

Memo

To: Jaime Morales
From: Brett T. Lashley, Esq.
Date: April 8, 2025
Subject: Sidewalk Maintenance Obligations

BACKGROUND

The Town is seeking a legal opinion regarding Town Ordinance Sec. 72-2 and 72-3 and the implications for property owners and the Town concerning the maintenance and repair of sidewalks, driveways, alleys, driveway aprons, swales, and curbs adjacent to private properties.

ISSUES

- 1) Under the Town's code, what duties do abutting property owners have to report or maintain Town sidewalks, driveways, alleys, driveway aprons, swales, and curbs abutting their properties?
- 2) Can the Town hold abutting property owners responsible for damage to Town sidewalks, driveways, alleys, driveway aprons, swales, and curbs caused by trees on the abutting property owner's property?
- 3) How does joint and several liability apply to abutting property owners liability for damages caused by trees shared by multiple properties and property owners?
- 4) Potential revisions to the Code for the Town's consideration.

TOWN CODE

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Sec. 72-2. - Obligation of property owner to maintain public sidewalks, driveways, alleys, driveway aprons, or curbs adjacent to a property owner's property.

(a) *General prohibition.* It is unlawful for the owner of real property, and/or his tenant, licensee, lessee, occupant, and/or agent and any other persons or entities who have the care, custody and/or control of the subject real property ("responsible parties"), to cause or allow to be caused damage to town sidewalks, driveways, alleys, driveway aprons, swales, swale areas, or curbs, which abut, or are adjacent or contiguous to the property owner's real property, where such damage renders such areas either defective, defaced, unsafe, dangerous, and/or detrimental to pedestrians, bicyclists, and motorists. Painting of town sidewalks is prohibited. Painting, resurfacing or marking of driveway aprons requires approval from the community development department; driveway apron painting, resurfacing or marking must match the color, style, and design of the corresponding, abutting driveway.

(b) *Responsible parties.* A property owner, and/or the owner's tenant, licensee, lessee(s), occupant and/or agent and/or any other persons or entities who have the care, custody and/or control over the adjacent real property, shall all be deemed "responsible parties" for purposes of this article. Responsible parties shall have an affirmative duty to regularly inspect the abutting, adjacent, and contiguous sidewalks and public ways, for unsafe conditions including but not limited to, potholes; broken or uneven surfaces which may make walking or traversing the area unsafe; worn out or otherwise in disrepair due to decaying or broken materials; protruding roots, overhanging branches, deteriorated surfaces, or any other unsafe condition, which may pose a danger or threat to the public or to the adjacent property owner or his guests, invitees, and other persons on the property and report such unsafe conditions to the community development department. Where such areas are damaged by roots from trees on the private property side of the right-of-way, any damage to the sidewalk shall be considered attributable to the property owner for purposes of this article. In the event that the tree is located on the property of more than one property owner, such as where a tree straddles a property line between the boundaries of two or more properties, both property owners shall be jointly and severally liable for any violation of this article, and any and all fines, costs, and other damages caused by the tree to the sidewalk. Where such areas are damaged by roots from trees located on town property maintained by the town, or by limbs falling from a tree or by the removal of a tree by the town, the repairs to town sidewalks shall be made by the town at no cost to the adjacent property owner.

Sec. 72-3. - Enforcement.

(a) *Proactive discovery of potential violations.* Where a sidewalk has been observed to be in an unsafe condition by the town or a complaint of the same has been reported

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to the town, the town may initiate code enforcement action, and/or legal any other legal remedies available to the town. If it is determined that the property owner and/or other responsible party has caused such condition, then the property owner or other responsible party shall repair or replace the damaged area of the sidewalk in the manner required by the town for the construction of such areas. In the event the violator does not affect repairs to the damaged area, the town may complete all required maintenance, repairs, and/or replacement, as more specifically provided below.

(b) *Town's right to make repairs.* In the event that the violator fails to complete the remedial action required of a final order rendered by either a special magistrate or court, the town shall have the right to make all necessary repairs in order to bring the property into compliance, and all costs and expenses incurred by the town in connection with the making of the repairs, together with all fines and other administrative costs imposed, shall constitute a lien upon the real and personal property owned by the violator. The town's lien may be foreclosed in accordance with the provisions of F.S. ch. 162, as amended.

ANALYSIS

1) **Under the Town's code, what duties do abutting property owners have to report or maintain Town sidewalks, driveways, alleys, driveway aprons, swales, and curbs abutting their properties?**

Section 72-2(a) prohibits a property owner from causing or allowing to be caused damage to Town sidewalks, driveways, alleys, driveway aprons, swales, swale areas, or curbs, which abut, or are adjacent or contiguous to the property owner's real property, where such damage renders such areas either defective, defaced, unsafe, dangerous, and/or detrimental to pedestrians, bicyclists, and motorists.

