

MEMORANDUM

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To: Tallmadge Charter Township Board of Trustees

From: Gregory L. Ransford, MPA

Date: January 21, 2022

Re: Proposed Tallmadge Charter Township Sidewalk and Bicycle Paths Ordinance

Prior to the beginning of the Covid-19 pandemic, then Supervisor Van Ess requested that the Tallmadge Charter Township Planning Commission (TCTPC) consider an ordinance to regulate and protect the longevity of pathway infrastructure within the Township, as more and more sidewalks and bike paths are constructed. The proposed ordinance would require, among other provisions, the following:

1. The prohibition of motorized vehicles on pathways
2. Excessive speed of bikes
3. The prohibition of horses on pathways
4. The prohibition of intentional damage
5. The removal of animal fecal matter by a user of a pathway
6. The prevention of irrigation related obstructions within pathways, such as garden hoses
7. The removal of snow and ice
8. A permitting process for performing a pathway cut and replacement
9. Construction requirements for sidewalks and bike paths

The proposed language is based upon Sidewalk and Bicycle Path Ordinances from Jamestown Charter Township, the City of Walker, and the City of Grand Rapids.

Recommendation

At the December 28, 2021 meeting of the TCTPC, Commissioner Terpstra provided a motion to recommend adoption. The motion was seconded by Commissioner Hanko and carried 6-0 with one member absent.

Board of Trustees Responsibility

As a result of the recommendation of the TCTPC, the Tallmadge Charter Township Board of Trustees (TCTBT) shall review the proposed ordinance and can perform revisions, reject the text, or return the language to the Planning Commission for further discussion and recommendation. In the instance the TCTBT support adoption, an introduction and first reading of the Ordinance is necessary at your ~~February meeting~~. Subsequently, the same Ordinance should have its second reading, final vote and adoption, if approved, at your ~~March~~ meeting.

The language has been reviewed and found satisfactory by the Township Legal Counsel. If you have any questions, please let us know.

GLR
Planner

Attachment

Tallmadge Charter Township Ordinance No. _____
Sidewalks and Pathways Ordinance

Preamble

An ordinance to promote and provide for the public health, safety, and general welfare of persons and property by the adoption of regulations concerning the construction of Sidewalks and Pathways within the Township, restrictions and regulations for the use of Sidewalks and Pathways in the Township, and providing penalties for the violation of the Ordinance and for certain administrative provisions.

THE CHARTER TOWNSHIP OF TALLMADGE, COUNTY OF OTTAWA, AND STATE OF MICHIGAN, ORDAINS:

Section 1. Short Title. This Ordinance may be referred to as the "Charter Township of Tallmadge Sidewalks and Pathways Ordinance."

Section 2. Purpose. The purpose of this Ordinance is to promote and provide for the public health, safety, and general welfare of Persons and property by the adoption of regulations concerning the construction of Sidewalks and Pathways within the Township and restrictions and regulations for the use of Sidewalks and Pathways in the Township. All Sidewalks, Pathways, Driveway Approaches, and similar areas shall be kept in a proper state of good repair and maintained free from hazardous conditions.

Section 3. Legal Authority. This Ordinance is enacted pursuant to the authority granted by compiled Michigan Compiled Laws Sections 42.15, 42.5(2), and 41.181.

Section 4. Rules Applying to Text. The following rules apply to the text of this Ordinance.

1. The particular shall control the general.
2. The headings which title various sections are for convenience only and are not to be considered in any explanation or interpretation of the Ordinance or as enlarging or restricting the terms and provisions of the Ordinance in any respect.
3. The word "shall" is always mandatory and not discretionary. The word "may" is permissive.
4. Words used in the present tense shall include the future, words used in the singular number shall include the plural, and words used in the plural number shall include the singular, unless the context clearly indicates the contrary.
5. The word "Person" includes a firm, association, partnership, joint venture, corporation, limited liability company, trust, municipal or public entity, or any other legal entity, or a combination of any of them, as well as a natural person.
6. Any word or phrase not defined in this Section 4 or in Section 5 shall be considered to be defined in accordance with its common or standard definition.

