

**HOWELL TOWNSHIP
LIVINGSTON COUNTY
STATE OF MICHIGAN**

Ordinance No. 283
Pathway Regulation Ordinance

At a meeting of the Township Board of Howell Township, Livingston County, Michigan, held at the Howell Township Hall, 3525 Byron Road, Howell, MI 48855 on September 9, 2019, at 6:30 p.m., Township Board Member Hohenstein moved to introduce the following Ordinance for adoption, which motion was seconded by Township Board Member Rudnicki:

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

THE TOWNSHIP OF HOWELL, LIVINGSTON COUNTY, MICHIGAN, ORDAINS:

Section 1 - Title

This Ordinance shall be known and may be cited as the Howell Township "Pathway 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.

Section 2 - Purpose

The purpose of this Ordinance shall be:

1. To further secure and protect the general welfare and safety of the citizens and other persons within Howell Township.
2. To regulate the development and construction of Pathways within Howell Township.
3. To provide for the maintenance of those Pathways.
4. To provide for the installation and maintenance of signage along Township Pathways.
5. To authorize the issuance of permits for construction of Pathways.
6. To authorize the collection of fees for the construction of Pathways.
7. To provide for penalties upon the violation of these provisions.

Section 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 Howell Township.

Commission or Planning Commission - The Planning Commission of Howell Township.

Committee - The Parks and Recreation Committee of Howell Township.

Condition of Disrepair - 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 Pathway itself or between the Pathway 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 Pathway 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, utility boxes and fences.

Owner - A person, firm, association, partnership, corporation or other legal entity or combination of them which may hold any ownership interest in property 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.

Pathway Plan - The recommended and approved plan showing all planned Pathways, existing or future, that has been made part of the Township's adopted Non-motorized Plan.

Pathway - a constructed surface located in a public right-of-way, but separate from any improved portion of a roadway or highway, dedicated primarily for use by pedestrians and persons operating non-motorized vehicles. Further, a Pathway shall mean a certain type of non-motorized path constructed for the benefit of the general public in the Township, as shown on Township's adopted Non-motorized Plan

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.

Section 4 – Pathways

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

Section 5 – Pathway Development

The Planning Commission, as part of its annual preparation and review of capital improvements of public structures and improvements for the Township and in conjunction with the Parks and Recreation Committee, shall evaluate, update, and present any proposed changes to the Township's Non-motorized Plan. This plan shall be reviewed by the public at a public hearing held by the Planning Commission. Such plan shall be adopted by the Township Board after recommendation by the Planning Commission as part of the Township's Non-motorized Plan.

This plan shall guide development of a system of planned Pathways in the Township.

Section 6– Pathway Plan Implementation / Developer's Responsibilities

- A. All developers of property fronting on a public roadway (other than an internal street of a subdivision or condominium association regulated by the Sidewalk Regulation Ordinance) that has been designated for Pathway installation on the Township's Non-motorized Plan shall install such a path when they develop their property, in accordance with the standards outlined in this Ordinance.
- B. If the Planning Commission determines that the planned pathway along the frontage of the developer's property is not a high priority at the time of development, based on the Non-motorized Plan, the developer may be allowed to make a deposit into the Townships Pathway Fund to be used for future construction of the pathway system. Such deposits shall be a sum of money equivalent to 125% of the cost of construction of the path, including permit, engineering, and inspection fees. Except as otherwise provided below, the actual cost of construction, including fees, shall be determined by the Township Engineer, and shall be based on current cost in the industry for similar types of path construction. Space for such pathway in the form of road right-of-way or easement shall be provided to the Township for later construction.
- C. Unless the Township Board has allowed a developer to make a deposit in the Township Pathway Fund in lieu of constructing a pathway under Subsection 2(B), construction of the Pathway shall be completed for each phase (if applicable) prior to the issuance of a final Certificate of Occupancy for any building or structure located on the parcel or adjacent to which the Pathway is to be located. The developer shall be responsible for securing all necessary permits, paying all necessary fees, and obtaining necessary inspections from Howell Township, the Livingston County Road Commission, the Livingston County Drain Commissioner, for soil erosion, and/or the Michigan Department of Transportation or other agency having jurisdiction over a portion of the project.
- D. In order to ensure completion of the path, the developer shall provide to the Township a cash bond or an automatically renewing irrevocable letter of credit in the amount of the estimated cost of the Pathway plus twenty-five percent (25%) to guarantee the completion of such path. The cost estimate shall be approved by the Township Engineer. Said completion guarantee, to be posted by the developer under this subsection, shall be in separate from the performance guarantee required under Subsection 2(F), unless covered by a performance guarantee required under the Township's Zoning Ordinance or any other ordinance of the Township. The completion guarantee shall be returned to the developer upon completion of the Pathway and approval by the Township Engineer and Zoning Administrator.
- E. Anyone constructing a Pathway in Howell Township shall first obtain a permit from the Township, using forms provided by the Township Clerk's office. A Township review escrow shall be established in accordance with the Schedule of Fees & Escrow

Charges, for applicable portions of site plan review and inspection, and shall be deposited with the Township, along with plan submittal.