Section 72-2(b) creates "an affirmative duty to **regularly inspect** the abutting, adjacent, and contiguous sidewalks and public ways, for unsafe conditions. . . **and report** such unsafe conditions to the community development department." . . . This subsection then provides "where such areas are damaged by roots from trees on the private property side of the right-of-way, any damage to the sidewalk shall be considered attributable to the property owner for purposes of this article." As such, this subsection creates a duty to regularly inspect and report unsafe conditions. However, there is no mention of an obligation to repair or maintain Town property in this section. The sentence regarding damage being attributed to property owners for trees on their properties could imply that an abutting property owner may be responsible for repairs caused by those trees, but this subsection makes no reference to the duty to actually repair or maintain. Thus, see my recommended changes to the Code in section 4 of this memo.

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Section 72-3 titled “enforcement” creates a duty to repair Town sidewalks, driveways, alleys, driveway aprons, swales, and curbs **only “if** it is determined that the property owner and/or other responsible party **has caused** such condition.” If it is determined by the Town that the property owner caused the damage, “then the property owner or other responsible party **shall repair or replace** the damaged area of the sidewalk in the manner required by the town for the construction of such areas.” Because of the inclusion of this sentence, I believe the only time an abutting property owner is responsible for repairing or maintaining Town sidewalks, driveways, alleys, driveway aprons, swales, and curbs is if it is determined that they **caused** the damage. This obligation is consistent with other municipalities’ codes. See City of Orlando code sec. 54.41 and City of Miami code sec. 25-56.

2) Can the Town hold abutting property owners responsible for damage to Town sidewalks, driveways, alleys, driveway aprons, swales, and curbs caused by trees on the abutting property owner’s property?

I could not find any authority preempting the Town’s ability to do so. Other municipalities throughout the state also hold property owners responsible for damage caused by trees on their property. Section 72-2 references damage caused by trees on abutting properties, but makes no mention of the duty to repair. Section 72-3 creates the duty to repair damage caused by property owners, but does not mention damage caused by trees. In reading the two sections together, it can be inferred that a property owner would be responsible for repairing damage caused by a tree on their property. However, this would seem to require some type of code enforcement hearing to determine that the property owner’s failure to maintain a tree on its property is the cause of the damage. In such cases, one would assume that the property owner would argue that it is an Act of God, i.e. the tree’s growth, that caused the damage. The property owner would then presumably be responsible for removing the offending tree, or repairing the sidewalk. This may necessitate revisions to the code to clarify a property owner’s responsibilities. See my proposed revisions in section 4 of this memo.

3) How does joint and several liability apply to abutting property owners’ liability for damages caused by trees shared by multiple properties?

In Florida, if a tree trunk straddles a property line, it is considered a “boundary tree” and belongs jointly to both property owners. Florida does not recognize joint and several liability. Florida recognizes comparative fault. Meaning, when multiple parties are liable in tort, each culpable party is assessed with their portion of fault. Rather than joint and several liability where either party could be held responsible for 100% of any damages caused. As this relates to apportioning fault to property owners that share a boundary tree, the Town can hold each property owner responsible for damages attributable to each for any damage caused by the boundary tree. It may be difficult to attribute fault in any manner other than 50/50 for damage caused by boundary trees. It may be the responsibility of each owner of the boundary tree to present why their portion should be less than 50%. I did not locate any specific instances of how a municipality or court handled comparative fault in similar situations.

4) Potential revisions to the Code for the Town's consideration.

Sec. 72-2. ~~—~~ Obligations of property owner to maintain public sidewalks, driveways, alleys, driveway aprons, or curbs adjacent to a property owner's property; restrictions.

(a) *General prohibition.* It ~~shall be~~ is unlawful for the owner of real property, and/or his tenant, licensee, lessee, occupant, and/or agent and any other persons or entities who have the care, custody and/or control of the subject real property ("responsible parties"), to cause or allow to be caused damage to town sidewalks, driveways, alleys, driveway aprons, swales, swale areas, or curbs, which abut, or are adjacent or contiguous to the property owner's real property, where such damage renders such areas either defective, defaced, unsafe, dangerous, and/or detrimental to pedestrians, bicyclists, and motorists. Painting of town sidewalks is prohibited. ~~Painting, resurfacing or marking of driveway aprons requires approval from the community development department; driveway apron painting, resurfacing or marking must match the color, style, and design of the corresponding, abutting driveway.~~