Section 5. Definitions. The following words and phrases are defined for the purpose of their use in this Ordinance. These definitions shall apply in the interpretation and enforcement of this Ordinance unless otherwise specifically stated.

1. "Bicycle" means a device propelled by human power upon which a Person may ride, having either two or three wheels in a tandem or tricycle arrangement.
2. "Driveway Approach" means that portion of a driveway which lies within the public right-of-way and extends generally from the inner edge of the Sidewalk to the street pavement or edge of a graded roadway.
3. "Improvements" means Sidewalks, Driveway Approaches, Retaining Walls and areaways located within public rights-of-way.
4. "Motorcycle" means a Motor Vehicle having saddle or seat for the use of a rider and designed to travel on not more than three wheels in contact with the ground.
5. "Motor Vehicle" means a Vehicle which is self-propelled.
6. "Parkway" means the area between the sidewalk and the street curb line.
7. "Pathways" means a paved surface paralleling and usually separate from the paved surface of a street, typically installed on one side of a street only, which is wider than a Sidewalk and is for use by bicycles with possible incidental use by pedestrians.
8. "Retaining Wall" means a wall built on the outer edge of the sidewalk line for the purpose of confining earth.
9. "Sidewalk" means a paved surface paralleling and separate from the paved surface of a street, typically installed on both sides of a street, for use primarily by pedestrians.
10. "Snowmobile" means a motor-driven vehicle designed for travel primarily on snow or ice of a type which utilizes sled-type runners or skis, an endless belt tread or any combination of these or other similar means of contact with the surface upon which it is operated.
11. "Township" means the Charter Township of Tallmadge, Ottawa County, Michigan.
12. "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn, except devices exclusively moved by human power.

Section 6. Use by Vehicle Restricted. No Person shall operate a Snowmobile, moped, Motorcycle, or any other type of Motor Vehicle upon any Sidewalk or Pathways within the Township except to enter or leave adjacent property. However, this section shall not be construed to prohibit the use of Sidewalks and Pathways by Persons using motorized wheelchairs. A front-wheel drive power-assisted Bicycle shall be permitted on a Sidewalk or Pathways when the power assistance is not being used. Responsibility for any vehicular damage shall be that of the owner of such Vehicle. If any snow plow defaces, breaks, destroys, or otherwise damages any Sidewalk, Driveway Approach, curb, or Retaining Wall, the driver shall be held responsible for replacement or repair of the damaged Improvement.

Section 7. Metal Tracks or Studs. Vehicles with metal tracks or studs are not permitted on Sidewalks or Pathways.

Section 8. Pedestrian Right-of-Way. A Person operating a Bicycle on a Sidewalk or Pathway or who is skating with in-line skates or using a skateboard or riding a scooter, or some other device with wheels on a Sidewalk or Pathway, shall yield the right-of-way to a pedestrian and shall give an audible signal before overtaking and passing a pedestrian.

Section 9. Bicycle Operation. No Person shall operate a Bicycle on a Sidewalk or Pathway, skate on a Sidewalk or Pathway with in-line skates or with a skateboard, or ride a scooter or other device with wheels, at a speed greater than is reasonable and prudent under the conditions when existing. Any person operating a Bicycle on a Sidewalk or Pathway, skating on a Sidewalk or Pathway with in-line skates or a skateboard, or riding a scooter or other device with wheels, shall yield the right of way to Motor Vehicles that are crossing the Sidewalk or Pathway.

Section 10. Horses. No Person shall ride a horse on a Sidewalk or Pathway, nor shall any Person walk or lead a horse upon a Sidewalk or Pathway.

Section 11. Damage. No Person shall willfully or maliciously destroy, injure, mutilate, deface, paint on, write on, or otherwise damage or remove a Sidewalk or Pathway or any related sign.

