


**CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
LEGAL OPINION – 08-003**

TO: Stephanie Grindell, Director
Public Works Department

FROM: Julie O. Bru, City Attorney 

DATE: April 28, 2008

RE: Ability of City to Require Adjacent Property Owners to Repair Adjacent Sidewalks
Matter ID No.: 07-2561

You have requested a legal opinion on substantially the following issue:

WHETHER THE CITY CAN ENFORCE SECTION 54-55 OF THE CODE OF THE CITY OF MIAMI REQUIRING OWNERS OF PROPERTY CONTIGUOUS TO CITY SIDEWALKS TO REPAIR THEM IF THE SIDEWALKS BECOME DANGEROUS OR DETRIMENTAL TO CITIZENS?

The answer to the question is in the affirmative.

FACTS

Section 54-54 of the Code of the City of Miami makes it unlawful for the owner of a property contiguous to a City sidewalk to allow the sidewalk to remain in a dangerous condition. Section 54-55 requires such a property owner, upon certain conditions, to repair such sidewalk. The relevant Sections of the Code of the City of Miami are set forth fully below:

Sec. 54-54. Allowing sidewalks to remain in dangerous condition.

It shall be unlawful for any owner, occupant or agent thereof, of any walk, sidewalk or curb (i.e., the owner, occupant or agent thereof of any property to which such sidewalk is contiguous) to allow such walk or sidewalk to remain in such a condition as to be dangerous or detrimental to citizens on their property.
(Code 1967, § 54-33; Code 1980, § 54-43)

Sec. 54-55. Notice to repair sidewalks.

In case the surface of any walk or sidewalk in the city becomes so uneven as to make walking over it dangerous or detrimental, or if the curbing becomes decayed, worn out or broken, it shall be the duty of the director of public works to notify the owner, and if the owner cannot be served, to notify the occupant, and if there is no occupant, then to notify the agent of the owner of the property to which the sidewalk is contiguous, to repair such walk or sidewalk. Such notice shall be in writing; shall allow such owner, agent or occupant 30 days in which to repair such walk or sidewalk; shall describe the walk, sidewalk or curb to be repaired; shall set forth that such walk, sidewalk or curb shall be repaired, if surface work is to be done, with the same

material as such walk, sidewalk or curb was originally constructed, and if curbing is to be put in, with concrete; and shall be served, returned and filed in the office of the director of public works. (Code 1967, § 54-34; Code 1980, § 54-44)

DISCUSSION

Generally, an abutting property owner has no duty to maintain a public sidewalk. *Schupbach v. City of Sarasota*, 765 So.2d 131 (2nd DCA 2000); *Freundlich v. South Seas Operating Corp.*, 398 So.2d 490 (Fla. 3rd DCA 1981); *Beattie v. City of Coral Gables*, 358 So.2d 1131 Fla. 3rd DCA 1978). In *Schupbach*, the plaintiff tripped and fell on a City sidewalk and sued the City. The City of Sarasota had in effect a Code provision similar to Miami's. In discovery the City named the abutting property owners as other parties liable to the plaintiff based upon the Code. The plaintiff amended the complaint to join the abutting property owners. The trial court granted the private property owner's motion for summary judgment and plaintiff appealed. The District Court held that the Code did not create a private cause of action imposing a duty of care in tort upon abutting property owners.

More recently, the 3rd DCA held that a Hialeah Ordinance did create a private cause of action imposing a duty of care in tort upon abutting property owners. *Del Rio v. City of Hialeah*, 904 So.2d 484 (3rd DCA 2005). The plaintiff tripped and fell on a hole in a City sidewalk. She sued the City of Hialeah and the abutting property owners. The trial court granted the private property owner's motion for summary judgment and plaintiff appealed. Hialeah Code Section 82-91 is also similar to Miami Ordinance 54-54. However, the Hialeah Code contains an additional provision specifically creating a third party cause of action against an abutting property owner that fails to make safe a dangerous condition or notify the City of such condition. See copy of the Hialeah Ordinance, attached.

In *Woods v. Palatka*, 63 So.2d 636 (Fla. 1953), the Florida Supreme Court held that, constitutionally, a municipality could not be exempted from tort liability in the discharge of its duty to exercise reasonable diligence in repairing defects in sidewalks. However, the Court pointed out that the city could require abutting property owners to repair sidewalks and impose, upon failure to do so, a lien upon the property.

A review of other local ordinances and related case law suggests that the City may require adjacent/abutting property owners to repair "dangerous or detrimental" City sidewalks that abut their property *if* the owner, occupant, agent or third party caused the damage giving rise to the dangerous condition. The abutting property owners may further be subject to lien for failure to make such repair.