(b) *Duty to inspect and report.* ~~Responsible parties. A property owner, and/or the owner's tenant, licensee, lessee(s), occupant and/or agent and/or any other persons or entities who have the care, custody and/or control over the adjacent real property, shall all be deemed "responsible parties" for purposes of this article.~~ Responsible parties shall ~~have an affirmative duty to~~ regularly inspect the abutting, adjacent, and contiguous town sidewalks driveways, alleys, driveway aprons, swales, swale areas, or curbs and public ways, for unsafe conditions including but not limited to, potholes; broken or uneven surfaces which may make walking or traversing the area unsafe; worn out or otherwise in disrepair due to decaying or broken materials; protruding roots, overhanging branches, deteriorated surfaces, or any other unsafe condition, which may pose a danger or threat to the public or to the adjacent property owner or his guests, invitees, and other persons on the property and promptly report such unsafe conditions to the town's public works department.

(c) *Duty to repair and maintain.* ~~Where town sidewalks, driveways, alleys, driveway aprons, swales, swale areas, or curbs have been observed to be in an unsafe condition by the town or a complaint of the same has been reported to the town, the town may initiate code enforcement action, and/or any other legal remedies available to the town. If it is determined by the town that the property owner and/or other responsible party has caused such damaged condition, then the property owner or other responsible party shall repair or replace the damaged area of the sidewalk, driveway, alley, driveway apron, swale, swale area, or curb in the manner required by the town for the construction of such areas. In the event the violator fails to repair the damaged area, the town may complete all required maintenance, repairs, and/or replacement, as more specifically provided in section 72-3.~~ Where any town sidewalks, driveways, alleys, driveway aprons, swales, swale areas, or curbs ~~such areas~~ are damaged by roots from trees on the private property side of the right-of-way, any damage ~~to the sidewalk~~ shall be considered attributable to the property owner for purposes of this article. In the event that the tree is located on the property of more than one property owner, such as where a tree straddles a property line between the boundaries of two or more properties, both property owners shall be jointly and severally ~~comparatively~~ liable for any violation of this article, and any and

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all fines, costs, and other damages caused by the tree ~~to the sidewalk~~. Where such areas are damaged by roots from trees located on town property maintained by the town, or by limbs falling from a tree or by the removal of a tree by the town, the repairs to town sidewalks shall be made by the town at no cost to the adjacent property owner.

Sec. 72-3. - Enforcement.

~~(a) Proactive discovery of potential violations. Where a sidewalk has been observed to be in an unsafe condition by the town or a complaint of the same has been reported to the town, the town may initiate code enforcement action, and/or legal any other legal remedies available to the town. If it is determined that the property owner and/or other responsible party has caused such condition, then the property owner or other responsible party shall repair or replace the damaged area of the sidewalk in the manner required by the town for the construction of such areas. In the event the violator does not effect repairs to the damaged area, the town may complete all required maintenance, repairs, and/or replacement, as more specifically provided below.~~

~~(a) Failure to regularly inspect and report or repair and maintain. The failure of a violator to regularly inspect and notify the town of any unsafe conditions set forth in section 72-2(b) or the failure to repair and maintain required in section 72-2(c) may shall subject the property owner violator to all permissible code enforcement action pursuant to fines, costs and remedies laid out in section 9-39 and F.S. ch. 162 provided under Florida law.~~

~~(b) Town's right to make repairs. In the event that the violator fails to complete the remedial action required of by the town within 45 days after notice provided by the town a final order rendered by either a special magistrate or court, the town shall have the right to make all necessary repairs in order to bring the damaged Town property into compliance, and all costs and expenses incurred by the town in connection with the making of the repairs, together with anyall fines and other administrative costs imposed by an order of the code enforcement magistrate may be recorded and thereafter shall constitute a lien upon the real and personal property owned by the violator. The town's lien may be foreclosed in accordance with the provisions of F.S. ch. 162, as amended. The town's right to make the repairs on behalf of the violator does not obligate the town to make such repairs. The right to make the repairs is a remedy in addition to the remedies specified above and under Florida law. Nothing in this section shall be deemed to limit the town from enforcing its code by any other means authorized by law.~~

~~(c) Private cause of action. Any person, including the town, 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 this chapter, or to correct a condition in violation of this chapter, 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 this chapter, for damages that the property owner, occupant, agent or third party's violation, negligence or wrongful acts or omissions contributed to any alleged injuries or damages sustained. The town may assert as a defense to any action that a violation of this chapter caused~~

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or allowed to be caused by an adjacent or abutting property owner, occupant or agent of such property is not, or third party, reduces the town's liability, but is wholly or partially the responsibility of any, in whole or in part by such property owner, occupant or agent of such property, or third party's violation, due to its negligence or failure to comply with this chapter wrongful acts or emissions.