Section 12. Burning, Depositing Materials. No Person shall deposit or burn, or cause to be deposited or burned, on any Sidewalk or Pathway, any leaves, branches, grass, brush, or other yard debris, or deposit, or cause to be deposited, on any Sidewalk or Pathway, any earth, stone, sand, gravel, trash, rubbish, cans, bottles, broken glass, nails, garbage cans, or other dangerous objects or debris.

Section 13. Animals. Any Person who owns or exercises any dominion or control over any animal shall, in the event that such animal deposits any fecal matter on any Sidewalk or Pathway, immediately and completely remove such matter from the Sidewalk or Pathway. This Section shall not be interpreted to prohibit the presence of animals on Sidewalks or Pathways, except as otherwise prohibited in Section 10 of this Ordinance with respect to horses. No Person shall permit any animal to walk on a Sidewalk or Pathway without the animal being held securely on a leash.

Section 14. Vegetation. No Person shall plant any trees, shrubs, or other vegetation in a location that obscures the view at intersections of a Sidewalk or Pathway with a street or roadway or with an intersecting Sidewalk or Pathway. No Person shall allow trees, shrubs, or other vegetation to grow to a size that obscures the view or obstructs passage along a Sidewalk or Pathway. No Person shall allow any vegetation within one (1) foot of the Sidewalk or Pathway to exceed a height of 10 inches.

Section 15. Irrigation. No Person shall leave any garden hose, lawn sprinkler, or other irrigation device or implement unattended when such hose, sprinkler, device, or implement is in contact with or runs across or over the paved surface of a Sidewalk or Pathway.

Section 16. Banners. No Person shall suspend any sign, banner, printed leaflet, or other similar object above a Sidewalk or Pathway, nor shall any Person tape or affix any sign, banner, printed leaflet, or other similar object to a Sidewalk or Pathway, without the express prior written permission of an authorized Township officer or employee.

Section 17. Sidewalks to be Cleared.

1. The occupant(s) of every property within the Township, and the owner(s) of the property, are responsible to clear any accumulation of ice or snow or both from the Sidewalks or Pathways adjoining such property within 24 hours of the accumulation or placement of the snow or ice.
2. If the occupant(s) or the owner(s) fail to remove any ice or snow from adjoining Sidewalks or Pathways within 48 hours of being notified by the Township of such violation, the Township may cause such ice and snow to be removed.
3. If the Township causes the removal of any snow or ice pursuant to the provisions of subsection 2 of this Section, the cost of such removal plus an administrative fee shall be assessed against the occupant(s) or owners(s) of the property. The

administrative fee shall be established from time to time by resolution of the Township Board. All costs and fees assessed pursuant to this subsection shall be a personal debt owed to the Township by the occupant(s) or owner(s) of the property and may be assessed as a lien against the property until paid.

4. Exemption. The occupant(s) or owner(s) of any property located within the Township may apply to the Township Supervisor or designee seeking an annual exemption from the requirements of subsection 1 of this Section. The Township Supervisor or designee shall decide whether to approve or deny an annual exemption request based on the following criteria:
 - a. Physical hardship due to age, disability, or illness;
 - b. Connectivity to existing or planned Sidewalks or Pathways;
 - c. Practical natural limitations on the ability to develop or improve the subject lot;
 - d. The traffic level on the street adjacent to the property;
 - e. Location of the subject lot in relation to schools, transit stops, institutional and civic uses, places of employment, and commercial or service uses;
 - f. The grounds for denial of an exemption under this subsection shall be provided to the applicant in writing, stating the basis for the denial. Any exemption approved under this subsection will expire one 1 year after the date of issuance. The owner(s) or occupant(s) of a lot where an exemption is sought must apply annually for an exemption. Issuance of an annual exemption does not ensure that future exemptions will be granted. A Person may not claim an exemption in an enforcement proceeding under this Section unless the Person has applied for and obtained the exemption from the Township Supervisor or designee prior to the date of any violation of this Section.

