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ORDINANCE 19-13

AN ORDINANCE OF THE CITY OF MARCO ISLAND, FLORIDA, AMENDING CHAPTER 42, ARTICLE II, SIDEWALKS; SECTION 42-36, DUTY OF ABUTTING PROPERTY OWNERS TO CONSTRUCT AND MAINTAIN SIDEWALKS, OF THE CODE OF ORDINANCES OF THE CITY OF MARCO ISLAND, FLORIDA; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, to perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, the City Council of Marco Island has previously determined that the promotion of the health, safety, and welfare of the residents and visitors will be accomplished by establishing requirements for construction and maintenance of sidewalks; and

WHEREAS, said regulations relating to construction and maintenance of sidewalks within the City were originally adopted by City Ordinance 99-2, amended by City Ordinance 05-10 and codified in Chapter 42, Article II, of the Code of Ordinances of the City of Marco Island; and

WHEREAS, pursuant to the Charter for the City of Marco Island and Florida law, the City Council has the power to adopt ordinances as may be required for the good government of the City; and

WHEREAS, the City Council deems it necessary to make certain amendments to Chapter 42, Article II, which was originally adopting by City of Marco Island Ordinance 99-2 and amended by City Ordinance 05-10; and

WHEREAS, after considering the recommendation of the City staff and following a public hearing on the subject, the City Council has determined it is in the best interest of the City of Marco Island to approve those amendments to the Code of Ordinances contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MARCO ISLAND, FLORIDA:

47 **SECTION 1. Recitals.**

48
49 The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true,
50 correct, and reflective of the legislative intent underling this Ordinance.

51
52 **SECTION 2. City Code Amended.**

53
54 That Section 42-36 "Duty of abutting property owner to construct and maintain
55 sidewalks" of Article II, "Sidewalks", Chapter 42 "Streets, Sidewalks and other Public
56 Places" of the Code of Ordinances of the City of Marco Island, Florida, is hereby
57 amended to read as follows:

58
59 **Section 42-36. Duty of abutting property owners to construct and maintain**
60 **Sidewalks**

61
62 (a) Generally. Excluding property owners within Hideaway and Key Marco PUD's
63 and Olde Marco (north of the centerline of Old Marco Lane), it shall be the duty of
64 every owner of abutting property to construct or reconstruct, maintain and keep in
65 good condition and repair, sidewalks in front of or abutting upon each parcel of the
66 owner's property.

67 (1) Vacant Lots. Sidewalk construction shall not be required for vacant lots until
68 the lot is developed (or partially developed), unless the City Council determines a
69 sidewalk is needed to complete a Safe Route to School, in which case sidewalk
70 construction shall be required to be properly permitted and completed by the
71 property owner within 9 months (or less if so determined by Council) from the
72 date of Council's determination of need. Where there is no sidewalk abutting
73 several adjacent vacant lots, to complete a Safe Route to School the city may
74 design and construct the required sidewalk and assess the abutting properties
75 for the costs in accordance with Section 42-39 of the City Code.

76
77 (2) Improved Lots. Upon issuance of a Notice of Violation from the Code
78 Enforcement Division the property owner of an improved lot shall be required to
79 properly permit and construct a sidewalk within 12 24-months (or less if so
80 determined by the city's Code Enforcement Magistrate) for Residential properties
81 and within 18-months (or less is so determined by the city's Code Enforcement
82 Magistrate) for Commercial properties. Sidewalks must comply with the city's
83 current Construction Standards at the time of permitting. Where there is no
84 sidewalk abutting several adjacent improved lots, the City may design and
85 construct the required sidewalk and assess the abutting properties for the
86 associated costs in accordance with Section 42-39 of the City Code.

87
88 (b) Maintenance. It is unlawful for any owner, occupant or agent of any property to
89 allow a sidewalk in front of or abutting such property to remain in a condition that
90 renders it unsafe, dangerous or detrimental for the purpose for which it is intended.

91

92 (1) If more than 50% of the total linear footage of sidewalk needs repair (as
93 determined by the city), the property owner must replace the abutting sidewalk in
94 total to the city's current standards at the time of permitting.

