

ORDINANCE 115
As Amended by Ordinance 115B (7/22/91)
MINERAL AND SOIL REMOVAL ORDINANCE

An Ordinance to provide for the licensing, regulation, inspection and monitoring of all mineral, mining and earth change operations in the Township of Jamestown. And to provide for penalties for violations of this ordinance including suspension or revocation of permit and payment of fees for costs of supervising the Licensee.

JAMESTOWN TOWNSHIP, OTTAWA COUNTY, MICHIGAN ORDAINS:

SECTION 1. DESCRIPTION AND PURPOSE. The purpose of these regulations is to promote the public health, safety and general welfare of persons and property in the Township, to preserve and manage its natural resources, and to prevent the creation of nuisance or hazardous conditions and to provide for licensing, monitoring, and regulation of all mineral mining and earth change operations within the Township.

SECTION 2. DEFINITION. Soil shall be defined as topsoil, subsoil, clay, sand, gravel, rock, stone and aggregate, earth, or any other similar material proposed to be moved, removed, excavated, mined or dumped on land.

SECTION 3. GENERAL RESTRICTIONS. All soil which is moved, removed, excavated, mined or dumped, when a permit is not required as is hereinafter provided, shall be moved, removed, excavated, mined or dumped in accordance with the following restrictions and regulations:

- A. All soil moved, removed, excavated, mined or dumped shall be stabilized as soon as possible in such a manner as to prevent soil and/or dust from being blown, washed or otherwise transferred to adjacent lands and/or public or private streets.
- B. Trees and vegetation shall not be stripped from land preparatory to moving, removing, excavating, mining or dumping soil so as to prematurely or unnecessarily expose soil to wind or water erosion.

SECTION 4. PERMIT REQUIRED. It shall be unlawful for any person to move, remove, excavate, mine or dump any soil without a permit as hereinafter required; provided, however, that no permit shall be required.

- A. When the total amount of soil to be moved, removed, excavated, mined or dumped in any one (1) project is less than three hundred (300) cubic yards;
- B. When the soil is to be moved, removed, excavated, mined or dumped is directly related to or necessary for the construction or alteration of a building, structure or other improvements for which a permit has been issued pursuant to the Township Building Code; or
- C. When the soil which is to be moved, removed, excavated, mined or dumped is directly related to or necessary for the landscaping of a lawn or yard, the construction or alteration of a driveway, the construction of subdivision improvements, or the filling of the inside of a building or structure.

If soil is to be moved, removed, excavated, or mined at one parcel of land in the Township and dumped at another parcel of land in the Township, then TWO (2) permits are required: one (1) for moving, removing, excavating or mining the soil and the other (2nd) for dumping the soil.

Only ONE (1) permit is required if soil is to be moved, removed, excavated or mined at ONE location on a parcel of land and dumped elsewhere on the SAME parcel of land.

SECTION 5. APPLICATION FOR SOIL MOVING PERMIT. An application for the issuance of a Soil Moving Permit shall be filed with the TOWNSHIP SUPERVISOR and/or BUILDING INSPECTOR in DUPLICATE.

In those instances where there will be only one (1) operator moving, removing, excavating, mining, or dumping soil, application for a Soil Moving Permit may be made by the operator on behalf of the land owner or person owning the mineral rights in the soil or in the alternative, by the land owner or the person owning the mineral rights in the soil.

Where more than one (1) operator will be moving, removing, mining, or dumping in connection with a project, then application for a Soil Moving Permit shall be made by the land owner or person owning the mineral rights in the soil.

In all cases all operators and the land owner or person owning the mineral rights in the soil shall be responsible for and comply with all the terms and provisions of these Regulations. An application for a Soil Moving Permit shall set forth the following information and be accompanied by the following data:

- A. Full identification of the applicant and all persons to be directly or indirectly interested in the Permit if granted.