- F. In addition to the above construction, permit, and inspection fees, upon completion and approval of the pathway, 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 Pathway construction, as agreed upon by the Township Engineer and the developer, to be placed in the Township's Pathway Fund and to be held for two (2) years, following the final inspection of such path 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 Pathway by construction activities and that the path has been maintained per Section 4 of this ordinance in essentially the same condition as it was at the time of final inspection by the Township Engineer.

Section 7 - Pathway Construction Standards

Pathways 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 where it is feasible and practicable.
- B. 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 of Pathway construction so as to minimize or avoid a safety hazard and/or adverse impact upon natural features.
- C. In general, Pathways shall be constructed within the road right-of-way, a minimum of one (1) foot off the property line, and two (2) feet from *any* existing fixed object. Where possible, a pathway shall be separated from the roadway by a minimum of five (5) feet. Notwithstanding the foregoing requirement, if site conditions (such as physical obstructions, natural features, etc.) prohibit use of the public road right-of-way, Pathways 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 8 - Pathway Maintenance

- A. The developer or successor of any section of approved Howell Township Pathway shall be responsible for the maintenance of such path for a period of two (2) years, commencing on the date of the path's final inspection by the Township Engineer. Upon the expiration of two (2) years and approval from the Township Engineer as to the

acceptable condition of such path, the Township, shall take over the maintenance of such path and the developer's responsibility shall end.

- B. Owners of developed property abutting the pathway shall keep vegetation trimmed so that no portion of said vegetation extends over or within two (2) feet (horizontally) of the Pathway unless such vegetation is a minimum of eight and one-half (8.5) feet above the Pathway.
- C. Owners of developed property shall keep the portion of the Pathway that runs adjacent to their property free and clear of all debris, litter, leaves or branches, machinery, vehicles, equipment junk, and other items which may obstruct the use of the Pathway.
- D. Any person who negligently, intentionally, or maliciously causes damage to the Pathway shall be responsible for either one of the following:
 - 1. Repair and/or replacement of the affected portion of the Pathway, or
 - 2. The cost of repair to the Pathway.

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. Should the responsible person choose to repair and/or replace the Pathway, said repair shall be made to the standards in Section 7, within ninety (90) days, weather conditions permitting, following issuance of a Township construction permit.

If the responsible person opts to pay the cost of repair, 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.

Upon repair and/or replacement of the damaged Pathway, the responsible person shall maintain the applicable section of Pathway for a period of two (2) years. This requirement maybe waived in situations where a minor section of the Pathway has been repaired and/or replaced upon petition to the Township Board.

- E. The Township shall establish a Pathway Maintenance Fund. This fund shall receive a portion of revenue generated by the Pathway millage each year, should one be adopted, as designated by the Township Board. These monies shall be used exclusively for Pathway maintenance, construction and improvement purposes.

- F. Non-motorized pathways are intended for general public use during times when accumulations of snow and/or ice are not on the Pathways. The Township may, but is not obligated to, provide limited winter maintenance on pathways within the Township.

Section 9 -Pathway Signage

The Parks and Recreation Committee may develop, in conjunction with the Non-motorized Plan, a plan for signage along each section of pathway as it is proposed for construction. The Committee may require signs with the public right-of-way or applicable Pathway easement under the following circumstances and for the following reasons:

- A. As part of a developer's responsibility in constructing the path as approved by the Township Engineer.
- B. As part of the Township's responsibility when the Township assumes the maintenance of any portion of each path
- C. To prohibit all motorized vehicles from using the path, excepting:
 - 1. Vehicles for the physically disabled designed for use by one individual at a time.
 - 2. Light duty maintenance vehicles authorized by the Township.
 - 3. Emergency Vehicles.
- D. To alert pathway traffic to hidden driveways or similar hazards.
- E. To include pavement markings where appropriate to provide advanced warning of approaching intersections.
- F. To alert approaching motorists to the presence of the pathway.
- G. To indicate limited winter maintenance.

The standards for signs including, but not limited to, sign size, material, location in relation to the pathway as well as the roadway, height and method of installation shall be in accordance with established Livingston County Road Commission sign standards.

Section 10 – Permitted Uses of Pathways

Pathways 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 or similar devices. In addition, equestrian use of such pathways shall be prohibited.

Section 11 - Prohibition of Obstruction of Pathways

- A. No person shall obstruct or cause or permit the obstruction of any Pathway in the Township by the placement on such Pathway 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 Pathway. 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 Pathway of the obstruction so as to avoid injury and/or damage.

Section 12 - 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.

Section 13 - 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 Ordinance 132 of the Township’s General Ordinances, and shall pay a civil fine as prescribed by ordinance or as determined by the district court, district court judge, or district court magistrate.

- B. Other Proceedings

The Township Board may institute injunction, or any other appropriate action, actions or proceedings to prevent, enjoin, or abate any violations of this Ordinance. The rights and remedies provided herein are cumulative and in addition to all other remedies provided by law.

Section 14 – Repeal

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

Section 15 - Effective Date

This Ordinance shall be published in a newspaper of general circulation in Howell Township qualified under State law to publish legal notices and shall become effective 30 days after publication, as provided by law.

(Ord. No 283 eff 10/22/2019)