

**TOWNSHIP OF BOSTON**

**COUNTY OF IONIA, MICHIGAN**

**ORDINANCE NO. 00-01, AS AMENDED**

**AN ORDINANCE TO REGULATE THE CREATION OF PRIVATE ROADS IN THE TOWNSHIP OF BOSTON; TO REPEAL ANY ORDINANCE OR PROVISION THEREOF IN CONFLICT HEREWITH; AND TO PRESCRIBE PENALTIES AND ENFORCEMENT REMEDIES FOR THE VIOLATION OF THIS ORDINANCE**

**THE TOWNSHIP OF BOSTON ORDAINS:**

**Section 1. Title.** This Ordinance shall be known and cited as the Boston Township Private Road Ordinance.

**Section 2. Purpose.** The purpose of this ordinance is to regulate the creation of private roads in Boston Township, to regulate their size and dimensions, to provide for their maintenance, to maintain orderly development of the community to assure access, safe passage, and maneuverability along private roads and driveways for police, fire, ambulance, and other safety vehicles, and to otherwise provide for the health, safety and welfare of the residents and property owners of the township by establishing reasonable standards for private roads and driveways.

**Section 3. Definitions.**

(a) “Driveway” shall mean an undedicated path, trail or road extending from a public street or private road or right-of-way to no more than two parcels or principal buildings, dwellings or structures, intended to provide ingress and egress primarily for the occupants thereof.

(b) “Private Road” shall be any undedicated path, trail, or road extending from a public street or private road or right-of-way to more than two parcels or principal buildings, dwellings or structures, or any combination thereof, intended to provide ingress and egress for the occupants thereof, whether such road is created by a private right-of-way agreement, easement, or prescription.

(c) “Existing Private Road” shall mean a legally constructed and maintained private road which existed on January 1, 2000. To be legally constructed and maintained, a private road must have been constructed and maintained in accordance with then existing Township ordinances. Any portion of a private road which is created, improved, re-routed or extended after January 1, 2000, shall not be considered part of the existing private road.

**Section 4. *Private Road Approval.***

(a) A private road may not be created, improved, extended or re-routed until a permit has been issued by the Township Board for such private road. A private road permit is not required for an existing private road, but a permit shall be required for any improvement, extension or re-routing of an existing private road.

(b) An applicant shall file an application with the Boston Township Clerk in such form, and requiring such information, as may be approved by the Township Board.

(c) The Township Clerk shall transmit all complete applications to the Township Supervisor, who shall determine whether the standards set forth in this Ordinance have been satisfied, or in the discretion of the Supervisor, such determination may be made by the Township Board.

(d) An applicant may be required to provide the certification of a licensed professional civil engineer or other professional that the applicant=s proposed private road complies with the standards set forth in the Ordinance.

(e) The private road shall be subject to inspection and approval by the Township Engineer. The applicant/owner shall reimburse the Township through withdrawals from an escrow account for all expenses incurred by the Township for necessary consulting services related to permit applications, inspections, approvals and construction of the private road. The applicant/owner shall add to an escrow account as requested by the Township Supervisor to assure adequate funds are available to meet anticipated or incurred expenses. The escrow account shall contain adequate funds to meet anticipated final expenses before a permit is issued.

(f) The Township Board may, by resolution, establish escrow and permit application fees.

(g) If the application satisfies the standards of this Ordinance, a permit shall be issued. If the application is found not to satisfy the standards of this Ordinance, the application shall be returned to the applicant with any deficiencies noted. The application fee shall not be refunded, but any unused escrow fees shall be returned to the applicant.

**Section 5. *Private Road and Driveway Standards.***

(a) Driveways.

(1) A driveway permit shall be obtained from the Ionia County Road Commission for a driveway extending from a public street.

(2) A driveway shall be constructed and maintained such that in all weather conditions the driveway shall be passable and shall readily afford emergency vehicles access to the dwellings, buildings or other structures serviced by such driveways.

(3) A driveway shall have a minimum cleared width of 10 feet or more.

(b) Private Roads.

(1) A private road shall have a recorded permanent right-of-way and easement, with a minimum width of 66 feet. The instrument establishing the easement and right-of-way shall expressly permit public or private utilities to be installed within the right-of-way or, if not within the right-of-way, then within 20 feet on either side thereof.