- B. The business address of the applicant,
- C. A complete physical and legal description (including street address of location where applicable) of the land to which the Permit is to apply. The legal description shall be certified by a registered civil engineer or land surveyor.
- D. A topographic map, certified by a registered civil engineer or land surveyor and prepared with four (4) foot contours, covering the land upon which the Project is to take place and three hundred (300) feet, so far as may be possible, outside the exterior boundary of such land.
- E. The exact nature of the proposed Project, the type of soil to be moved, removed, excavated, mined or dumped, and an estimate of the approximate number of cubic yards of soil involved.
- F. The applicant shall further describe in detail, by maps or otherwise, the contour and condition of the land as he proposes to leave it upon completion of the Project. This shall include a description of any landscaping to be done or other stabilization control to be employed to leave the land in a reasonably level and usable condition, and to prevent erosion, dust, and other nuisance conditions.
- G. A statement of the manner in which the Project work is to be completed and the kind of equipment proposed to be employed.
- H. The proposed route which applicant proposes to use over the public streets and over private property in transporting the soil.
- I. The past experience of the applicant in the matter to which the permit appertains and the name, address and past experience of the person to be in charge of the Project.
- J. Whether or not any similar permit or application has ever been revoked and/or suspended; and, if so, the circumstances or such revocation or suspension.
- K. The time within which the Project is to be commenced after the granting of the Permit and the time when it is to be completed.
- L. The measures that will be taken by applicant to control noise, vibration, dust and traffic.
- M. A description of any traffic control devices, public facilities, or public services which will be required for the proposed operations and a statement as to how and by whom applicant proposes that the costs thereof be paid.
- N. Any measures which applicant proposes to take to insure public safety, the exclusion of children from the land, and the lateral support of surrounding land, buildings, structures or other improvements.
- O. Such further information as the Township Board or Planning Commission may reasonably require.

Upon the request of the applicant, all or part of the requirements contained in this subsection may be waived by the TOWNSHIP SUPERVISOR and/or BUILDING INSPECTOR at the time the application is filed with the TOWNSHIP SUPERVISOR and/or BUILDING INSPECTOR PROVIDED, however, that such waiver shall not preclude the TOWNSHIP BOARD from requiring at a later time, that the information required by this subsection be provided to the Township prior to action on the application for a permit.

SECTION 6. RESTRICTIONS GOVERNING PERMIT HOLDER. Every person to whom any permit is granted under these Regulations shall comply with the following:

- A. All vehicles transporting soil from or to a Project over public streets in the Township shall follow the established truck route or shall travel only over such route as may be directed by the TOWNSHIP BOARD to be least dangerous to public safety, cause the least interference with general traffic, and cause the least damage to the public street.
- B. Adequate safeguards shall be provided during the Project to prevent soil and/or dust from being deposited on adjoining lands and public or private streets, from waste erosion, or blowing soil and/or dust.
- C. The restored elevation of the land shall be compatible with the surrounding area and the land shall be left in a condition suitable for subsequent development for uses permitted in the zoning district in which the land is zoned by the Jamestown Zoning Ordinance.
- D. If, at the time it grants the permit hereunder, the TOWNSHIP BOARD shall determine by resolution that any project will present a dangerous condition if left open and unfenced, then such Project shall be enclosed by chain link, wire mesh, or snow fence completely surrounding the portion of the land where the Project extends; said fence to be not less than FOUR (4) FEET in height and to be complete with gates, such gates to be kept locked when operations are not being carried on. Barbed wire shall not be used as part of any such fence.
- E. Any soil that may be deposited on any public street or public place from any vehicle transporting materials from the project site shall be immediately removed without damage to the public street or public place at the expense of the permit holder.
- F. Any roads used for the purpose of ingress and egress to said project site which are located within three hundred (300) feet of an occupied residential or commercial or industrial establishment shall be kept dust-

