expressly allow for paver sidewalks and driveways in the public rights-of-way; and

WHEREAS, in accordance with section 163.3174, Florida Statutes, the City's planning and zoning board functioning as the local planning agency has reviewed and recommended approval of this Ordinance prior to its passage by the City Council.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Belle Isle, Florida that:

SECTION 1. RECITALS. The foregoing recitals are ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. AMENDMENT OF LAND DEVELOPMENT CODE. Chapter 50, Article II, Section 50-36(4) of the City of Belle Isle Land Development Code is hereby amended to reflect the following changes (~~struckout text~~ indicates deletions; underlined text indicates additions; and non-referenced provisions shall remain unchanged):

Sec. 50-36. Improvements

* * *

(4) ~~Sidewalks and block crosswalks.~~ All subdivisions areas of the City shall have four-foot concrete sidewalks on both sides of all streets except streets projected to carry in excess of an ADT equal to 3,500 vehicle per day (vpd) which shall have five-foot concrete sidewalks. Prior to the issuance of a certificate of occupancy for a structure upon a parcel or lot, a public sidewalk shall be constructed at the expense of the property owner along all street right-of-way frontage of such parcel or lot in a manner required by code. All public sidewalks shall be located constructed within the street public right-of-way or a public sidewalk easement. Concrete sidewalks shall be a minimum of four inches in thickness, except at driveways where the required thickness is six inches and will be a minimum of 3,500 psi reinforced concrete. Sidewalks shall be designed to include handicapped ramps at all intersections. On a case-by-case basis, upon approval from the city engineer and city manager or the city manager's designee, a developer may make a voluntary contribution to a sidewalk fund to pay for construction of sidewalks in lieu of actual construction of sidewalks. The amount of the contribution shall be on a per foot basis, as may be approved from time to time by the city engineer and the city manager or the city manager's designee. On a lot by lot (or parcel by parcel) basis, the city may approve the use of pavers for sidewalks, driveways, and driveway aprons within the right-of-way or sidewalk easement adjacent to residential parcels or lots pursuant to section 50-77.

SECTION 32. AMENDMENT OF LAND DEVELOPMENT CODE. Chapter 50, Article III of the City of Belle Isle Land Development Code is hereby amended to create a new Section 50-77 as set forth below (~~struckout text~~ indicates deletions; underlined text indicates additions; and non-referenced provisions shall remain unchanged):

Section 50-77. Pavers for sidewalks and driveways.

- a) Subject to compliance with the applicable requirements of this section, the city may permit a residential property owner to construct a paver sidewalk, driveway and driveway apron (or either one individually) within the public right-of-way or a public sidewalk easement adjacent to such residential property owner's parcel or lot in conjunction with such property owner's construction of a paver driveway upon the adjacent private property. Any such permit or permission granted by the city (included such granted prior to the adoption of this section) shall be a revocable license and does not create any vested rights, property rights, or privileges. All property owner(s) given permission to install a paver sidewalk, paver driveway and/or paver driveway apron shall assume the risk that the city's permission to construct and maintain the pavers within the public right-of-way or public sidewalk area may be revoked at any time at the city's discretion and that the pavers may be required to be removed. By granting permission to use pavers under this section, the city does not waive or restrict the city's power and authority over the operation, use, regulation and control of the public rights-of-way and public sidewalk easement areas.
- b) A residential property owner that desires to construct or reconstruct a sidewalk, driveway or driveway apron within the public right-of-way or public sidewalk easement area using pavers must, as a precondition of obtaining approval, execute a license and maintenance agreement with the city, in a form and with terms acceptable to the city manager, that provides, at a minimum, for such property owner and its successors and assigns in interest, to maintain and repair (at the property owner(s)' expense) the pavers and to indemnify and hold the city and its officers, employees and agents harmless from matters arising from or concerning the use, installation, maintenance and repair of the pavers, and address other matters set forth in this section. All license and maintenance agreements shall be promptly recorded in the public records of Orange County, Florida, at the property owner(s)' expense, and such shall run with the property owner(s)' land and shall inure to and be binding upon the property owner(s)' heirs, personal representatives, successors, and assigns. Further, such license and maintenance agreement shall give the city lien rights against the property owner(s)' property for the recovery of any monies owed to the city concerning the pavers. In the event the city license is revoked or terminated, then the property owner(s) shall promptly, at the property owners' cost, remove the paver sidewalk and driveway apron improvements and restore such area as directed by the city, which may require the reconstruction of sidewalks and/or a driveway apron with other code compliant materials at the property owner(s)' expense.
- c) Sidewalks made of pavers shall be constructed with pavers that are 2-1/4" thickness x 4" width x 8" length to meet ASTM C 902-11 pedestrian and light traffic paving brick specifications except at driveways where 2-3/4" thickness x 4" width x 8" length to meet ASTM C 1272-11 is required. Pavers are to be set on one inch of compacted sand on top of four-inches of compacted 3/4-inch crushed rock (six-inches of compacted 3/4-inch crushed rock for driveways). Pavers are to be laid with no or minimal joints and the joints are to be filled with a fine sand-portland cement grout mix. Additionally, sidewalk pavers must differentiate and delineate the property owner(s)' property lines in a manner that allows pedestrians and the city to easily determine the boundaries of the public sidewalk area for ease of pedestrian access, to avoid inadvertent trespass and

to identify vehicle blockages of public sidewalks. If pavers are used for driveways, driveway aprons or sidewalks, the first course will be perpendicular to the curb, or edge of pavement to protect the existing pavement.