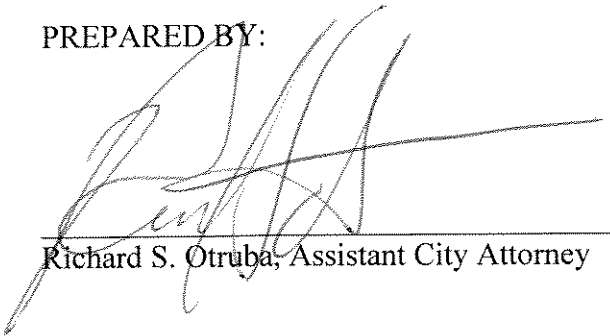
Without specific language creating a private right of action, however, Section 54-54 of the Code of the City of Miami does not impose a duty of care in tort upon abutting property owners.

CONCLUSION

The Code as stated does authorize the City to require the owner of any property to which a City sidewalk is contiguous to repair such sidewalk. The Code does not, however, relieve the City of any liability arising from a claim for negligence based upon a dangerous condition on the sidewalk.

The City would benefit from legislation specifically creating a third party cause of action against an abutting property owner that fails to make safe a dangerous condition or notify the City of such condition.

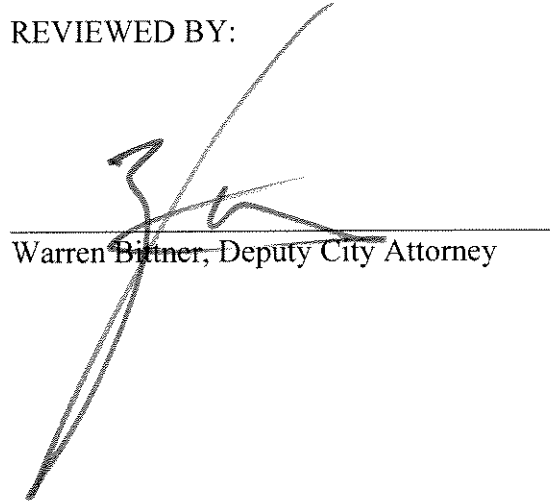
PREPARED BY:



Richard S. Otruba, Assistant City Attorney

Enclosure(s)

REVIEWED BY:



Warren Bittner, Deputy City Attorney

City of Miami Ordinance

(Code 1967, § 54-32; Code 1980, § 54-42)

Sec. 54-54. Allowing sidewalks to remain in dangerous condition.

It shall be unlawful for any owner, occupant or agent thereof, of any walk, sidewalk or curb (i.e., the owner, occupant or agent thereof of any property to which such sidewalk is contiguous) to allow such walk or sidewalk to remain in such a condition as to be dangerous or detrimental to citizens on their property.

(Code 1967, § 54-33; Code 1980, § 54-43)

Sec. 54-55. Notice to repair sidewalks.

In case the surface of any walk or sidewalk in the city becomes so uneven as to make walking over it dangerous or detrimental, or if the curbing becomes decayed, worn out or broken, it shall be the duty of the director of public works to notify the owner, and if the owner cannot be served, to notify the occupant, and if there is no occupant, then to notify the agent of the owner of the property to which the sidewalk is contiguous, to repair such walk or sidewalk. Such notice shall be in writing; shall allow such owner, agent or occupant 30 days in which to repair such walk or sidewalk; shall describe the walk, sidewalk or curb to be repaired; shall set forth that such walk, sidewalk or curb shall be repaired, if surface work is to be done, with the same material as such walk, sidewalk or curb was originally constructed, and if curbing is to be put in, with concrete; and shall be served, returned and filed in the office of the director of public works.

(Code 1967, § 54-34; Code 1980, § 54-44)

Sec. 54-56. Construction, reconstruction or repair of street improvements required when property is improved by construction of \$25,000.00 or more in value or exceeding 650 square feet in floor area.

(a) Sidewalks, curbs and/or gutters, pavement, modifications to existing drainage systems and sodding, hereafter referred to as street improvements, shall be constructed, reconstructed or repaired when any property located within the corporate limits is improved, altered or modified by the construction, reconstruction, remodeling, renovation or repair of any type of building, structure or parking facility amounting to \$25,000.00 or more in value, or when such building to be constructed, reconstructed, remodeled, renovated or repaired is 650 square feet or more in floor area, for which a permit is required.

(b) The director of the public works department of the city shall notify the applicant/qualifier for the permit by noting on the approved plans that the street improvements adjacent to the lot or parcel to be improved, altered or modified shall be constructed, reconstructed or repaired. Said street improvements may extend to the centerline of the street and shall be constructed within or adjacent to the established base building lines to the proper line and grade as determined by the public works department on all roadways within the corporate limits. In the event that the surface of any existing street improvements is uneven, cracked, broken or marred, these portions of the street improvements shall be replaced by the applicant/qualifier.

