

ORDINANCE NO.: 06-2009.

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA, AMENDING CHAPTER 72, ENTITLED "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", ARTICLE I; PROVIDING FOR THE CREATION OF NEW CODE SECTION 72-2 REQUIRING PROPERTY OWNERS WHOSE PROPERTY ABUT OR ARE ADJACENT TO SIDEWALKS TO MAINTAIN SIDEWALKS IN A SAFE CONDITION; PROVIDING FOR NEW CODE SECTION 72-3 TO BE ENTITLED "ENFORCEMENT; PROVIDING FOR THE AMENDMENT ARTICLE II, SECTION 72-31 ENTITLED "PERMIT"; PROVIDING FOR THE AMENDMENT OF SECTION 72-32 ENTITLED "REPLACING SUBGRADE AND PAVEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF LAWS IN CONFLICT; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Lake Park, Florida ("Town") is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the Town Commission has adopted general provisions pertaining to streets, sidewalks, and other public places generally, which have been codified in Chapter 72, Article 1, of the Code of Ordinances of the Town of Lake Park; and

WHEREAS, the Town has determined that there are an increasing number of sidewalks, parkways, driveways, alleys, driveway aprons, curbs, gutters, pavement areas, and other similar rights-of-way ("sidewalks and public ways"), which abut, or are adjacent or contiguous to, private property within the Town, which have fallen into disrepair, become defective, and/or due to a variety of causes, conditions, actions, and omissions in reasonable care, may have resulted in dangerous or potentially dangerous conditions; and

WHEREAS, under current Florida law, a private property owner has no duty to maintain a public sidewalk or public way, unless the local government affirmatively requires an abutting

property owner to repair dangerous, detrimental, and/or defective sidewalks, where such property owner, or the owner’s tenant(s), licensee(s), lessee(s), occupant(s) and/or agent(s) of the real property (“other responsible parties”), have through either any act or omission have caused the dangerous condition, or have caused the damage giving rise to the dangerous condition. (See e.g., Del Rio v. Town of Hialeah, 904 So. 2nd 484 (Fla. 3rd DCA 2005), Woods v. Palatka, 63 So. 2d 636 (Fla. 1953); and

WHEREAS, a review of Florida judicial law and other local ordinances and codes of municipalities in Florida, reflect that the Town may legally require an adjacent, abutting, and contiguous property owner to repair Town sidewalks and public ways, that abut private property when the damages to the sidewalk or public way giving rise to the dangerous or detrimental condition, are caused by the abutting, adjacent, or contiguous property owner (and/or other responsible parties), and

WHEREAS, in addition, the Town may also make the necessary repairs and charge the property owner with all related costs of the repair work, together with any fines, administrative and other costs imposed through a Town code enforcement proceeding, or court action, and all such fees and costs incurred by the Town shall constitute a valid Town lien upon the real and personal property of all responsible parties; and

WHEREAS, the Town Commission has determined that adopting provisions requiring an abutting, adjacent, or contiguous property owner to maintain Town sidewalks and public ways which abut their property, so as not to create a dangerous and/or detrimental conditions which may cause or result in harm, is in the best interests of the safety of the Town, and its residents, visitors, and guests; and

WHEREAS, the Town Commission further finds that such regulations will provide yet another positive mechanism to enhance community pride, continue to make the Town a desirable

place in which to live, and possibly protect the Town against a further decline of property values in certain portions of the community; and

WHEREAS, the Town Commission further finds that enacting this Ordinance is in the common interest of the people of the Town, as it will further the general health, safety and welfare of the Town at large, not only via the means stated above, but also by fostering a stronger sense of personal responsibility and civic awareness in individual property ownership, engendering greater community pride in the Town, and facilitating a communal sense of participation and cooperation; and

WHEREAS, Chapter 166, Florida Statutes authorizes the Town Commission, as the governing body of the Town, to adopt Ordinances and Resolutions which are deemed necessary for the exercise of its powers, and

WHEREAS, in addition Chapter 162, Florida Statutes further authorizes the Town to enforce violations of regulations of the Code of Ordinances adopted by the Town through code enforcement proceedings, and to impose and prescribe fines and penalties for violation of such Ordinances which have been properly adjudicated in a quasi-judicial proceeding held in accordance with Florida law; and

WHEREAS, Town staff has recommended to the Town Commission that Chapter 72 of the Town Code, Article 1, Sections 72-2 and 72-3, be created to provide for additional regulations requiring abutting, adjacent, and contiguous private property owners, and other responsible parties to be held legally responsible for sidewalk and public way maintenance and repair under the circumstances as specified herein, and to subject all such violators to the imposition of fines, administrative costs, legal and professional fees, the costs of all remedial measures and corrective work undertaken either by the Town or the violator, together with all other remedies available to the Town under Florida law for any violator's failure to so; and

WHEREAS, Town staff has recommended to the Town Commission that Chapter 72, Article II, Sections 72-31 and 72-32, be amended to provide for additional regulations regarding permits and construction and repair; and

WHEREAS, the Town Commission, after due notice and public hearings, deems it to be in the interest of the public health, safety, and general welfare to amend Chapter 72, Article 1, of the Town's Code of Ordinances to provide for the creation of these additional new Code Sections 72-2 and 72-3, containing such additional regulations and procedures.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA:

Section 1. The whereas clauses are hereby incorporated as true and correct findings of fact of the Town Commission.

