

ORDINANCE NO. 22-07

**AN ORDINANCE OF THE CITY OF BELLE ISLE, FLORIDA,
AMENDING CHAPTER 26, ARTICLE I TO CREATE NEW SECTIONS
RELATED SIDEWALK INSTALLATION AND MAINTENANCE AND
REQUIRING CERTAIN SIDEWALKS WITHIN THE RIGHT-OF-WAY
TO BE MAINTAINED BY ADJACENT PROPERTY OWNERS AND
CREATING ENFORCEMENT MECHANISM FOR THE SAME;
PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS,
AND AN EFFECTIVE DATE.**

WHEREAS, the City acknowledges that property owners, lessees, and other occupants have affirmative duties relating to the maintenance of sidewalks and unpaved right-of-ways adjoining their properties between the property boundary line and the street as may be required under Florida law and under existing provisions of the City Code of the City of Belle Isle; and

WHEREAS, the City has determined that additional maintenance obligations of adjoining property owners are desirable in the interests of the public health, safety, and welfare for pedestrians and others who traverse sidewalks within the jurisdictional limits of the City; and

WHEREAS, the City Council of the City of Belle Isle hereby finds that it is in the best interests of the public welfare, health, and safety that the City's Code of Ordinances be amended as provided herein.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF BELLE ISLE, FLORIDA, AS FOLLOWS:

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

SECTION 2. City Code Amendment, Chapter 26, Article I. Chapter 26, Article I of the City Code of Ordinances is hereby amended as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions; provisions not referenced are not being modified):

ARTICLE I. – IN GENERAL

Sec. 26-2. - Unpaved right-of-way and sidewalk maintenance.

(a) Unless exempt pursuant to Section 26-3, property owners, lessees, or occupants of a property developed with a building or buildings shall maintain sidewalks and unpaved portions of rights-of-way adjoining their properties between the property boundary line and the street in a safe and clean condition and at a minimum shall comply with the following:

- (i) It is unlawful for any person to obstruct or cause obstruction of a sidewalk, or to permit a sidewalk bordering upon real property owned by that person to be obstructed. For the purposes of this section, obstruction means the prevention or impairment of passage on the sidewalk by pedestrians or wheelchairs and may include, but not limited to, refuse, waste, litter, debris, excess vegetation, weeds building material, tree limbs and branches growing over the sidewalk from the adjacent property, dirt, sand, excavated material, wood, rubbish,

any article or other substance or merchandise to be dropped, delivered, piled or placed in any way above or upon any sidewalk or pathway so as to obstruct the sidewalk or pathway except by special permission of the City. Such does not include barriers or fencing erected by the City or contractors during the performance of right-of-way or sidewalk maintenance or repair work; and

- (ii) Regularly mow or otherwise maintain unpaved areas in a neat and attractive condition; and
- (iii) Regularly scrub, pressure wash, clean, treat, or otherwise maintain sidewalks in a condition that is free of mold, mildew, or other deleterious conditions, which is free from discoloration and poses a reduced risk of slipping, skidding, or sliding to a reasonable person of ordinary sensibilities; and
- (iv) Prohibit and not cause new irrigation systems (supply lines or irrigation heads), trees, bushes or shrubs to be placed, planted or grown on sidewalks or in unpaved rights-of-way without the city's prior written consent, which may be in the form of a right-of-way maintenance agreement with terms acceptable to the city. It shall be a violation of this section for any person to install unauthorized irrigation systems, trees, bushes, shrubs and other landscaping within public rights-of-way without the city's prior written consent, and such items are subject to immediate removal without notice or compensation. Water distribution patterns for irrigation systems should not encroach into sidewalks or other pavement areas; and
- (v) Any landscaping or irrigation installed by a developer, homeowner's association or property owner within the right-of-way with the city's written consent, shall be maintained in a neat and attractive manner, so as not to impede or interfere with right-of-way improvements and the city's or public's use thereof, and otherwise maintained consistent with the terms and conditions of the city's written consent or applicable right-of-way maintenance agreement.
- (vi) If an entity or person having jurisdiction or responsibility over a road or public right-of-way performs any routine maintenance or road improvement within any such right-of-way (for the purposes of this article, the term "right-of-way" shall have the same meaning as the definition therefore contained in F.S. § 334.03), the property owner, agent, custodian, lessee, or occupant of the property adjoining the right-of-way shall be responsible for removing and/or relocating mailboxes, flag poles and/or any other personal items and installations located within that portion of the adjoining rights-of-way located between the property and the street, including any existing irrigation system components or other property, or he/she/it will otherwise bear the cost for any loss or repair of such items and installations. The city is not responsible for replacement, repair, or reimbursement of such installations or items.

