

**INTER-OFFICE CORRESPONDENCE**

**MEMORANDUM NO. 2023-013**

TO: Mayor Greg Ross  
Members of the City Commission

CC: Ryan Eggleston, City Manager  
Tedra Allen, City Clerk  
Tim Fleming, Interim Public Works Director  
Captain Christopher DeGiovanni, Broward Sheriff's Office  
Sergeant Richard Mosca, Broward Sheriff's Office

FROM: Jacob G. Horowitz, City Attorney *JGH*  
Brian J. Sherman, Assistant City Attorney *BJS*

DATE: December 7, 2023

RE: City of Cooper City ("City") / Maintenance and Repair of Sidewalks and Swales

---

In anticipation of the City Commission workshop on December 12, 2023, the City Attorney's Office has reviewed the City Code and other applicable law related to sidewalk and swale maintenance. The City Code provides a number of references to the maintenance of sidewalks and swales, and the code provisions are a legally permissible and enforceable exercise of municipal authority. Nevertheless, the City has a **non-delegable** duty to maintain the City's roads, sidewalks, and rights-of-way in a reasonably safe condition.

The City **may legally require** abutting property owners to maintain their adjacent sidewalks and to initiate code enforcement actions against those owners who fail to adhere to the City code. This obligation is currently embraced in Sec. 25-102 of the City Code. However, the Supreme Court of Florida determined in *Woods v. City of Palatka*, 63 So. 2d 636, (Fla. 1953), that the passage and enforcement of such an ordinance "[does] not relieve the City of its duty to exercise reasonable diligence in repairing defects in sidewalks." The Florida Supreme Court, in *Commercial Carrier Corp. v. Indian River Cnty.*, 371 So. 2d 1010 (Fla. 1979), found that the repair and upkeep of traffic signals remains an 'operational' function, as distinguished from a 'discretionary' function, of government for which the City remains legally responsible to the extent sovereign immunity is waived pursuant to Section 768.28, F.S.

If the defect or alleged dangerous condition on the sidewalk was caused or created by the actions of an abutting property owner, then that property owner may also be found

responsible for a claimant's injuries and damages resulting from a trip and fall on a city sidewalk. Even so, the city will not be relieved of its legal duty to properly maintain, and to warn of and to correct a dangerous condition which it knew or should have known of on a city sidewalk or roadway. These dangerous conditions may include defects caused by trees and tree roots growing on private or public property. In these cases, adjacent homeowners may be liable for overgrown landscaping which protrudes past the property line, but the City is not relieved its liability or maintenance obligations. See Also *Williams v. Davis*, 974 So. 2d 1052, 1054 (Fla. 2007). The City remains responsible for the maintenance of trees and shrubbery on public property, which includes rights-of-way and the maintenance of the foliage intruding into roadways. See *Jauma v. City of Hialeah*, 758 So. 2d 696 (Fla. 3d DCA 2000); *Armas v. Metro. Dade Cnty.*, 429 So. 2d 59, 61 (Fla. 3d DCA 1983).

The City can also legally require and enforce, by ordinance, that the adjacent property owner maintain the trees and shrubbery in the public right-of-way. If the adjacent property owner refuses to maintain the landscaping in the right-of-way, then the City has the duty to perform the maintenance, but after providing proper notice and opportunity for the adjacent property owner to correct a maintenance issue, the City can charge the adjacent property owner for the maintenance cost. If an accident occurs due to the failure to properly maintain the landscaping in a City right of way, the City as the landowner may have tort liability and cannot transfer such liability to the adjacent landowner. However, the City can also pursue the adjacent property owner for the cost of repair if the adjacent property owner does not fix the defect after being directed to do so as required by the City code. If the adjacent homeowner contributes or causes the defect, then the homeowner may also have personal tort liability.

#### CODE OF ORDINANCES

A review of the City Code revealed a number of provisions which allude to the responsibility of adjacent property owners being responsible for the maintenance of swales and public rights-of-way. Section 25-48 expressly provides that property owners, as listed on the tax rolls, are responsible for the regular maintenance of all landscaping on that property.

Chapter 25, Article III of the City Code entitled, "Landscaping," contains most of the City's regulations regarding the maintenance of swales and rights-of-way, and defines a swale to mean:

(T)he area of land located in the public right-of-way between the edge of the street pavement and the front property line of the adjacent property.

A number of sections within the City Code also allude to the desire of the City to have adjacent property owners maintain contiguous swale areas and the landscaping and trees within those rights of way. Section 25-44 discusses tree buffers for residential developments, but also provides for the recording of a declaration of covenants obligating the property owner to maintain such buffers. The City Attorney's Office investigated this obligation in relation to

December 7, 2023

Page 3

certain code compliance matters; however, we were unable to find a recorded declaration of those cases. Section 25-45 further refers to the obligations of adjacent property owners to remove inappropriate trees in the swale area which do not conform to the swale plant list or obstruct visibility. Additionally, Section 25-51, provides for penalties for those who do not properly maintain swale areas.

As noted, Section 25-48 of the City Code provides that property owners, defined as the person shown on the county's real estate tax records, shall be responsible for the regular maintenance of all landscaping on the property. This section also provides that yard waste shall not be disposed of or stored on the swales, but does not include swales in the owner's maintenance responsibilities. Note that Section 25-49, regulating swale trees, provides that adjacent property owners are only responsible for the maintenance of palm trees in the swale area, and this obligation is absent in reference to other types of swale tree.

Maintenance obligations are again discussed in Chapter 13, Article VIII of the City Code. In this section, "Lot" and "Maintenance" are defined to mean:

*Lot.* (A)ny tract or parcel of land shown on a recorded plat or on the official County zoning maps or any piece of land described by a legal recorded deed and the swale area adjacent to any land

*Maintenance.* (A) responsible owner is required to maintain, mow, clear, cut, trim or bulldoze his or her lot and maintain his or her pool, and remove and legally dispose of all associated solid waste so that the lot does not constitute a violation of the provisions of this article.

Section 13-103 provides the responsible party, as defined, must maintain the property in order to prevent the; growth or accumulation of any grass, weeds, undergrowth or other dead plant life on an improved lot and the accumulation of bushes, trees, undergrowth or other dead or living plant life on a lot which threatens or endangers the public health, safety, welfare.

Finally, Chapter 25, Article VII, clearly delineates the obligations of property owners to clean adjacent sidewalks, but not repair sidewalks within the public rights of way. Sec. 25-102 expressly provides that "it shall be the duty and responsibility of each owner ... to keep in repair any sidewalks located on their premises (excluding public sidewalks located within the public right-of-way).

The City Attorney's Office remains available to discuss these matters further at the December 12, 2023 City Commission workshop. Please also do not hesitate to contact our office if there are any further questions.

JGH:BJS