

The following Mineral and Soil Removal Ordinance was adopted at the Jamestown Charter Township Board meeting on July 20, 2015

ORDINANCE # 15-004

AN ORDINANCE TO PROVIDE FOR THE LICENSING, REGULATION, INSPECTION AND MONITORING OF ALL SOIL AND MINERAL REMOVAL, EXCAVATION AND MINING OPERATIONS AND MATTERS RELATED THERETO

THE CHARTER TOWNSHIP OF JAMESTOWN ORDAINS:

Section 1. Description and Purpose; Title. The purpose of this Ordinance is to promote the public health, safety and general welfare of persons and property in the Township, to preserve and manage its natural resources, to prevent the creation of nuisance or hazardous conditions, and to provide for licensing, monitoring, and regulation of all soil and mineral removal, excavation and mining operations within the Township. This Ordinance shall be known and cited as the "Mineral and Soil Removal Ordinance."

Section 2. Definitions.

(a) "Soil" means 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.

(b) "Soil Moving" means the moving, removing, excavating, mining or dumping of soil on or from land within the Township.

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.

(a) 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 when:

(1) 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;

(2) the soil 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

(3) the soil 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 filing of the inside of a building or structure.

(b) 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.

(c) If the 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: the first for moving, removing, excavating or mining the soil and the second for dumping the soil.

Section 5. Application for Soil Moving Permit.

(a) An application for the issuance of a Soil Moving Permit shall be filed with the Township Zoning Administrator. Once filed, a copy of the application shall be provided to the Township Supervisor and the Township's Planner.

(b) 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 landowner or person owning the mineral rights in the soil or in the alternative, by the landowner 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 landowner or person owning the mineral rights in the soil.

(c) In all cases, operators and the landowner or person owning the mineral rights in the soil shall be responsible for and comply with all the terms and provisions of this Ordinance. An application for a Soil Moving Permit shall set forth the following information and be accompanied by the following data:

(1) Full identification of the applicant and all persons to be directly or indirectly interested in the permit if granted.

(2) The business address of the applicant.

(3) 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.

(4) A topographical map, certified by a registered civil engineer or land surveyor and prepared with four (4) foot contours, covering the land upon which the soil moving is to take place and three hundred (300) feet, so far as may be possible, outside the exterior boundary of such land.

(5) The exact nature of the proposed soil moving, 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.

(6) The applicant shall further describe in detail, by maps or otherwise, the contour and condition of the land as it is proposed to be left upon completion of the soil moving. 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. Furthermore, the applicant shall include a description of any intended plat, planned development or of any proposed streets or other improvements to be made upon the property and a general statement of the intended final utilization of the property.

(7) A statement of the manner in which the soil moving work is to be completed and the kind of equipment proposed to be employed.

(8) The proposed route which applicant proposes to use over the public streets and over private property in transporting the soil.

(9) 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 soil moving project.

(10) 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.

(11) The time within which the soil moving project is to be commenced after the granting of the permit, the time when it is to be completed, and any phasing of the soil moving project with a description and the specified duration of any such phases of the soil moving project.

(12) The measures that will be taken by the applicant to control noise, vibration, dust and traffic.

(13) 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.

(14) 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.

(15) Such further information as the Township Board or Planning Commission may reasonably require.

(d) Upon the request of the applicant, all or part of the requirements contained in this Section 5 may be waived by the Township Zoning Administrator at the time the application is filed with the Zoning Administrator; provided, however, that such waiver shall not preclude the Township Board from requiring, at a later time, that the information required by this Section 5 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 this Ordinance shall comply with the following:

(a) All vehicles transporting soil from or to a soil moving project over public streets in the Township shall follow the established truck route or shall travel over such route only

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 public streets.

(b) Adequate safeguards shall be provided during the soil moving 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 soil moving project shall be enclosed by chain link, wire mesh, or snow fence completely surrounding all or a portion of the land where the soil moving project extends; said fence to not be 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 hand 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 of the excavation of soil and/or when soil moving is completed, the slopes of the banks of the soil moving 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 sub lateral support to surrounding property.

