

**GREEN OAK CHARTER TOWNSHIP
LIVINGSTON COUNTY
STATE OF MICHIGAN**

**ORDINANCE NUMBER 05-2018
SIDEWALK REGULATION**

AN ORDINANCE REGULATING THE DEVELOPMENT, CONSTRUCTION AND MAINTENANCE OF SIDEWALKS; AUTHORIZING THE ISSUANCE OF PERMITS AND THE COLLECTING OF FEES FOR THE CONSTRUCTION OF SIDEWALKS; AND PROVIDING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

Article 1 - Title

This Ordinance shall be known and may be cited as the Green Oak Charter Township "Sidewalk Regulation Ordinance", and it shall be deemed sufficient in any action for the enforcement of the provisions hereof to define the same by such short title and by reference to the number hereof.

Article 2 - Purpose

The purpose of this Ordinance shall be:

1. The purpose of this article is to regulate the repair, maintenance and construction of public sidewalks to keep them in proper and safe condition for public use.
2. To further secure and protect the general welfare and safety of the citizens and other persons within Green Oak Charter Township.
3. To regulate the development and construction of sidewalks within Green Oak Charter Township.
4. To provide for the maintenance of those sidewalks through private property owners or special assessment.
5. To authorize the issuance of permits for construction of sidewalks.
6. To authorize the collection of fees for the construction of sidewalks.
7. To provide for penalties upon the violation of these provisions.

Article 3 - Definitions

The following words and phrases, when used in this Ordinance, shall have the meanings respectively ascribed to them in this section:

Board - The Board of Trustees of Green Oak Charter Township.

Commission or Planning Commission - The Planning Commission of Green Oak Charter Township.

Condition of Disrepair - Conditions including, but not limited to, those having any one or more of the following characteristics; provided, however, that the existence of any one or more of these characteristics shall not create a presumption or other indication that such characteristics were the cause of any injury or damage which may occur:

1. **Hole** - Place where the surface is missing;
2. **Gap** - Separation of material proportion on the surface of the sidewalk itself or between the sidewalk and the adjacent surface;
3. **Rise or Drop** - Abrupt change in grade where one surface vertically separates from an adjacent surface;
4. **Tilt** - Incline where the sidewalk surface has rotated and is no longer oriented in gradient or cross slope;
5. **Swell or Depression** - Place where the surface undulates due to uplift or subsidence of underlying materials;

Developer - An owner who is causing property to be developed, except for an owner who is constructing or causing to be constructed a single-family dwelling on a lot in a single-family residential district, but including an owner who is installing a private road on property or developing property as a subdivision, site condominium, condominium, site plan, or planned unit development.

Existing Fixed Object - An object that cannot be easily moved without the assistance of mechanical tools and/or without causing destruction to the property to which it is attached, including, but not limited to, buildings, driveways, utility poles, and fences.

Master Plan - The Green Oak Charter Township Master Plan; prepared and adopted under Act No. 168 of the Public Acts of Michigan of 1959, as amended.

Owner - A natural person, firm, association, partnership, corporation or other legal entity or combination of them which may hold any ownership interest in land whether recorded or not.

Person - A natural person, firm, association, partnership, corporation or other legal entity.

Road, Public - A road accepted by dedication or otherwise by the Livingston County Road Commission.

Sidewalk shall mean and refer to all constructed surfaces located in the public right-of-way or private road easements, dedicated primarily for pedestrian usage, and constructed primarily as dedicated pedestrian paths within a subdivision or adjacent to street lots. This does not include "Pathways" as defined in the Pathways Regulation Ordinance.

Street Lots - One or more lots which are not part of a formally created subdivision, but which are part of a neighborhood where a sidewalk has been constructed to serve the lots within such neighborhood.

Subdivision - The lots, units, and other areas which are part of a development platted under the Michigan Land Division Act (or predecessor Act) or created under the Condominium Act.

Vegetation - Trees, shrubs, bushes, flowers, weeds, or any other type of plant growth.

Terms not expressly defined above shall have their customary dictionary meanings, taking into consideration the context and intent of this Ordinance.

Article 4 – Sidewalks

The following sections shall govern the development, construction and maintenance of sidewalks throughout the Township.

Section 1 – Sidewalk Development

- A. Sidewalks shall be installed along all internal roads, either public or private, within subdivision and site condominium developments consisting of lots or units smaller than one (1) acre which are approved following the date of adoption of

this ordinance. It shall be the developer's responsibility to ensure that such sidewalks are installed, regardless of whether the construction of homes or other buildings on abutting lots is being undertaken by another party.

- C. Construction of required sidewalks shall be completed for each phase (if applicable) prior to the issuance of a final Certificate of Occupancy for any building or structure located within said phase. If such phase is internal, a permanent or temporary pedestrian connection shall be established to existing or planned pedestrian facilities around the perimeter of the overall development. The developer shall be responsible for securing all necessary permits, paying all necessary fees, and obtaining necessary inspections from Green Oak Charter Township, the Livingston County Road Commission, and/or the Michigan Department of Transportation.