- free by hard topping with concrete, bituminous substance, chemical treatment, or such other means as may be proposed by the applicant and approved by the TOWNSHIP BOARD by resolution at the time it grants a permit hereunder.
- G. No part of a soil processing operation (screening, washing, crushing, etc.) shall take place closer than TWO hundred (200) feet to the nearest adjacent residence or closer than one hundred (100) feet to any street or adjacent property line.
 - H. At the time the excavation and/or mining is completed, the slopes of the banks of the Project excavation shall be THREE (3) FEET of RUN to ONE (1) FOOT of RISE. However, the TOWNSHIP BOARD may, by resolution at the time it grants a permit hereunder, prescribe more lenient or stricter requirements in order to give sublateral support to surrounding property.
 - I. Where Project operations result in the creation of a Pond, at the completion of the Project, authorization for the maintenance of such Pond shall be obtained pursuant to the APPLICABLE Section of the TOWNSHIP ZONING ORDINANCE and, in addition, such pond shall at all times be maintained in accordance with the requirements of the APPLICABLE SECTION OF THE TOWNSHIP ZONING ORDINANCE as well as the STATE STATUTES applicable thereto.
 - J. No cut or excavation shall be made nearer than THIRTY (30) FEET to a street or road right-of-way, nor nearer than FORTY (40) FEET to any adjacent residential or commercial property; and not closer than TWENTY-FIVE (25) FEET to any woodlot, farmland, or pastureland; provided, however, that the TOWNSHIP BOARD may, by resolution at the time it grants a permit hereunder, prescribe stricter requirements.
However, the 25 foot requirement may be waived if agreed to by both parties and registered with the County Register of Deeds by suitable legal document binding on the property. In no case shall any excavating for sand/gravel, etc. be allowed to endanger another person's property, either by way of erosion, land slide, undermining, and/or any other damaging operation.
 - K. During the period in which the Project is being carried on or operated, no body of water which may exist in conjunction with such operations shall be allowed to become stagnant. All bodies of water which may exist in conjunction with such operations shall be sprayed or otherwise treated as necessary to keep such from becoming breeding places for mosquitoes or otherwise creating unhealthy conditions.
 - L. The land utilized for each phase of the Project shall be so landscaped or stabilized upon completion of each phase so that all soil erosion by wind and water shall be eliminated.
 - M. No soil shall be mined, excavated, or removed in such a manner as to cause water to collect or to result in a place of danger or a menace to the public health. The land shall at all times be graded so as to not interfere with surface water drainage.
 - N. If the permit being granted is for a stripping operation, wherever top soil exists, suitable for growing turf or for other land uses at the time the operation began, sufficient topsoil and/or overburden shall be stockpiled so that the entire site, when stripping operations are completed, can be restored. The replacement of topsoil shall be made immediately following the termination of the stripping operations provided, however, that if such stripping operations continue over a period of time greater than THIRTY (30) DAYS, the operator shall replace the stored topsoil over the stripped area as the work progresses.
 - O. The TOWNSHIP BOARD may require additional performance standards or stricter performance standards than are provided herein where, because of peculiar conditions, such standards are necessary to achieve the purposes of these Regulations. In addition, the TOWNSHIP BOARD may also attach and impose conditions, restrictions, or requirements as it shall determine are necessary to achieve the purposes of these Regulations. Violation of any performance standard, condition, restriction, or requirements imposed by the Township Board shall be deemed a violation of these Regulations.

SECTION 7. PAYMENT OF FILING FEE. At the time of filing the application for a permit hereunder, the applicant shall pay a filing fee as may be determined by the TOWNSHIP BOARD from time to time by resolution. Such application fees shall be for the purpose of offsetting and defraying any cost or expense to the Township of investigating, reviewing and processing such an application.

SECTION 8. PLANNING COMMISSION RECOMMENDATION.

- A. **PROCEDURE:** Immediately upon the filing of an application for a permit as provided in Section 5, one copy thereof, together with all supporting data, shall be delivered to the Planning Commission.
- B. **INVESTIGATION:** The Planning Commission shall review the application and make a written recommendation to the Township Board concerning the granting or denial of the permit. In its review the Planning Commission may consider all factors it deems relevant to the application and may further conduct such investigations, interviews and hearings that it deems necessary in making its recommendation to the Township Board.

SECTION 9. HEARING BEFORE THE TOWNSHIP BOARD. After receiving the recommendation of the Planning Commission for a permit pursuant to Section 8, and before acting upon such application, the Township Board shall hold a public hearing. All property owners within 1/4 mile of the proposed site will be informed by mail, of the intent to apply for a Soil Removal Permit.

SECTION 10. CONSIDERATION OF APPLICATION BY TOWNSHIP BOARD. After completion of the public hearing specified in Section 9 above, the Township Board shall determine whether or not to grant or deny the permit. In making such determination, the Township Board shall take into consideration the recommendation of the Planning Commission, the zoning of the site, the past performance of the applicant in similar undertakings, the financial responsibility of the applicant, and all matters relevant to the accomplishment of the purposes of these Regulations. NO PERMIT shall be granted IF it appears from the investigation thereof that the Project would remove the lateral and subjacent support of the adjacent land, result in a dangerous topographic condition, or result in seepage or slides.