(c) The director of the public works department of the city is hereby directed to withhold or withdraw the certificates of occupancy or use until such street improvements are properly constructed, reconstructed or repaired as provided in subsections (a) and (b) of this section.

(d) The director of the public works department is hereby authorized to approve deferment of construction and allow variations and deviations from the above requirements of constructing,

reconstructing or repairing said street improvements, as he determines necessary, based on the conditions of the terrain and the existing sidewalk, curbs and/or gutters, and pavement immediately adjacent to the property involved; provided that the property owner furnishes the city with a properly executed covenant to run with the land in which the property owner agrees to construct or pay the cost of constructing the street improvements when such construction is required by the department of public works.

(e) In the event that the property owner fails to construct, reconstruct or repair the street improvements as required by the public works department, the director of the public works department shall notify the applicant in writing that the applicant has 30 days in which to construct said street improvements. If the street improvements are not constructed within the 30-day period, the director of the public works department is authorized to cause the construction of said street improvements by either city personnel or by award of a contract under the provisions of the city Code. An accounting of the total cost of said street improvements, certified by the director of the public works department, shall be recorded in the public works and thereafter shall constitute a lien against the property involved. The total cost shall include the construction cost, a 16-percent fee for engineering services for the public works department, and any incidental expenses.

(Code 1967, § 54-34; Ord. No. 9871, § 1, 7-31-84; Ord. No. 10279, § 1, 6-11-87; Code 1980, § 54-45)

Sec. 54-57. Obstructing streets or sidewalks with trash, lumber, etc.

(a) No person shall place any trash, lumber, wood, glass or other obstruction in any public street, lane, alley or way, or on any sidewalk. Any person who shall place any such obstruction in any street, lane, alley or way, or on any sidewalk, and fail to remove the same within six hours after being notified by the chief of police or any police officer, or who, after having removed the obstruction, shall replace it or place similar obstructions shall, on conviction, be punished as provided in section 1-13. Any person actually building or about to build or repair any building, or construct or repair any sewer or line of water or gas piping, may collect and lay all such materials as may be necessary adjoining the place where such building or repairing is to be done, or in front of such building, and shall have the privilege of using one-third of the width of the street adjoining in front of such building or repairs. But in no event shall any person obstruct the sidewalk in front of or along the site or place where such improvement is being made, or where such building is in process of repair or construction, except upon written consent of the director of public works, and in no event shall such obstruction of the sidewalk be permitted for a period exceeding one day.

(b) The owner or proprietor of such materials shall cause a lamp or lantern, with a good and sufficient light therein, to be securely hung up, placed or fixed on a post or otherwise at each end of the pile of material which may be lying in the street, lane or sidewalk and obstructing the same, and in such manner as to clearly and plainly show the place and extent occupied by such material. The lamp or lantern shall be lighted by the owner, proprietor or his employees, at or before dark in the evening, and shall be kept burning until daylight.

(Code 1967, § 54-35; Code 1980, § 54-46)

Sec. 54-58. Right-of-way dedication required prior to issuance of permits.

(a) Whenever the owner(s) of the property within the city wishes to construct a new building or structure, or to change the use of an existing building or structure, or expand an existing structure, and the director of the department of public works determines that there is a rational and substantial connection between the burdens imposed by the proposed development or the change of use on the city services, including adjacent streets and the dedication of the portion of the applicant's lot, tract or parcel of land lying within the city's officially established right-of-way

to the public for street purposes, and that the dedication of the officially established right-of-way is absolutely necessary to mitigate the burdens that the proposed development or change of use places on the adjacent streets, no permit for construction of a new building or structure or change of use or expansion of an existing structure shall be issued on any lot, tract or parcel of land until all portions of the applicant's lot, tract or parcel lying within the city's officially established right-of-way have been dedicated to the public for street purposes. Additionally, right-of-way lines at street intersections shall be rounded with a radius of 25 feet. The area external to the 25-foot radius shall also be dedicated to the public for street purposes prior to the issuance of permits described above.

(b) Upon written request by applicant for a determination that the proposed construction of a new building or structure or change of use, or expansion will not burden the city services, including adjacent streets, director shall have the authority to waive the required dedication or, if he does not so waive the dedication, director shall convene, within 30 days after receipt of written request from applicant, a meeting of a review committee which shall be comprised of the director of public works, the director of the department of planning, building and zoning and an assistant city manager. The applicant shall have the right to present its position to the review committee which shall review director's refusal to grant the waiver of dedication. The committee, acting by majority vote, shall either affirm the director's refusal or reverse its refusal and grant the requested waiver of dedication. The committee shall, in determining whether director's refusal was reasonable, determine whether the proposed construction of a new building or structure or change of use or expansion will burden city services, including the adjacent street (s). The decision of this committee, which shall be rendered within 30 days after conclusion of the hearing, shall be final.

