

## CHARTER TOWNSHIP OF COMMERCE

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, CHARTER TOWNSHIP OF COMMERCE, OAKLAND COUNTY, MICHIGAN TO BE KNOWN AS CODE AMENDMENT ORDINANCE NO. 1.060.

The Charter Township of Commerce ordains:

### **SECTION 1 –PURPOSE**

The purpose of this Ordinance is to (i) amend Chapter 34, Article II, Section 34-28, of the Code of Ordinances, Charter Township of Commerce, Oakland County, Michigan, to allow variances from the standards for public streets as found in Section 34-20 of the Township Code of Ordinances and (ii) to amend Chapter 34, Article V, Section 34-86, of the Code of Ordinances, Charter Township of Commerce, Oakland County, Michigan, to reduce the amount of the performance guarantee for construction of new sidewalks and recreational pathways to be consistent with the Township Fee Ordinance.

### **SECTION 2 – AMENDMENT**

**Chapter 34, Article II, Section 34-28, of the Code of Ordinances, Charter Township of Commerce, Oakland County, Michigan, is hereby amended in its entirety to read as follows:**

#### **Sec. 34-28. Appeals.**

(a) A board of appeals shall be designated to hear requests for variances from the restrictions of section 34-20(1) and/or standards of section 34-22 and shall be empowered to grant variances from such standards and/or restrictions when a finding of fact of unnecessary hardship or practical necessity is made.

(b) The board of appeals shall consist of the same members that constitute the zoning board of appeals and shall be governed by the same procedures and rules as used in zoning appeals under the zoning ordinance.

(Ord. No. 87-03-01, § 11, 4-8-2003)

**Chapter 34, Article V, Section 34-86, of the Code of Ordinances, Charter Township of Commerce, Oakland County, Michigan, is hereby amended in its entirety to read as follows:**

#### **Sec. 34-86. - New Sidewalk and Recreational Pathway Construction Regulations.**

(a) Requirements for New Development and Construction.

(1) *Sidewalks Required.* Construction of a new sidewalk shall be required as part of site plan approval for new construction and development along either side of a public highway or private street. Upon development of their

property, all developers and owners shall construct the sidewalk in accordance with the design and material standards set forth within this article and the Engineering Design Standards. A sidewalk shall not stand alone upon an individual property but shall connect with existing sidewalks on adjoining property. Alternatively, the planning commission may determine that construction of the sidewalk is impractical and require payment to a fund in lieu of construction as provided for pursuant to this section.

- a. *Public Sidewalks.* All developers and owners along either side of a public highway, upon development of their property, shall construct the sidewalk within the public road right-of-way which shall extend the full width of the property.
- b. *Private Sidewalks.* All developers and owners along either side of a private street, upon development of the property, shall construct the private sidewalk at least 5 feet from the private street unless the private street is curbed, in which case the sidewalk may be constructed closer to the street.

(2) *Recreational Pathways Required.*

Construction of a recreational pathway shall be required as part of site plan approval for owners and developers of property involving recreational pathways shown on the Charter Township of Commerce Sidewalk/Pathway Map, and as consistent with the Charter Township of Commerce Master Land Use Plan as it now exists and as it may be amended from time to time. Upon development of the property where a new recreational pathway will be installed, all developers and owners shall construct the recreational pathway in accordance with the design and material standards set forth within this article and the Engineering Design Standards. A recreational pathway shall not stand alone upon an individual property but shall connect with any existing recreational pathways on adjoining properties. Alternatively, the planning commission may determine that construction of the recreational pathway is impractical and require payment to a fund in lieu of such construction as provided for pursuant to this section. The terms and conditions of this article shall also apply to owners, developers and other persons who seek to construct a recreational pathway on their own initiative and with their own financing.

(b) Performance Guarantee.

After site plan approval, if applicable, and prior to the beginning of construction, the owner or developer of the property shall post a performance guarantee in an amount equal to the cost of the construction of the sidewalk or recreational pathway

plus a five (5%) percent administrative fee, as agreed upon by the director and the developer, or, where there is a conflict, by the township engineer. The amount of the guarantee shall include the costs of site preparation, construction, site restoration and site inspection, and shall be based upon the construction plans approved by the township. The performance guarantee provided to the township shall be valid for the entire completion period allowed for sidewalk or recreational pathway installation, inspection, and approval.