SECTION 11. PERMITS: DEPOSIT OF BOND AND CERTIFICATE OF INSURANCE. The Township Board shall require as a condition to the granting of a permit that the applicant file or deposit with the Township Treasurer, performance securities in the form of a performance bond written by an insurance company licensed to do business in the State of Michigan, insuring to the benefit of the Township and in for satisfactory to the Township Attorney, cash, a certified or cashier's check payable to the Township, or an irrevocable bank letter of credit, in form satisfactory to the Township Attorney.

The Township Board shall, in establishing the amount of the bond, consider the scale of the operations, the prevailing cost to rehabilitate the property upon default of the operator, court costs, and other reasonable expenses to guarantee that the applicant will fully and faithfully perform all applicable performance standards, conditions, restrictions and requirements of these Regulations and any special performance security if the Township Board shall, be resolution, determine that any such standard, condition, restriction, or requirement has been violated.

The Township Board may also require, as a condition to the granting of any such permit, that the applicant deposit a certificate of an indemnity company licensed to do business in the State of Michigan, in an amount reasonably relevant to the proposed work to be done as specified by the Township Board, insuring the Township against any loss or damage to persons or property arising directly or indirectly from the operations of the applicant, or any person acting on his behalf, in carrying on any work connected directly or indirectly with the issuance of said permit.

SECTION 12. EXPIRATION OF PERMIT. In the event that any work for which a Permit has been granted under these Regulations is not commenced within six (6) months from the date of granting of said permit, or in the event work is started on projects pursuant thereto and said work is abandoned for a period of six (6) months, said permit shall automatically expire by limitation and cease to be valid for any purpose. Such expired permit may be reviewed by the Township Board for reinstatement and/or continuance without payment of a permit filing fee, PROVIDED that the commencement date change or abandonment is caused by access problems, weather conditions, or other conditions or circumstances beyond the control of the applicant.

SECTION 13. REVOCATION AND SUSPENSION OF PERMIT. Any permit granted pursuant to these Regulations may be revoked and/or suspended for failure to comply with any of the performance standards, conditions, restrictions or requirements attached and imposed as part of the issuance of a permit. Revocation of such permit shall be accomplished only pursuant to a hearing held before the Township Board after five (5) days written notice to such permit holder stating the grounds of complaint against the Permittee, stating the time and place where such hearing will be held.

SECTION 14. FEES. The licensee shall pay the following fees for each cubic yard of material removed and/or removed and stockpiled under the authority of their permit issued to be paid monthly, based upon the records of the licensee:

1. One cent per cubic yard up to 100,000 cubic yards.
2. One cent in addition thereto per cubic yard from 100,000 cubic yards to 250,000 cubic yards.
3. One additional cent per cubic yard for all material removed above 250,000 cubic yards.

These fees shall be used for paying expenses of enforcing this ordinance and paying for any damages or defaults occurring as a result of the operation by the licensee, including damages to roads, private property, and/or protection of the public from damages to the air, pollution or insect control as well as protection from dangers from excavations upon the premises to which the license is applied. These fees shall be an annual fee based upon a calendar year.

The Licensee shall keep accurate records of the materials removed and these records shall be open to inspection at all reasonable times by Township Enforcement Officials.

The Licensee shall in addition pay the sum of \$250.00 each year for the purpose of processing the annual renewal of the permit.

The Licensee shall be required to pay the sum of \$250.00 in the event of any violation which at the discretion of the township board requires a public hearing. (Amended July 22, 1991)

SECTION 15. FINES. Any person or organization who violates any of the provisions of these Regulations shall be subject to a fine of up to FIVE HUNDRED and no DOLLARS (\$500) for each offense and/or an imprisonment of not to exceed NINETY (90) DAYS.

SECTION 16. SEVERANCE CLAUSE. This ordinance in each article, section, subsection, paragraph, subparagraph, or words shall be deemed severable, and in any portion or provision is adjudicated by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the remainder of this ordinance shall remain in full force and effect.

SECTION 17. ADOPTION. This ordinance was adopted by the JAMESTOWN TOWNSHIP BOARD of Ottawa County, Michigan at a regular meeting thereof, held on the _____ day of _____, 1989, and ordered to take affect THIRTY (30) DAYS after publication as provided by law.

Township Clerk

ATTEST:

Township Supervisor