Section 18. Snow Removal. All Persons removing snow or ice from private property, whether by use of a shovel, snowblower, or any other method, shall comply with the following regulations.

1. Neither snow nor ice shall be deposited or spread into Sidewalks, Pathways, or streets.
2. Neither snow nor ice shall be deposited so as to obstruct fire hydrants or mailboxes.
3. Neither snow nor ice shall be deposited so as to create any visual obstruction which would impair the safe use of Sidewalks, Pathways, or streets.

Section 19. Construction Projects. If any construction project on lands adjoining a Sidewalk or Pathway results in damage to a Sidewalk or Pathway, then all such damage to the Sidewalk or Pathway shall be fully repaired and the Sidewalk or Pathway shall be fully restored to its former condition within 10 business days after the construction project is completed. However, if weather conditions prohibit full restoration of the Sidewalk or Pathway to its former condition within 10 business days, then the Sidewalk or Pathway shall be temporarily patched and restored to permit reasonable utilization for its intended purpose within such 10 business days, and full repair and restoration to its former condition shall then be completed as soon as weather permits. If a Person is unable to complete a full repair of and restoration of

the Sidewalk or Pathway to its former condition within 10 business days after the construction project is complete and instead chooses to temporarily patch the Sidewalk or Pathway, then that Person shall provide the Township with adequate financial security in the form of a cash deposit, certified check, or letter of credit, satisfactory to the Township in amount and form, to guarantee full repair and restoration of the Sidewalk or Pathway to its former condition as soon as weather permits.

Section 20. Sidewalk or Pathway Cuts. Any Person desiring to make a cut or opening in a Sidewalk or Pathway shall obtain a permit therefore from the Township. A cut or opening shall not be made until a permit has first been obtained from the Township and a fee, to be established by Township Board resolution, has been paid in full. If an emergency requires an immediate cut or opening to be made, advance permit approval shall not be required, but the Township shall be notified and a permit obtained and the fee paid on the next business day during which the Township office is open.

A certified check, cash deposit, or irrevocable letter of credit in the amount of \$2,000 is required as a financial surety for any cut or opening on a Sidewalk or Pathway. The certified check, cash deposit, or irrevocable letter of credit shall be returned after the Township has approved the full repair and restoration of the Sidewalk or Pathway. The Township may increase the amount of the certified check, cash deposit, or irrevocable letter of credit that is required as a financial surety if it is determined that the additional financial surety is required because of the size or location of the proposed cut or opening.

Any cut or opening shall be as narrow as possible. Cuts in a Sidewalk or Pathway shall be made by saw to ensure straight side cuts. Cuts or openings shall not be made with a backhoe bucket or any other instrument which can create jagged edges and/or weaken the surrounding Sidewalk or Pathway. No cut or opening shall remain open for more than 48 hours. During a period that a cut or opening exists, lighted barriers shall be erected around the cut or opening to protect the public.

If a Sidewalk or Pathway is not fully restored to its former condition as is provided above in a timely manner, the Township may complete the repair and restoration of the Sidewalk or Pathway instead and utilize the financial surety to pay the cost. To the extent the financial surety is insufficient for this purpose, the difference shall be immediately paid by the Person who has made the cut or opening.

Section 21. Construction Requirements. The following construction requirements shall apply to all Sidewalks and Pathways.

1. The following construction requirements shall apply to Sidewalks.
 - a. All Sidewalks shall be of concrete construction.
 - b. All Sidewalks shall conform to the minimum standards for Sidewalk construction as adopted and amended from time to time by the Ottawa County Road Commission.
 - c. Sidewalks along all streets in subdivisions or other similar residential developments shall be a minimum of five feet in width.
2. The following construction requirements shall apply to Pathways.
 - a. Pathways shall be a minimum of eight feet in width.
 - b. Pathways constructed of concrete shall be constructed in accordance with the same construction requirements that apply to Sidewalks as provided above.

