

# Mining and Excavation Ordinance

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*An ordinance to regulate the operation sand and gravel mining operations in the Charter Township of Madison.*

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THE CHARTER TOWNSHIP OF MADISON ORDAINS:

## **Section 1. Title**

This ordinance shall be known and cited as the Charter Township of Madison Mining and Excavation Ordinance.

## **Section 2. Permit Required**

No person may operate or permit to operate on land in the Charter Township of Madison any mining or quarry operations without first obtaining a conditional use permit pursuant to the Charter Township of Madison Zoning Ordinance.

## **Section 3. Term of Permit**

This conditional use permit shall be valid for five (5) years from date of issuance, subject however, to an annual review.

## **Section 4. Permitted and Prohibited Uses of the Property**

- a. The property subject to this permit shall not be used for any purposes other than agricultural, housing development, sand and gravel mining, sorting, washing, stockpiling and or sales and transportation of mined materials.
- b. The uses not permitted on the property include, but are not limited to the following:
  - i. Establishment and/or operation of either a concrete or asphalt plant.
  - ii. Mixing of concrete or disposal of "concrete washwater".
  - iii. Establishment and/or operation of a landfill.

## **Section 5. Hours of Operation**

From the period April 1 through October 31 of each year during this permit. The hours of operation for all trucking and shipping at the site shall be limited to the hours between 7:00

a.m. to 6:00 p.m. During the period November 1 through March 31, the hours of operation shall be limited from sunrise to sunset. There shall be no operation on Sundays and Holidays.

#### **Section 6. Compliance with Zoning Ordinance**

Except as specifically herein provided to the contrary, the mining operation shall conform to standards set forth in the Madison Charter Township Zoning Ordinance and in particular Sections 2.2.42 and 5.5.5 of that ordinance.

#### **Section 7. Planting and Maintenance of Vegetation**

Establishment and/or re-establishment of vegetation shall take place progressively in the same year that mining operations begin. The permit holder shall be responsible for the care and maintenance of such vegetation, until such time as it is no longer needed for visual screening, sound screening and/or dust control. Vegetation shall be evergreen trees in at least two rows. One row shall be on the top of the berm, with trees planted at intervals not to exceed twenty feet (20'). The second row shall be approximately halfway down the outside slope of the berm, with trees planted at intervals not to exceed sixty feet (60').

#### **Section 8. Use of Topsoil**

Topsoil shall not be stripped, excavated or otherwise removed from the premises for sale at retail or wholesale. All topsoil removed from the subject property shall be returned to the subject from the subject property.

#### **Section 9. Sound Control**

Any crushing equipment or device utilized on the premises shall be housed in a wooden building adequate to control noise and dust generated by the crushing operation and associated processes. Crushing equipment located on the property shall not generate noise in excess of fifty (50) decibels at five hundred (500) feet. On materials mined from the property which is subject to this permit may be crushed on the premises.

#### **Section 10. Controlling Access to Work Site**

Access, including roads to the mining operation shall be closed off by means of fences and gates, as specified by Township during hours when mining activities cease.

#### **Section 11. Road Improvements**

Roads to the mining operations shall be improved to a "Class A" road. If, in the future, further road improvements are recommended by the Lenawee County Road Commission as a result of increases in traffic to and from site, any such recommended improvements shall be put into place at the earliest practical date after the Road Commission has specified the nature of the improvement. All road improvements and associated costs shall

be the responsibility of the mining operator, without cost to the Township.

#### **Section 12. Dust Control**

There shall be located on the site at all times a "water wagon" available and of sufficient capacity for controlling dust on the roads located within the site.

The use of chemical dust suppressants other than water shall be approved in advance of use by the Township Board.

#### **Section 13. Safety Programs**

The mining operator will cooperate in and support any safety program intended to improve awareness of school bus traffic as requested by officials of local school districts and any requests for traffic lights, speed reductions or other traffic control measures sought by the Township.

#### **Section 14. Annual Review of Permit**

The conditional use permit shall be reviewed annually and shall be subject to review of past performance and verification that operations have been conducted according to the requirements of the permit and approved plans, the requirements of the Township Zoning Ordinance, and the requirements of this Mining and Excavation Ordinance. Site operations shall be open to inspection at all times and as often as necessary to assure compliance.

If at any time while this permit is in effect, the Township Board or, its designated agent, the Zoning Compliance Officer, determines that the mining operator has violated the terms or conditions of this permit or the applicable provisions of the Township Zoning Ordinance and such violation constitutes a threat to health or safety, this permit shall lapse immediately and all operations at the site shall cease until such time as the deficiency has been cured.

If any non-compliance is noted, other than one which constitutes a danger to health or safety, the Township Board or its designated agent, the Zoning Compliance Officer, shall, in writing, notify the mining operator of such deficiency and upon notification, the mining operator shall, within fifteen (15) days, either cure such deficiency or provide the Township Board with a written summary of corrective action being implemented and an estimate of a reasonable amount of time needed to bring its operation into compliance.

Any costs incurred for special inspections, consultant fees, or special studies made to insure compliance with permit shall be paid by the mining operator.

#### **Section 15. Performance Bond**

Financial guarantees in the form of a performance bond shall be furnished the Township prior to commencement of mining operations in order to insure proper rehabilitation and

reclamation in accordance with the provisions of the Township Zoning Ordinance.

The bond shall be in the amount determined by the Township Board following a recommendation from the Township Planning Commission.