In order to ensure completion of the required sidewalks, the developer shall deposit cash in an escrow account, or provide the Township with an automatically renewable irrevocable letter of credit, in the amount of the estimated cost of the required sidewalks plus twenty five percent (25%) to guarantee the completion of such sidewalks. The cost estimate shall be approved by the Township Engineer. The escrow amount to be posted by the developer under this subsection shall be in addition to the performance guarantee required under subsection 4(1)(E), unless covered by a performance guarantee required under the Township's Zoning Ordinance or any other ordinance of the Township. The escrow amount shall be returned to the developer upon completion of the sidewalk and approval by the Township Engineer and Building Official.

- D. Anyone constructing sidewalks in Green Oak Charter Township pursuant to the requirements of this Ordinance shall first obtain a permit from the Township, using forms provided by the Township Building Department. A Township review escrow shall be established in accordance with the Schedule of Fees & Escrow Charges, for applicable portions of site plan review, and shall be deposited with the Township, along with plan submittal. The review fee shall be one point two percent (1.2%) of the construction cost as agreed upon by the Township Engineer and the developer or property owner, but not fewer than One Hundred (\$ 300) Dollars. Also, an amount based on the inspection estimate by the Township Engineer shall be placed in escrow to be used toward the anticipated cost of inspections. Any unused portion of such escrows shall be returned to the developer.
- E. In addition to the above construction, permit, and inspection fees, the developer shall place, with the Township, a cash performance guarantee, or an automatically renewing irrevocable letter of credit, in the amount of twenty-five percent (25%)

of the estimated cost of the sidewalk construction, as agreed upon by the Township Engineer and the developer, to be placed in the Township's Sidewalk Maintenance Fund and to be held for two (2) years following the final inspection of sidewalks by the Township Engineer. At the expiration of the two (2) year period, the guarantee will be reimbursed to the developer, provided that no damage has been done to the sidewalks by construction activities and that the sidewalks are in essentially the same condition as they were at the time of final inspection by the Township Engineer.

Section 2 – Sidewalk Construction Standards

Sidewalks installed pursuant to the requirements of this Ordinance shall be constructed according to the following standards and specifications:

- A. All construction shall comply with the requirements of the Township's Engineering Design Standards, as well as the requirements of the Livingston County Road Commission, ASTO standards and ADA requirements.
- E. Where unique and peculiar circumstances are present, such as extreme topography, dense mature trees and/or wetlands, and/or existing fixed objects, the Planning Commission, as a part of the site plan review process, shall be authorized to vary the location and/or specifications of sidewalk construction so as to minimize or avoid a safety hazard and/or adverse impact upon natural features. Any and all required approvals from other governmental agencies shall be obtained by the developer with respect to all variances permitted by the Township.
- F. In general, sidewalks shall be constructed within the public road right-of-way or private road easement, as applicable, one (1) foot off the property line, and three (3) feet from *any* existing fixed object. Notwithstanding the foregoing requirement, if site conditions (such as physical obstructions, natural features, etc.) prohibit use of the public road right-of-way or private road easement, sidewalks required pursuant to this Ordinance may be constructed within easements on private property that have been granted by the owner. If private easements are needed, such private easements shall be fully executed, recorded at the Livingston County Register of Deeds, and a recorded copy provided to the Township prior to construction commencing.

Section 3 - Sidewalk Maintenance

- A. For sidewalks constructed after the effective date of this ordinance, the Township Board, pursuant to MCL 41.288a, may order the maintenance or repair of sidewalks in the Township because of health, safety, or general welfare of the residents of the Township.

- B. The following regulations shall apply to sidewalks in the Township:
1. If the Township Board tentatively determines that maintenance or repair of sidewalks within a subdivision and/or adjacent to one or more street lots may be necessary due to being in a condition of disrepair, or due to one or more other identified reasons:
 - a. The Township shall obtain the approval of the Michigan Department of Transportation or of the Livingston County Road Commission with regard to undertaking the maintenance and/or repair of sidewalks in a right-of-way within their respective jurisdiction.
 - b. A plan and cost estimate for maintenance and repair shall be prepared, along with an assessment roll based upon such cost estimate, allocating the cost of the project including the cost of inspection, engineering, legal, finance and administration, to the properties involved (e.g., the properties within the subdivision), and a notice of a public hearing shall be sent to owners of such lots, units and parcels. The notice shall include a basic description of the project, the cost estimate, and the tentative assessment amount, and shall be sent by first class mail to the last known address of the owner of the properties based upon the current tax assessment records in the Township.
 2. Following the public hearing, if the Township Board determines that the maintenance and/or repair of certain sidewalks is necessary due to being in a condition of disrepair, or due to one or more other identified reasons, the Board may adopt a resolution confirming the assessment roll and determining to contract for such maintenance and/or repair, and assess the costs to the properties involved in proportion to the respective benefits received, payable in five (5) annual installments, with interest; provided, however, prior to entering into such contract, the Township Board may, if requested in writing by persons representing a number of properties within the area to be assessed deemed sufficient by the Township Board, provide an opportunity within a reasonable time set by the Township for the respective property owners involved to have the sidewalks maintained and/or repaired at their own expense, according to specifications directed by the Township.
 3. A notice of assessment shall be sent to each property involved following entry into a contract for the maintenance and/or repair. If the amount of the contract is more or less than the cost estimate, the amount of the assessment upon each property shall be adjusted accordingly, provided,

however, if the cost difference is more than ten percent (10%) higher than the estimate, the contract shall not be entered into, and the assessment shall not be finalized unless and until a new public hearing is noticed and held by the Township Board in the manner provided above.