(2) A private road shall have a road bed not less than 22 feet wide and shall have a minimum sub-base of 12 inches of sand and 6 inches of finished compacted gravel. No. 22A gravel shall be used for roads with a paved surface, and No. 23A gravel shall be used for roads with a gravel surface.

(3) A private road which terminates at a dead-end shall have a means for vehicle turn-around, either by use of a cul-de-sac or by a continuous loop. In the case of a cul-de-sac, there shall be a minimum radius of 50 feet for the accommodation of emergency, commercial and other vehicles.

(4) A private road surface shall have a minimum crown of two-tenths of one foot, from the center line of the road to the outside edge thereof.

(5) The maximum grade of a private road shall not exceed 7%. For a minimum distance of 30 feet back from the intersection of the private road with a public street right-of-way or another private road, there shall be a maximum grade of 4%.

(6) A private road shall be constructed so as to sufficiently control stormwater runoff, by means of seepage basins, culverts, and drainage contours, or such other effective methods as may be required by the Township so as to ensure adequate drainage and control of stormwater runoff.

(7) All private roads shall be constructed and continuously maintained in such a manner that (i) their use does not pose a danger to the health, safety and welfare of the inhabitants of the Township or other persons, and (ii) in all weather conditions the roads shall be passable and shall readily afford emergency vehicles access to the dwellings, buildings or other structures serviced by such private roads.

(8) The applicant/property owner(s) shall record a private road maintenance agreement or restrictive covenant between the owners of the lands served by the private road and any other parties having an interest in the property upon which the private road is located, which shall assure that the costs of maintenance, improvements, and snow removal as required by this ordinance shall be the responsibility of the owners of the lands served by the private road, and/or any property owners association consisting of the owners of such lands, or shall otherwise provide for the equitable apportionment of these costs among those benefitted. The agreement or restrictive covenant shall provide the Township with the right to assess such costs against the owners of those properties benefitted, plus a 25% administrative fee, as authorized in Section

5(b)(9), in the event of a failure of those benefitted to privately perform those duties.

(9) The applicant for a private road and the owners of the affected lands agree that by applying for and obtaining approval of the private road, and a permit to construct the same, they shall indemnify the Township and shall hold it harmless from any and all claims for personal injury or property damage arising out of or in any way related to the use of the private road or the failure to properly construct, maintain, repair, and replace the private road, in whole or in part. The applicant and the owners of the affected lands further agree that in the event of a failure of the owners and/or applicant to perform these duties for the health, safety and general welfare of the public and the users of the lands served by the private road, the Township shall have the right to perform such improvements and specially assess all costs incurred against the properties benefitted by such improvements, including all Township expenses associated with such special assessment and an administrative fee equal to 25% of all such costs of improvement incurred.

(10) Any intersection between private and public roads or between more than one private road shall be designed and constructed to provide for clear vision and safe turning and travel of vehicles in all directions at the posted speed limit, including not less than a clear vision triangular area extending two feet along each street right-of-way line as measured from the intersecting right-of-way lines.

(11) As a condition for approval of a private road, the Township may require that the applicant provide a performance bond, with an acceptable surety, or a letter of credit, in a specified amount, conditioned upon the timely and faithful performance by the applicant under the terms of this section and under the terms of any approvals given for the private road by the Township Board and Township Engineer.

**Section 6. Access and Safe Passage.** Driveways, private roads and existing private roads shall be constructed and maintained with sufficient width, surface and grade to assure access, safe passage and maneuverability of police, fire, ambulance and other safety vehicles. Maintenance shall include the clearing and trimming of all trees and undergrowth necessary to assure such access, safe passage and maneuverability.

**Section 7. Inspections.** The Township fire chief or his designee shall have the right to enter upon the property where any private road or driveway is or will be located to conduct such inspections as may be necessary to assure that the private road or driveway is sufficiently constructed, designed and maintained so as to be in compliance with this ordinance and to allow access, safe passage and maneuverability of fire department and other emergency vehicles.

The fire chief or his designee may notify any property owner or occupant who has failed to comply with the terms of this ordinance that if the condition of the private road or driveway is not corrected, emergency services will not be available to that property, including services by police, fire, ambulance or other emergency vehicles.