The depositor shall submit a written statement containing the address at which the township shall contact the depositor on all matters relating to disposition of the guarantee. The township is not obligated to conduct a search or attempt to relocate a depositor who, after reasonable effort, cannot be contacted at the address furnished.

A performance guarantee for a development encompassing more than one legal tract, lot or parcel may be partially released or refunded by the township following receipt by the director of (1) proof of transfer of one or more tracts, lots or parcels comprising a portion of the development, (2) substitute performance guarantee acceptable to the township and sufficient to assure performance on, or related to, the particular parcel(s) or tract(s), or (3) completion of all construction on that particular tract, lot or parcel and installation of a sidewalk or recreational pathway.

Upon satisfactory completion of the sidewalk and upon final inspection and approval by the director, the guarantee shall be returned to the depositor, following the necessary length of time required for processing. One (1) year after satisfactory completion of the recreational pathway and upon final inspection and approval by the director, the guarantee shall be returned to the depositor, following the necessary length of time required for processing. The guarantee shall be conclusively presumed to have been returned to depositor if enclosed in an envelope with postage fully prepaid, addressed to depositor at the address furnished and such envelope was deposited in the U.S. Mail.

(c) Impracticability.

Where construction of a sidewalk or recreational pathway is impractical as determined by the township planning commission, then the planning commission may allow a developer or owner who is otherwise required to install a new sidewalk or recreational pathway to pay to the township a sum of money equivalent to the actual cost of construction of the sidewalk or recreational pathway, including permit, engineering, site preparation, site restoration, legal, administrative, and inspection fees in lieu of constructing the sidewalk or recreational pathway. Construction shall be impractical for reasons which include, but are not necessarily limited to, the physical nature of the property and/or road system, future development plans and safety issues. Construction costs shall not constitute impracticability.

The township planning commission shall create an escrow account used for a sidewalk and recreational pathway construction fund. All funds collected under this Subsection shall be deposited into said escrow account and used for the construction of the sidewalk or recreational pathway system.

Where the township planning commission determines it is in the township's best interest to delay construction of sidewalks or recreational pathways because of pending, or forthcoming adjacent construction or improvements or weather conditions, the developer or owner of the property shall pay to the township a sum of money equivalent to the actual cost of construction of the sidewalk or recreational pathway, including permit, engineering, site preparation, site restoration, legal, administrative, and inspection fees in lieu of constructing the sidewalk or recreational pathway. The developer or owner shall execute an escrow agreement with the township to guarantee completion of the sidewalk or recreational pathway, pursuant to all township standards and requirements.

Unless the planning commission has allowed a developer or owner to pay a sum of money to the township in lieu of constructing a sidewalk or recreational pathway under this subsection, construction of all new sidewalks and recreational pathways shall be completed as provided for pursuant to this article.

### **SECTION 3 – SEVERABILITY**

Should any provision or part of this ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity or enforceability of the balance of this ordinance, which shall remain in full force and effect.

### **SECTION 4 – REPEALER**

All other provisions of the Code of Ordinances, or ordinances or parts of ordinances, in conflict with this ordinance are hereby repealed only to the extent necessary to give this ordinance full force and effect.

### **SECTION 5 - SAVINGS CLAUSE**

Nothing in this ordinance shall be construed to affect any suit or proceeding pending in any court or any rights acquired or any liability incurred, or any cause or causes of action acquired or existing, under the Code of Ordinances, or any act or ordinance hereby repealed as cited in Section 4 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired, or affected by this ordinance.

### **SECTION 6 - EFFECTIVE DATE**

This ordinance shall take effect following publication in the manner prescribed by law. This ordinance shall be published in the manner provided by law.

**SECTION 7 – ADOPTION**

This ordinance is hereby declared to have been adopted by the Township Board of the Charter Township of Commerce at a meeting duly called and held on the 15<sup>th</sup> day of November, 2022, and ordered to be given publication in the manner prescribed by law.

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Melissa Creech, Clerk

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Larry E. Gray, Supervisor

Introduction:	October 11, 2022
Introduction Publication:	October 19, 2022
Adopted:	November 15, 2022
Adoption Publication:	November 23, 2022
Effective:	November 23, 2022