- C. Assessments established under this Ordinance shall constitute a lien upon the property assessed and shall be collected, and delinquent assessment payments shall accrue interest and penalties, as provided for in Public Act No. 188 of 1954, as amended.

Section 4 - Private Maintenance and/or Repair of Sidewalks

- A. If an area of sidewalk is in a condition of disrepair resulting from the actions of one or more private property owners, such owner or owners shall repair such area of sidewalk. For purposes of this section, "actions" shall include, but shall not be limited to: surface drainage; on-site construction; vehicular traffic; and other site activities and actions resulting in a condition of disrepair. The Township will provide notice to the property owner of the condition of disrepair, and the notice shall provide that the property owner may contest the condition of disrepair at a hearing before the Board. In the event a hearing is not requested by the property owner, the property owner shall apply for a construction permit within five (5) business days of receipt of the notice. All repairs shall be made within ninety (90) days, weather permitting, following issuance of a Township construction permit, and in accordance with the standards in Section 2 of this Article.
- B. If damage or injury is caused as a result of a failure to promptly repair a condition of disrepair, as stated in Subsection A of this section, above, and if the Township had previously provided notice of the condition of disrepair and allowed an opportunity for hearing before the Township Board, or the Board's designee, the owners to whom such notice was sent shall be liable to the Township for any damages, costs and expenses incurred by the Township, including reasonable attorney fees expended by the Township. Notice of the actual cost of such repair shall be sent to the responsible person by the Township Clerk, with a demand for payment. If said person fails to pay such costs within thirty (30) days after notice, the Township Board may authorize civil action to collect such costs.
- C. In addition to the above, the Township Board, pursuant to MCL 41.288a, may order the repair of such sidewalk by the persons whose actions resulted in a condition of disrepair; and, if such repair is not made within the time stated in the order of the Township Board, and the sidewalk is within reasonable proximity of the property owned by the breaching party, the Township may proceed with the repairs and recover all costs and expenses incurred by the Township, plus a twenty-five percent (25%) administrative fee, by assessing the property of the

owner or owners who failed to make the repairs required under this section. Such assessments shall be made in accordance with the procedure specified, above, in this section. If the party failing to make the required repair does not own the property within reasonable proximity of the sidewalk to be repaired, the Township may seek recovery of all costs and expenses, including reasonable administrative costs and attorney fees, by any lawful means.

- D. As a condition to any recovery for injuries sustained by reasons of any defective sidewalk the injured person shall serve notice upon the Township within the time and in the manner prescribed by law (MCL 691.1404, as amended).

Article 5 – Permitted Uses of Sidewalks

Sidewalks within the Township shall be used for non-motorized transportation. To this end, all motorized transportation shall be prohibited, with the exception of devices for personal mobility assistance, including motorized chairs and Segways or similar devices. In addition, equestrian use of sidewalks shall be prohibited.

Article 6 - Prohibition of Obstruction of Sidewalks

- A. No person shall obstruct or cause or permit the obstruction of any sidewalk in the Township by the placement on such sidewalk of any object, debris or material of any kind or nature, or by suspending any sign, object or material within eight and one-half (8.5) feet above a sidewalk. This provision is not intended to create an obligation to modify natural accumulations of snow or ice.
- B. Subsection A shall not apply in circumstances in which a person is temporarily loading or unloading a vehicle adjacent to the property, if such person has, if reasonably required, secured a device reasonably calculated to warn users of the sidewalk of the obstruction so as to avoid injury and/or damage.

Article 7 - Severability

This Ordinance shall be deemed to be severable, and should any section, paragraph, or provision hereof be declared by the courts to be unconstitutional or invalid, such holdings shall not affect the validity of this Ordinance as whole or any part hereof, other than the part so declared to be unconstitutional or invalid.

Article 8 - Violation and Penalties

A. Municipal Civil Infraction / Payment of Fine.

Any person, firm, or corporation violating a provision of this Ordinance, upon an admission or a finding of responsibility for such violation, shall be deemed responsible for a municipal civil infraction pursuant to Chapter 20 of the Code of Ordinances, Article II, Municipal Civil Infractions, as amended, and shall pay a civil fine as prescribed by ordinance or as determined by the district court, district court judge, or district court magistrate.

Article 9 - Effective Date

This Ordinance shall be published in full in a newspaper of general circulation in Green Oak Charter Township qualified under State law to publish legal notices and shall become effective upon publication, as provided by law.