(i) At the completion of the soil moving project, the slopes of any body of water shall be six (6) feet of run to one (1) foot of rise between the static water level and a depth of three (3) feet. Beyond a depth of three (3) feet, the slopes of any body of water shall be three (3) feet of run to one (1) foot of rise.

(j) Where soil moving project operations result in the creation of a body of water, the Planning Commission may require a hydrogeological study of the project.

(k) 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.

(l) During the period in which the soil moving 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.

(m) The land utilized for each phase of the soil moving project shall be so landscaped or stabilized upon completion of each phase so that all soil erosion by wind and water shall be eliminated.

(n) 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.

(o) If the permit being granted is for a stripping operation, wherever topsoil 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.

(p) 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 this Ordinance. 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 this Ordinance. Violation of any performance standard, condition, restriction, or requirements imposed by the Township Board shall be deemed a violation of this Ordinance.

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. The applicant may also be required to pay the Township's costs for professional consultants to process the application (i.e., engineer, attorney, planner and any other

professional engaged by the Township or technical assistance with respect to the application). Such application fees shall be for the purpose of offsetting and defraying any cost or expense of the Township of investigating, reviewing and processing such an application.

Section 8. Planning Commission Recommendation.

(a) Immediately upon the filing of an application for a permit as provided in Section 5 of this Ordinance, one copy thereof, together with all supporting data, shall be delivered to the Planning Commission.

(b) 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 of this Ordinance, and before acting upon such application, the Township Board shall hold a public hearing in accordance with the public notice provisions of Section 103 of the Michigan Zoning Enabling Act (or its successor statute) for all property owners within one-quarter (1/4) mile of the proposed site.

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 and to specify the term of the permit including any periodic review of the grant of the permit. In making such determinations, 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, the proposed duration and phasing of the soil moving project, and all matters relevant to the

accomplishment of the purposes of this Ordinance. No permit shall be granted if it appears from the investigation thereof that the soil moving 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 Security and Certificate of Insurance. The Township Board shall require, as a condition to the granting and maintaining of the Soil Moving Permit, that the applicant obtain and maintain and file with the Township Treasurer, security in the form and amount specified by resolution of the Township Board (which may include, but is not limited to, a performance bond or letter of credit) in favor of the Township, for mitigation of adverse impacts caused by the soil moving project (including, but not limited to, adverse impacts on drinking water and water supply, and site remediation).

The Township Board shall, in establishing the amount of the security, consider the scale of the operations, the prevailing cost to rehabilitate the property upon default of the property 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 this Ordinance and the Soil Moving Permit, and any special performance security if the Township Board shall, by 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 Soil Moving Permit has been granted under this Ordinance is not commenced within six (6) months from the date of granting of said permit, or in the event work is started on portions of the soil moving project 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; Periodic Review of Permit.

(a) Any permit granted pursuant to this Ordinance 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 Licensee, stating the time and place where such hearing will be held.

(b) If, in granting the soil moving permit, the Township Board specifies that the permit and operations of the soil moving project are subject to periodic review, the licensee shall provide information to the Zoning Administrator to permit the Township to evaluate the licensee's compliance with the requirements of this Ordinance and the permit and the licensee's progress with the soil moving project. The Township Board may conduct, in its sole discretion, a public hearing as part of the periodic review of the soil moving project. The licensee shall be required to pay such fees as specified in Section 14 of this Ordinance for the periodic review including, but not limited to, such fees for a public hearing by the Township Board for the review of the permit.

Section 14. Fees.

(a) The licensee shall pay a tipping fee for each cubic yard of soil removed and/or removed and stockpiled under the authority of the Soil Moving Permit issued. The amount of the tipping fee shall be established by resolution of the Township and may be modified from time to time. The tipping fee shall be paid monthly to the Township, based upon the records of the licensee.

(1) The tipping fees shall be used for paying the Township's expenses of administering and 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.

(2) The licensee shall keep accurate records of the materials removed and these records shall be open to inspection at all reasonable times by the Township.