- c. Pathways constructed with bituminous pavement shall have a compacted sub base of six inches of MDOT class II sand, overlaid by six inches of MDOT 22A aggregate compacted in place. The Pathway shall be surfaced with two courses of bituminous pavement. The base course shall consist of 165#/sy (1 ½" thick) MDOT 13A bituminous mixture. The top course shall consist of 165#/sy (1 ½" thick) MDOT 36A bituminous mixture. A bond coat shall be applied between successive courses of bituminous at a rate of 0.10 gallons per square yard.

Section 22. Good Condition and Repairs. It shall be the responsibility and duty of the owner of every property to maintain and keep the Sidewalk or Pathway adjacent to or abutting the owner's property at all times in good repair and condition.

Sidewalks or Pathways shall be promptly repaired or replaced by the owner of the property abutting or adjoining the Sidewalk or Pathway when the condition of the Sidewalk or Pathway is detrimental to the safety of the public. Conditions requiring repair or replacement include, but are not limited to, the following:

- a. A vertical displacement of more than one (1) inch between any two sections of Sidewalk;
- b. More than two cracks of one-quarter (1/4) inch in width or more in any two linear feet of the Sidewalk or Pathway;
- c. Any section of Sidewalk or Pathway that is tilted in excess of one (1) inch per foot from inside/outside edge to outside/inside edge;
- d. Any linear section of Sidewalk or Pathway, five (5) feet or more, where more than 25 percent of the surface has scaled off to a depth of one-quarter (1/4) inch or greater; or
- e. Any condition that arises regarding a Sidewalk or Pathway that would render it unsafe for use or otherwise unfit for public pedestrian travel.

Upon receipt of a written notice from the Township, the owner of the property involved shall make the Sidewalk or Pathway repairs or replacement necessary to conform to this Ordinance within 60 days. The Township may extend the 60-day time period if weather conditions or Street repairs prevent the repair or replacement in a timely manner.

If the owner of the property fails to comply with the written notice within 60 days, the Township may repair or replace such Sidewalk or Pathway as necessary, and shall assess the cost thereof against the abutting or adjoining property.

Section 23. Penalties. Any Person violating any of the provisions of this Ordinance shall be deemed guilty of a civil infraction, and upon conviction, shall be punished by a fine not exceeding \$500.

Section 24. Administrative Liability. No Township officer, agent, or employee shall be personally liable for any damage that may accrue to any Person as the result of any act, decision, or other consequence or occurrence arising out of the discharge of duties and responsibilities pursuant to this Ordinance.

Section 25. Severability. This Ordinance and its various parts, paragraphs, sections, subsections, sentences, phrases, and clauses are severable. If any part, paragraph, section, subsection, sentence, phrase, or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected.

Section 26. Repeal. All ordinances or portion of ordinances in conflict with this Ordinance are repealed.

Section 27. Effective Date. This Ordinance was approved and adopted by the Township Board of the Charter Township of Tallmadge, Ottawa County, Michigan, on _____, 2020, after introduction and a first reading on _____, 2020, and publication after such first reading as required by Michigan Act 359 of 1947, as amended. This Ordinance shall be effective the day after publication following adoption

Mark Bennett, Township Supervisor

Lenore Cook, Township Clerk

CERTIFICATE

I, Lenore Cook, Clerk for the Charter Township of Tallmadge, Ottawa County, Michigan, certify that the foregoing Sidewalks and Pathways Ordinance was adopted at a regular meeting of the Township Board held on _____, 2020. The following members of the Township Board were present at that meeting: _____

_____. The following members of the Township Board were absent: _____.

The Ordinance was adopted by the Township Board with members of the Board _____ voting in favor and _____ members of the Board voting in opposition.

A Notice of Adoption of the Ordinance was published in the *Ottawa Advance* on _____, 2020.

Lenore Cook, Township Clerk