Section 2. Chapter 72, Article I, Sections 72-2 and 72-3 of the Code of Ordinances of the Town of Lake Park, Florida are hereby created to read as follows:

Sec. 72-2. Obligation of Property Owner to Maintain Public Sidewalks Adjacent to 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, or curbs, which abut, or are adjacent or contiguous to the property owner's real property, if such damage renders such areas either defective, unsafe, dangerous, and/or detrimental to persons such as pedestrians, bicyclists, and motorists, using these areas for the normal purposes for which they were intended.

(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 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.

(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 Chapter 162, Florida Statutes, as amended.

Section 3. Chapter 72, Article II, 72-31 & 72-32 of the Code of Ordinances of the Town of Lake park, is hereby amended to read as follows:

ARTICLE II. EXCAVATIONS

Sec. 72-31. Permit.

~~Before any person shall make an excavation in, upon or across any paved road, street or other public way, other than a sidewalk, within the town, such person shall apply to the town for a permit, and pay therefor a permit and inspection fee of \$250.00.~~

When any person desires to construct, repair, disturb, cut into, dig up, or excavate any public street, alley, or public right-of-way, whether same is paved or unpaved, or any parkway, curb, gutter, or sidewalk, an application for a permit to perform those activities shall be submitted to the Town using the permit application form provided by the Town for such purpose.

Sec. 72-32. ~~Replacing subgrade and pavement.~~ Construction and/or Repair of Public Ways and Sidewalks.

When any person or entity constructs, repairs, replaces, or otherwise makes an excavation in, upon or across any paved road, street or any public way, ~~other than~~ including a sidewalk or driveway apron

within the Town, ~~he~~ the person or entity shall repair the same in strict accordance with the standards and any other permit requirements or conditions set forth in the excavation permit issued by the Town of Lake Park engineer and/or Director of Public Works. Such standards shall be made available to an applicant as part of the permit process. ~~by stabilizing the subgrades immediately under the street base by applying at least eight inches of compacted limerock, shell or marl and applying thereon at least six inches of concrete ("Min" with reinforced steel rods) which concrete shall be at least 36 inches width minimum or twice the size of ditch dug. There also shall be at least two inches of hot or cold mix asphalt applied on the concrete.~~

~~(b) The asphalt shall be either rolled or thoroughly compacted by hand tamping or other approved method, and shall be compacted and smoothly finished to the existing grades.~~

Section 4. **Severability.** If any section, paragraph, sentence, clause, phrase or word of this Ordinance is for any reason held by a Court to be unconstitutional, inoperative or void, such holding shall not affect the remainder of this Ordinance.

Section 5. **Repeal of Laws in Conflict.** All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. **Codification.** The provision of this Ordinance shall become and be made a part of the Code of Ordinances for the Town of Lake Park. The Sections of the Ordinance maybe renumbered or re-lettered to accomplish such.

Section 7. **Effective date.** This Ordinance shall take effect immediately upon passage.

Upon First Reading this 18 day of March, 2009
 the foregoing Ordinance, was offered by Commissioner Carey who moved
 its approval. The motion was seconded by Vice-Mayor Daly, and being
 put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
VICE MAYOR ED DALY	<u>/</u>	_____
COMMISSIONER CHUCK BALIUS	<u>/</u>	_____
COMMISSIONER JEFF CAREY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____

PUBLISHED IN THE PALM BEACH POST THIS 22 DAY OF March, 2009

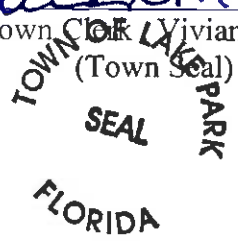
Upon Second Reading this 1 day of April, 2009 the foregoing
 Ordinance, was offered by Commissioner Daly who moved its
 adoption. The motion was seconded by Vice-Mayor Carey, and being
 put to a vote, the result was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	_____
COMMISSIONER ED DALY	<u>/</u>	_____
COMMISSIONER KENDALL RUMSEY	<u>/</u>	_____
VICE - MAYOR JEFF CAREY	<u>/</u>	_____
COMMISSIONER PATRICIA OSTERMAN	<u>/</u>	_____

The Mayor thereupon declared **Ordinance No. 06-2009** duly passed and adopted
 this 1 day of April, 2009

TOWN OF LAKE PARK, FLORIDA
 BY: Desca DuBois
 Mayor, Desca DuBois

ATTEST:
Vivian M. Lemley
 Town Clerk Vivian Mendez Lemley
 (Town Seal)



Approved as to form and legal sufficiency:
Thomas J. Baird
 Town Attorney, Thomas J. Baird