- d) Paver sidewalks and driveway aprons shall be installed and at all times maintained in compliance with Americans with Disabilities Act (ADA) requirements, as may be subsequently modified and be designed to include handicapped ramps at all intersections.
- e) The owner(s) of the property served by or upon which a paver driveway (including with or without a paver sidewalk) is or was installed (including those installed prior to the adoption of this section) is/are solely responsible to cause and pay for all inspections, maintenance and repair of the paver driveway and paver sidewalks within the public right-of-way or public sidewalk area adjacent to said property owner(s)' property. The city shall not be liable for the costs of any inspection, maintenance, repair, or replacement of the paver driveway and sidewalk regardless of the reason(s) requiring the maintenance or repair.
- f) A property owner, property owner's agent or occupant shall regularly inspect a sidewalk and driveway apron composed of pavers to ensure its proper maintenance and repair, including in accordance with this section, other applicable code provisions and any applicable license and maintenance agreement or condition of approval. Whenever a sidewalk, driveway or driveway apron composed of pavers is in the public right-of-way or public sidewalk easement is in violation of any city code provision, the property owner or occupant must take prompt corrective action to ensure that the sidewalk and driveway apron complies with the requirements of this section, other applicable code provisions and the terms of any applicable license and maintenance agreement or condition of approval.
- g) In the event any property owner fails to properly maintain and repair the paver materials within the public right-of-way or public sidewalk easement area adjacent to such property owner's property, the city may give fifteen (15) days' written notice of such deficiencies and an opportunity to cure to the property owner(s) at the address on file with the Orange County Property Appraiser. Thereafter, if the property owner(s) fails to cure the deficiencies as determined by the city after notice of same, then the city may perform any corrective action it determines necessary, which may include without limitation, the removal of the pavers and restoration of such areas with code compliant concrete sidewalks and driveway aprons and charge the costs for the same against the property owner(s) and as a recorded lien against the property owner(s)' property. However, in the event of exigent circumstances, the city may proceed to take corrective action as stated above without notice to the property owner(s).
- h) It shall be a violation of this section for any owner, occupant, or agent of any property to allow sidewalks, driveways, or driveway aprons composed of pavers to be in violation of this section.
- i) A permit shall not be issued for the installation of a paver sidewalk, paver driveway or paver driveway apron if the city has not been fully compensated for prior expenses

incurred in removing, repairing, or replacing a non-compliant paver sidewalk, paver driveway or paver driveway apron on the subject adjacent property.

j) Driveway construction that requires removal of a vertical curb (raised curb) shall have pavement saw cut at curblines prior to removing existing curb and replaced with a header curb or valley in accordance with existing type. Driveway construction where Miami type curb (mountable) exists must tie to the back of the curb.

k) On a case-by-case basis, upon approval from the city engineer and city manager or the city manager's designee, the property owner may request an alternative to subsection (c) above if it can be shown that the alternative requested will provide equal or greater protections or benefits to the city. Further, the city manager or his/her designee shall have the authority to deny permission for the use of pavers within the public rights-of-way or public sidewalk easement area in any circumstance where: (i) the city manager is not satisfied that the proposed pavers and installation, maintenance or repair methods involved will meet the intent of this section or otherwise be safe; or (ii) such may create issues with the city's operation, control, maintenance, regulation of public rights-of-way and sidewalk easements.

l) Those property owners who as of the date of the adoption of this section have pavers installed in the place of concrete sidewalks or driveway aprons pursuant to previous permit or permission of the city are not required to comply with subsections (b), (c) and (j) above unless such improvements are removed or reconstructed; however they are not relieved of the other obligations and responsibilities of this section.

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SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this Ordinance invalid or unconstitutional.

SECTION 5. CODIFICATION. It is the intention of the City Council that the provisions of this Ordinance shall become and be made a part of the Belle Isle Land Development Code and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to section, article, or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. EFFECTIVE DATE. This Ordinance shall become effective upon adoption by the City Council of the City of Belle Isle, Florida.

First Reading on April 7, 2020.

Second Reading and Adoption this _____ day of _____, 2020.

	YES	NO	ABSENT
Ed Gold	_____	_____	_____
Anthony Carugno	_____	_____	_____
Karl Shuck	_____	_____	_____
Mike Sims	_____	_____	_____
Harvey Readey	_____	_____	_____
Jim Partin	_____	_____	_____
Sue Nielsen	_____	_____	_____

ATTEST: _____
 Yolanda Quiceno, CMC
 City Clerk

 Nicholas Fouraker, Mayor

 Approved as to form and legality for use and
 reliance by the City Kurt Ardaman, City Attorney

STATE OF FLORIDA

COUNTY OF ORANGE

I, Yolanda Quiceno, City Clerk of the City of Belle Isle do hereby certify that the above and foregoing document ORDINANCE 20-04 was duly and legally passed by the Belle Isle City Council, in session assembled on the ____ day of _____, 20____, at which session a quorum of its members were present.

 Yolanda Quiceno, CMC-City Clerk