**Section 8. Appeal.** An appeal may be taken to the Township Board by any person, or by an officer, department, board or bureau affected by any application of this Ordinance. Such appeal shall be taken within sixty (60) days after the date of the action appealed from by filing with the Township Clerk a notice of appeal, specifying the grounds thereof.

The Township Board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties ten (10) calendar days prior to public hearing and shall render a decision on the appeal without unreasonable delay. For the purpose of this section, calendar days shall include Saturdays, Sundays, and legal holidays. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

The Township Board may, from time to time, prescribe and amend by resolution a reasonable schedule of fees to be charged to applicants for appeals under this ordinance. At the time the notice for appeal is filed, the fee shall be paid to the Township Treasurer to the credit of the general revenue fund of the Township.

**Section 9. Appeal/Variance Procedures.** The Township Board shall have the power to act on those matters where this Ordinance provides for an administrative review, interpretation, exception or special approval permit and to authorize a variance as defined in this Ordinance and the laws of the State. Such powers include:

(a) *Administrative Review.* To hear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, permit, decision or refusal made by the application of this Ordinance.

(b) *Variance.* To authorize, upon an appeal, a variance from the strict application of the provisions of this Ordinance where it is found that all the following criteria exist:

(1) That there are exceptional or extraordinary circumstances or conditions applying to the parcel, unit or ownership that do not apply generally to other parcels, units or ownerships in the Township;

(2) That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same vicinity, provided that possible increased financial return shall not, of itself, be deemed sufficient to warrant a variance;

(3) That authorization of such variance will not be of substantial detriment to adjacent property, and will not materially impair the intent and purpose of this Ordinance or the public health, safety and general welfare of the community;

(4) That the condition or situation of the specific parcel, unit or ownership or the intended use of the parcel, unit or ownership for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practical the formulation of a general regulation for such conditions or situation, as a part of this Ordinance.

In its consideration of all appeals and proposed variances, the Township Board shall, before granting relief, determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, unreasonably increase congestion in public streets, endanger public safety, unreasonably diminish established property values in the surrounding area, or otherwise impair the public health, safety or welfare of the inhabitants of the Township.

**Section 10. Penalties and Enforcement.**

(a) *Municipal Civil Infraction.* A violation of this ordinance or a violation of any permit issued hereunder is a municipal civil infraction, for which the fine shall be \$500 for the first offense, and not less than \$1,000 nor more than \$2,500 for subsequent offenses, in the discretion of the court, and in addition to all other costs, damages, expenses and actual attorney fees incurred by the Township in enforcing the ordinance. For purposes of this section, “subsequent offense” means a violation of this ordinance committed by the same person within 12 months of a previous violation of the ordinance for which said person admitted responsibility or was adjudicated to be responsible, provided, however, that offenses committed on subsequent days within a period of one week following issuance of a citation for a first offense shall be considered separate first offenses. Each day that such violation occurs shall constitute a separate offense.

(b) *Injunctive Relief.* In addition, a violation of this ordinance or a violation of any permit issued hereunder is hereby declared to be a nuisance per se. The issuance of a municipal civil infraction and imposition of the foregoing municipal civil infraction penalties against a violator shall not prohibit the Township from also seeking injunctive relief against a violator, in order to abate the violation or to seek such other relief provided by law.

**Section 11. Severability.** The provisions of this Ordinance are hereby declared to be severable and if any clause, sentence, word, section or provision is declared void or unenforceable for any reason by any court of competent jurisdiction, it shall not affect any portion of this Ordinance other than said part or portion thereof.

**Section 12. Repeal.** All previous Ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

TOWNSHIP OF BOSTON

Lori Spoelstra  
Township Clerk

Ordinance No. 00-01, revised March 8, 2000  
Ordinance No. 02-6, adopted February 13, 2002, and effective March 21, 2002  
Ordinance No. 02-10, adopted April 10, 2002, and effective April 25, 2002  
Ordinance No. 07-1, adopted November 14, 2007, and effective December 7, 2007  
Ordinance No. 09-08, adopted September 9, 2009, and effective October 19, 2009