(Ord. No. 9966, § 1, 3-21-85; Ord. No. 10279, § 2, 6-11-87; Ord. No. 10898, § 1, 7-11-91; Code 1980, § 54-47)

Secs. 54-59--54-85. Reserved.

CITY OF HIALEAH ORDINANCE

ARTICLE I. IN GENERAL

Sec. 82-1. Legislative intent.

It is the intent of the city to set forth regulations and standards for construction, maintenance and use of swale areas, sidewalks, streets and other public rights-of-way; and to delineate the responsibility between the city and property owners, tenants or agents in connection therewith.

(Ord. No. 2000-113, § 1, 11-14-2000)

Sec. 82-2. Private right of action.

Any person, including the city, 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 according to the percentage that the property owner, occupant, agent or third party's violation, negligence or wrongful acts or omissions contributed to any alleged injuries or damages. The city may assert as a defense to any action that a violation of this chapter caused or allowed to be caused by an adjacent or abutting property owner, occupant or agent of such property, or third party reduces the city's liability in whole or in part by such property owner, occupant or agent of such property, or third party's violation, negligence or wrongful acts or omissions.

(Ord. No. 2000-113, § 1, 11-14-2000)

ARTICLE IV. SIDEWALKS, CURBS AND GUTTERS**DIVISION 1. GENERALLY**

Secs. 82-61--82-85. Reserved.

DIVISION 2. CONSTRUCTION**Sec. 82-86. Required.**

No person shall construct any building in a residential or commercial zoning district without constructing a sidewalk adjoining the entire frontage of the lot and along the rear of the lot, if the building side runs from street to street. Where the building will be constructed on a corner lot, a sidewalk will also be required along the sides of the lot.

(Ord. No. 2000-113, § 1, 11-14-2000)

Sec. 82-87. Permit required.

The applicant shall apply for a sidewalk permit at the same time as the building permit. No building permit shall be issued unless the sidewalks are shown or incorporated in the plans and specifications submitted for the building permit.

(Ord. No. 2000-113, § 1, 11-14-2000)

Sec. 82-88. Lines and grades.

The builder shall furnish all stakes or pins and such ordinary labor as may be necessary for setting grades, and shall take the necessary steps to protect and care for the stakes after the grade is set. If any stakes are disturbed, the grade shall be reset at the builder's expense.

(Ord. No. 2000-113, § 1, 11-14-2000)

Sec. 82-89. Inspection.

After the grades are set and before actual construction is commenced or at any time before final acceptance or approval of the work by the streets department, the city shall inspect the grades as set, and if found to conform to the grades established in the plans or specifications, the city shall so certify and permit construction to proceed.

(Ord. No. 2000-113, § 1, 11-14-2000)

Sec. 82-90. Nonconformity.

If, during the course of construction, the streets department observes that the construction does

not conform to the established lines and grades, the director of the streets department shall have the authority and power to suspend or stop work until a final decision is made or until the construction conforms to the established lines or grades. It shall be unlawful for the builder or contractor, its employees or agents, to proceed with the construction until the director approves the resumption of construction.

(Ord. No. 2000-113, § 1, 11-14-2000)

Sec. 82-91. Curb, gutter and sidewalk maintenance by abutting owners or occupants.

(a) It is unlawful for any owner, occupant or agent of any property to allow the sidewalks, driveways or curbs and gutters abutting or contiguous to such property to remain in a condition that renders them unsafe, dangerous or detrimental for the purpose for which they were intended.

(b) A property owner, occupant or agent shall inspect the sidewalk, driveways and curbs and gutters for unsafe conditions. Where a sidewalk or curb and gutter is in the public right-of-way and in an unsafe condition, the property owner, occupant or agent thereof, or third party shall immediately notify the city of any unsafe condition by written notice. Upon investigation and determination by the city that the condition was not caused by action of the owner, occupant or agent thereof, or third party, the city will not charge the owner, occupant, agent or third party if the city repairs the condition. If it is determined that the owner, occupant or agent thereof, or third party caused the damage, then the person who caused the damage shall be required to repair or replace the damage in the manner provided in this division for the construction of new sidewalks, curbs or gutters at his or her own cost; or pay the city to make such repairs or replacement. If the property owner, occupant or agent thereof fails to notify the city of any unsafe condition caused by a third party, the property owner, occupant or agent cannot raise the defense to a claim of liability that the unsafe condition was caused by a third party. If the owner, occupant, agent or third party does not repair or replace the damage or otherwise pay the city, the city shall assess the owner of the property for costs incurred by the city for repairs or replacement. Such assessment, if not paid within 30 days, shall become a lien against the property or as provided in this Code or state law.

(Ord. No. 2000-113, § 1, 11-14-2000)

Secs. 82-92--82-120. Reserved.