(b) In addition to the tipping fee payable pursuant to Section 14(a) of this Ordinance, the licensee shall pay:

(1) a sum, in an amount to be established by resolution of the Township, which sum may be modified from time to time by the Township Board, for the purpose of processing the periodic review of the permit, if any, as provided in Section 10 of this Ordinance; and

(2) a sum, in an amount to be established by resolution of the Township, which sum may be modified from time to time by the Township Board, for the purpose of conducting a public hearing by the Township Board for the periodic review of the permit and soil moving project or in the event of any violation of this Ordinance requires a public hearing, as determined in the sole discretion of the Township Board.

Section 15. Enforcement and Penalties. A violation of this Ordinance is a municipal civil infraction. For a first offense, a municipal civil infraction citation shall be issued, for which the fine shall be not less than \$50.00 and not more than \$249.00, not less than \$250.00 and not more than \$499.00 for a second subsequent offense, and not less than \$500.00 for third or more subsequent offense, in addition to all other costs, damages, expenses and actual attorney fees incurred by the Township in enforcing the Ordinance as ordered by the court. For the 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.

Section 16. Severability and Captions. This Ordinance and its various parts, sections, subsections, sentences, phrases and clauses are severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid, the remainder of this Ordinance shall not be affected. The captions included at the beginning of each Section are for convenience only and shall not be considered as part of this Ordinance.

Section 17. Repeal. All ordinances which are in conflict in whole or in part with any of the provisions of this Ordinance as of the date of this Ordinance including, but not limited to, Ordinance No. 115 and Ordinance No. 115B (collectively, “Ordinance No. 115, as amended”), are repealed to the extent of that conflict.

Section 18. Savings Clause. A permit previously issued or an ordinance enforcement action which is pending on the effective date of this Ordinance under Ordinance No. 115, as amended, which is repealed by this Ordinance, or an ordinance enforcement action which is commenced within one (1) year after the effective date of this Ordinance arising from a violation of

Ordinance No. 115, as amended, or provisions repealed by this Ordinance and which was committed prior to the effective date of this Ordinance, shall be handled, determined and resolved in accordance with the permit, remedies and procedures provided by such ordinance exactly as if Ordinance No. 115, as amended, had not been repealed. Further, all charges, fees, interest and/or penalties levied, imposed or accrued but not yet billed or paid under Ordinance No. 115 that are unbilled or uncollected as of the effective date of this Ordinance shall be billed and collected by the Township under the terms of Ordinance No. 115, as amended, or any permit issued thereunder.


Section 19. Publication/Effective Date. This Ordinance shall become effective seven days after the publication of a summary of its provisions in a local newspaper of general circulation.

AYES: Altman, Brouwer, Pruis, Bergwerff, Oskin, Miller and Tacoma.

NAYS: None

ORDINANCE DECLARED ADOPTED.

Passed and adopted by the Township Board of the Charter Township of Jamestown, County of Ottawa, Michigan, on July 2, 2015, and approved by me on July 20, 2015.



Ruth Pruis
Township Clerk



Ken Bergwerff
Township Supervisor

CERTIFICATE

I, Ruth Pruis, clerk for the Charter Township of Jamestown, Ottawa County, Michigan, do hereby certify that the forgoing Jamestown Township Ordinance was adopted at a regular meeting of the Jamestown Township Board on July 20, 2015. The following members of the Township Board were present and voting: Brouwer, Altman, Bergwerff, Pruis, Tacoma, Miller and Oskin. The following members of the board were absent: None. The Ordinance was adopted by the Township Board with members of the Board Brouwer, Altman, Bergwerff, Pruis, Tacoma, Miller and Oskin voting in favor and members of the Board: None voting in opposition. Notice of Adoption and Posting of the Ordinance was published in The Grand Valley Advance on August 2, 2015.



Ruth Pruis, Clerk
Jamestown Charter Township

CERTIFICATE OF PUBLICATION

I, Ruth Pruis, Township Clerk of the Charter Township of Jamestown, County of Ottawa, State of Michigan, hereby certify pursuant to MCL 42.22 that Township Ordinance #15-004, or a summary thereof was published in the *Grand Valley Advance* on August 2, 2015.



Ruth Pruis, Clerk
Jamestown Charter Township