(b) The requirements of subsection (a) are a condition of the adjacent property's driveway connection to the adjacent public road and use of the unpaved right-of-way for a mailbox serving the adjacent property. Moreover, the requirements of subsection (a) are reasonable because sidewalks are required adjacent to buildings due to ADA accessibility reasons and the sidewalk provides a pedestrian access point to such buildings.

Sec. 26-3. - Exemption: unpaved right-of-way, city maintained.

- (a) The following table is a comprehensive inventory of unpaved right-of-ways, or parts thereof, which are maintained by the City of Belle Isle:

1) <u>Hoffner Avenue N Side Right of Way</u>	<u>Hoffner Bridge east to Conway Road</u>	
2) <u>Hoffner Avenue S Side Right of Way</u>	<u>Hoffner Bridge east to Conway Road</u>	
3) <u>Gondola Avenue E Side Right of Way</u>	<u>McCoy Road north to Fulmer Road</u>	
4) <u>Overlook Road N Side Right of Way</u>	<u>Along wall to Matchett Road</u>	
5) <u>Perkins Boat Ramp</u>	<u>Entire property</u>	
6) <u>E. Wallace Street N Side Right of Way</u>	<u>Wallace Field to Fire Station 70</u>	

7) <u>E. Wallace Street N Side Right of Way</u>	<u>Randolph to Hansel</u>	
8) <u>Daetwyler Drive E Side Right of Way</u>	<u>Warren Park Road to Judge Road</u>	
9) <u>Judge Road N Side Right of Way</u>	<u>Daetwyler Drive to Conway Road</u>	
10) <u>Police Department</u>	<u>1521 Nela Avenue</u>	
11) <u>Gilbert Park</u>	<u>Entire property*</u>	
12) <u>Cove Drive Right of Way</u>	<u>Between Conway Road and Corner</u>	
13) <u>Swann Beach Park</u>	<u>Entire property*</u>	
14) <u>Cross Lake Beach</u>	<u>Entire property*</u>	
15) <u>Conway Circle Park</u>	<u>Entire property*</u>	
16) <u>Labelle Beach</u>	<u>Entire property*</u>	
17) <u>Holloway Park</u>	<u>Entire property*</u>	
18) <u>Lesser Park</u>	<u>Entire property*</u>	
19) <u>Peninsular Park</u>	<u>Entire property*</u>	
20) <u>Dewayne Drive</u>	<u>Retention Pond*</u>	
21) <u>Regal Park</u>	<u>Entire property*</u>	
22) <u>Gene Polk Park</u>	<u>Entire property*</u>	
23) <u>Trimble Park</u>	<u>Entire property*</u>	
24) <u>Nela Avenue Bridge</u>	<u>Overlook Road to Homewood Drive</u>	
25) <u>Trentwood Blvd</u>	<u>Intersection of Daetwyler</u>	
* <u>Note: Entire Property means the ROW and the sidewalks within the park if applicable</u>		

- (b) The inventory of city maintained unpaved right-of-ways identified in subsection (a) and the table above shall periodically be reviewed and may be amended as needed by resolution of the City Council.
- (c) The above table and map of the locations identified is filed in the office of the city clerk.
- (d) Adjacent property owners are not responsible for the maintenance of sidewalks and unpaved portions of rights-of-way pursuant to Section 26-2 for rights-of-way listed in subsection (a) above.
- (e) Adjacent property owners are not responsible for repair and replacement of buckled, uneven, cracked or damaged sidewalk segments needing concrete work unless such damage was caused by the adjacent property owner, occupants, tenants and/or their respective contractors, vendors, guests, invitees or agents. However, this subsection does not prohibit the City from adopting, enforcing and collecting assessments against property owners to offset the cost of sidewalk repair and replacement.
- (f) Property owners, lessees, and occupants of a property with a driveway connection to a public road are responsible, at their expense, for the maintenance, repair and replacement of their respective driveway connections and aprons within the right-of-way, including the repair and replacement of buckled, uneven, cracked and damaged driveway and drive aprons.