95 (2) If 50% or less of the abutting sidewalk needs repair (as determined by the
96 city, the damaged sections may be replaced in kind with similar construction and
97 material. Concrete leveling with a flowable material will be permitted as an
98 alternate to replacement. Sidewalk grinding will be considered on a case by
99 case basis. . A property owner may use asphalt to repair an existing asphalt
100 sidewalk, but when a new building is built on the abutting lot, the asphalt
101 sidewalk must be replaced with a concrete sidewalk in compliance with the city's
102 current Construction Standards at the time of permitting.

103 (c) Damage. Any sidewalks damaged during new construction or renovation is
104 presumed to be caused by the owner or the owner's agent undertaking construction or
105 renovation. It shall be the owner's responsibility to promptly repair or replace any
106 sidewalk damaged during construction or renovation at the owner's expense.

107
108 (d) Duty to Inspect. A property owner, occupant or agent shall inspect all sidewalks
109 in front of or abutting upon the owner's property for unsafe conditions. Where a
110 sidewalk is in the public right-of-way and is in an unsafe condition, the property owner,
111 occupant or agent thereof, or third party shall immediately notify the city of any unsafe
112 condition by written notice. Upon investigation and determination by the city that the
113 condition was not caused by action of the owner, occupant or agent thereof, or third
114 party, the city will not charge the owner, occupant, agent or third party if the city
115 repairs the condition. If it is determined that the owner, occupant or agent thereof,
116 or third party caused the damage, then the person who caused the damage
117 shall be required to repair or replace the damage in the manner provided in
118 this division for the construction of new sidewalks at said person's own cost; or
119 pay the city to make such repairs or replacement. If the property owner,
120 occupant or agent thereof fails to notify the city of any unsafe condition caused by
121 a third party, the property owner, occupant or agent cannot raise the defense to a
122 claim of liability that the unsafe condition was caused by a third party. If the
123 owner, occupant, agent or third party does not repair or replace the damage or
124 otherwise pay the city, the city shall assess the owner of the property for costs
125 incurred by the city for repairs or replacement. Such assessment, if not paid within
126 30 days, shall become a lien against the property or as provided in this Code or
127 state law.

128
129 (e) Encroachments. It is the duty of each owner of abutting property to
130 maintain the sidewalk and driveway apron in such a way that it is free of
131 overgrowth of grass, weeds, sand, debris, and encroachments. A clearance zone
132 encompassing the entire width of the sidewalk by seven and one-half 7½ feet in
133 height shall be maintained. Vegetative encroachments are not permitted.

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SECTION 3. Codification.

It is the intention of the City Council, and it is hereby ordained, that the amendments to the City of Marco Island Code of Ordinances made by this Ordinance shall constitute a revised Section 42-36 of the City of Marco Island Code of Ordinances, and that the sections of this Ordinance may be renumbered and re-lettered as necessary, and that the word "Ordinance" may be changed to "Section", "Article" or other appropriate word.

SECTION 4. Conflicts.

All ordinances or parts of ordinances and all resolutions or parts of resolutions in conflict with the provisions of this Ordinance are hereby superseded and resolved to the extent of any conflict in favor of the provisions of this Ordinance.

SECTION 5. Severability.

If any term, section, clause, sentence or phrase of this Ordinance is for any reason held to be invalid, illegal, or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the other or remaining terms, sections, clauses, sentences or phrases portions of this Ordinance, and this Ordinance shall be read and applied as if the invalid, illegal, or unenforceable term, provision, clause, sentence or section did not exist.

SECTION 6. Effective Date.

This Ordinance shall become effective upon its adoption.

ADOPTED BY THE CITY COUNCIL OF THE CITY OF MARCO ISLAND THIS 20TH DAY OF MAY 2019.

ATTEST:

Laura M. Litzan, City Clerk

CITY OF MARCO ISLAND, FLORIDA
By: _____
Erik Brechnitz, Chairman

Approved as to form and legal sufficiency:

Alan L. Gabriel, City Attorney