Sec. 26-4. - Responsibility for noncompliance.

The owner, lessee, and/or occupant of property upon which a violation of this article occurs, along with any agent responsible for the upkeep thereof, may be held jointly and severally liable for failure to comply with this article.

Sec. 26-5. - Enforcement; correction of violation.

(a) Whenever a code enforcement officer finds that there appears to be a violation of this article, the code enforcement officer may initiate code enforcement action via the procedures outlined in section 14-34 of this code and as prescribed by statute. The code enforcement officer may also (or in the alternative) declare the violation a public nuisance and issue a notice of public nuisance pursuant to this section to be served upon the responsible party directing the abatement or correction of the violation within the time prescribed in the notice. For the purposes of this article, a public nuisance exists where a violation of § 26-2 creates or presents a danger to the public or otherwise impairs or impedes safe and accessible travel. Notice is deemed received on the earliest of: (a) the day the notice is hand delivered to the property owner; (b) the date the notice is posted at the property; or (c) five days after the notice is mailed to the property owner, postage prepaid. The notice of violation or notice of public nuisance must include the following information:

- (1) A sufficient description by address and/or legal description to identify the property upon which the violation exists;
- (2) A description of the violation to be corrected and abated;
- (3) A statement that if the described violation is not corrected and abated within the prescribed notice period, the city may cause the violation to be corrected and abated;
- (4) That a special assessment lien will be imposed upon the property for the actual cost of any such corrective action and abatement, plus administrative expenses; and
- (5) A preliminary nonbinding, minimum estimate of the cost of corrective action and abatement.
- (6) The notice of violation shall further state in bold and conspicuous letters that if such violation, within the time period prescribed for correction or abatement:
 - i. Has not been corrected and abated;
 - ii. Has not been timely appealed in accordance with section 26-6; or
 - iii. Has been timely appealed but the appeal process proves unsuccessful,

Then the code enforcement officer, with approval from the city manager, may cause the violation to be corrected and abated, and the actual cost of such corrective action and abatement, plus administrative fees, shall constitute a special assessment lien on the property in accordance with section 26-7.

(b) *Imminent health threat (first and subsequent violations).* In a case involving a condition which poses an imminent public health threat, the code enforcement officer with approval of the city manager may, without prior notice, authorize the immediate correction and abatement of the condition.

(c) *After the fact notice.* Whenever the code enforcement officer proceeds pursuant to subsection (b) herein, an after-the-fact notice shall be provided not later than five days after the corrective action or abatement of the condition, which notice shall include the following:

- (1) A description of the conditions that were corrected and abated;
- (2) Whether the conditions were corrected and abated without prior notice due to subsection (b), herein;
- (3) The actual cost of the corrective action and abatement, together with administrative fees, is due to be paid within ten days of the notice;
- (4) That the failure to pay the actual costs and administrative fees when due will result in imposition of a special assessment lien against the property; and
- (5) That the property owner may file a notice appeal to show that the property did not contain such violation within ten days of the notice, as provided by section 26-6.

- (d) Terminated and abated. If the owner or other person in control of any property fails to abate the nuisance within time specified in the notice, the city may cause such nuisance to be terminated and abated. The city manager or city manager designee, may hire and enter into contracts with independent contractors to take corrective action and/or abate the nuisance.

Sec. 26-6. - Appeals.

- (a) Within ten days of receiving a notice of public nuisance pursuant to § 26-5, an aggrieved party may appeal the code enforcement officer's determination that a public nuisance existed or that such condition did not warrant immediate corrective action and abatement pursuant to subsection 26-5(b).
- (b) An appeal by an aggrieved party shall:
- (1) Be accompanied by a filing fee as determined by resolution of the City Council; and
 - (2) Be addressed to the city manager; and
 - (3) Be either hand-delivered to the city manager or postmarked within the ten-day period after notice is received.
- (c) Upon receipt of a timely appeal, the city manager, or city manager's designee, shall schedule a hearing date before the special magistrate.
- (d) At the hearing, the magistrate shall allow the code enforcement officer and the aggrieved party an opportunity to present evidence and to examine and cross-examine witnesses. After considering the evidence and testimony, the magistrate shall make a factual determination as to whether the property is (or was), with respect to subsection 26-5, in violation of this article. If the magistrate determines that the property is (or was) in violation of this article, he/she/it shall affirm the code enforcement officer's issuance of the notice of violation and, with respect to an appeal of action taken pursuant to subsections 26-5(a) or (b), issue an order requiring the aggrieved party to promptly abate the violation, and/or, with respect to an appeal of action taken pursuant to either subsection 26-5(b), issue an order affirming the existence of conditions warranting immediate termination or abatement of the violation(s). If the aggrieved party has not remedied the violation within 10 calendar days after the date of the magistrate's written order finding one or more violations of this article, then the city manager may cause the mowing, cleaning, repair, maintenance, or other corrective actions to the extent necessary to remedy the violation, and the property owner shall be responsible for such costs and related expenses. If the magistrate makes a factual determination that the property is not (or was not) in violation of this article, then the filing fee shall be returned to the aggrieved party, and, if the city has incurred costs in the corrective actions, the city shall bear the responsibility for such costs and reimburse the owner to the extent that the owner has paid the city for same.
- (e) Appeal of the magistrate's decision shall be filed in a timely manner with the circuit court in accordance with section 14-38 of the Belle Isle Code.

Sec. 26-7. - Liens; assessment.

- (a) After correcting a violation of this article as authorized in section 26-5, the code enforcement officer shall certify to the city clerk the actual cost incurred in remedying such violation, whereupon such cost, plus a charge equal to 100 percent of such cost to cover city administrative expenses, shall become payable within ten (10) days. If such costs are not paid within the allotted time, the city shall assess a special assessment lien and charge against the property, which shall be payable with interest at the rate of 12 percent per annum from the date of such certification until paid.
- (b) Prior to approving and recording a claim of special assessment lien pursuant to subsection (c), the city shall, by hand or certified mail, return receipt requested, deliver or send a notice of assessment of costs to the last known owner of record of the subject real property. If the assessment is not paid or arrangements satisfactory to the city have not been made to pay such assessment within ten days after notice is received, then the city may record the claim of special assessment lien.
- (c) A lien assessed pursuant to this article shall be enforceable in the same manner as a tax lien in favor of the city and may be satisfied at any time by payment thereof, including accrued interest.

Notice of such lien may be filed in the office of the clerk of the circuit court and recorded among the public records of the county.

- (d) With approval of the city manager, the city attorney is authorized and directed to institute such proceedings in the name of the city in any court having jurisdiction over such matters against any property for which a lien has been filed pursuant to this article, and the property owner shall be liable for all costs, including reasonable attorney's fees, incurred in any such action.

Sec. 26-8. - Opposing, obstructing or resisting code inspector.

No person shall oppose, obstruct or resist any code enforcement officer, code inspector or any person authorized by the code enforcement officer or code inspector in the discharge of his/her duties as provided in this article. Any code enforcement officer or code inspector shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon property utilized or zoned for residential, professional office, commercial, or industrial use while in the discharge of duties imposed by this article.

Secs. 26-9 – 26-19. - Reserved.

SECTION 3. Codification. Section 2 of this Ordinance shall be incorporated into the Belle Isle Code of Ordinances. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the City Code may be freely made.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 5. Conflicts. In the event of a conflict or conflicts between this Ordinance and any other ordinance or provision of law, this Ordinance controls to the extent of the conflict, as allowable under the law.

SECTION 6. Effective date. This Ordinance shall become effective immediately upon adoption by the City Council of the City of Belle Isle, Florida.

FIRST READING: _____, 2022

SECOND READING: _____, 2022

ADOPTED this ____ day of _____, 2022, by the City Council of the City of Belle Isle, Florida.

	YES	NO	ABSENT
Ed Gold	_____	_____	_____
Anthony Carugno	_____	_____	_____
Karl Shuck	_____	_____	_____
Randy Holihan	_____	_____	_____
Beth Lowell	_____	_____	_____
Jim Partin	_____	_____	_____
Stanley Smith	_____	_____	_____

CITY COUNCIL
CITY OF BELLE ISLE

Nicholas Fouraker, Mayor/Commissioner

ATTEST:

Yolanda Quiceno, City Clerk