In determining the area to which the performance bond is to apply, the following shall be included:

- a. Any area stripped of topsoil or overburden;
- b. Areas from which material is extracted;
- c. Areas utilized for stockpiling extracted material, overburden and topsoil;
- d. Any area which from a past term of operation has not been fully rehabilitated;
- e. Any other land determined by the Township Planning Commission as integral to the operation and requiring protection under a financial guarantee;

Financial guarantees shall be in the form of cash, certified check, corporate surety bond of an insurance company licensed to do business in the State of Michigan and agreeable to the Township board, letter of credit or securities. The guarantees shall remain in effect and be supplied until such time as it is determined by official inspection that the acreage it guarantees is rehabilitated and the release of the bond or any portion thereof shall require the recommendation of the Township Planning Commission and approval of the Township Board.

#### **Section 16. Citizen Complaints**

The mining operator will designate an individual to receive citizen complaints. The Township Board shall designate an individual to receive citizen complaints and transmit them to the mining operator. The permit holder will make all efforts which may be practical under the circumstances to accommodate citizen concerns.

#### **Section 17. Assignment of Permit**

This permit and the rights conferred hereunder are granted exclusively and may not be assigned without the express written approval of the Township Board. Such approval shall not, however, be arbitrarily or unreasonably withheld.

#### **Section 18. Amendment of Permit**

- a. These conditions may, during the term of this permit, be altered to accommodate practical necessities, under the procedure set forth presently in the Township Zoning Ordinance.

- b. Minor field variations in features or locations of proposed features due to topographical or other physical considerations shall not require amendment of the approved site plan or amendment of these conditions.

#### **Section 19. Indemnification and Hold Harmless**

The mining operator agrees to indemnify and hold the Township harmless from any and all fees, fines, expenses, claims or costs, including , without limitation, attorney fees and court costs, incurred by the Township as the result of any environmental problems or accidents at the site. Further, the mining operator agrees to undertake at its sole expense, any remediation costs ordered by a governmental agency necessary to cure any environmental damage to the property.

#### **Section 20. Defense of Future Claims**

If a suit is commenced against the Township or any of its agents, employees or elected officials by a third party for any damages or claims arising out of the operation of the mining enterprise by the mining operator, at the Township's request, the mining operator will agree to assume the defense of the Township before any court or administrative agency or, at the mining operator's option, to assume the cost of any such defense, and further, the mining operator shall indemnify and hold the Township harmless from any claims asserted against the Township arising out of mining operations within the Township. If the mining operator opts to pay for the costs of defense, the Township agrees that the mining operator shall be allowed to control the defense. Failure to allow the mining operator to control the defense shall void any obligation on the part of the mining operator to pay for such defense. This indemnification would not apply to any claim against the Township for damages arising out of acts or omissions attributable to the Township, excluding the issuance of the permit.

#### **Section 21. Excavation Surcharge**

The mining operator shall pay to the Township an amount equal to .05 cents per yard for each yard of sand or gravel mined from the site. It is understood that the mining operator does not measure the sand and gravel as it is removed from the earth, but rather it is measured at such time as the materials are trucked from the site.

Consequently, for purposes of computing the amount owed to the Township for any given year, the mining operator will compute this excavation surcharge based upon the number of yards trucked from the site during the year.

The mining operator shall disclose to the Township the total number of yards trucked from the site and shall provide the Township with any supporting documents necessary to establish this amount. This excavation surcharge shall be paid within two (2) months after the end of the mining operator's fiscal year.

## **Section 22. Monitoring Water near Fuel Supply**

- a. The mining operator shall locate at least one (1) monitoring well a maximum of 100 feet down gradient of the permanent location of fuel supply tanks to be placed on the property. Once fuel supply tanks have been placed in their permanent location, as indicated in the filed site plan, the mining operator shall conduct test for total petroleum hydrocarbons (TPH) on the well down gradient of fuel supply tanks and one up gradient well.
- b. These tests shall be conducted on a quarterly basis for the first year after the location of the fuel supply tanks and on an annual basis thereafter.

## **Section 23. MEASUREMENT OF WATER LEVELS**

During the first year of this permit, or the first year after installation of a monitor well, whichever is later, the mining operator shall measure water levels on a monthly basis.

## **Section 24. Blasting Regulations**

Wherever and whenever blasting or the setting off of an explosive blast occur on the site, said blasting or setting off of an explosive blast shall be conducted in such manner that the maximum peak particle velocity of any one of three mutually perpendicular components of ground motion in the vertical and horizontal and longitudinal directions resulting therefrom shall not exceed two (2") inches per second at the nearest property line of the property at which said blasting or setting off of an explosive blast occurs and shall not exceed two (2") inches per second at a point three hundred (300') feet from the explosive blast; however when the distance from the explosive blast exceeds one thousand (1,000') feet from the nearest property line, the maximum peak particle velocity shall not exceed two (2") inches per second at a point five hundred (500') feet from the explosive blast. Blasting and the setting off of an explosive shall be restricted to the hours between 10:00 a.m. and to 6:00 p.m., Monday through Friday.

## **Section 25. Minimum Set-back Requirements for Excavations**

There shall be no excavation on said site closer than the following: 1) two hundred (200) feet from any public road; and 2) one hundred (100) feet from any property line; and 3) two hundred (200) feet from any existing residential structure. As part of the restoration, the one hundred (100') foot wide perimeter around the area of excavation shall be sloped downward the area of excavation at the slope of one (1') foot vertical for each seven (7') feet horizontal. The slope shall commence at the existing grade.

## **Section 26. Penalty**

Every person convicted of a violation of any provision of this ordinance or any rule or regulation adopted or issued in pursuance thereof shall be punished by a fine of not more than one hundred (\$100.00) dollars and costs of prosecution or imprisonment for not more

than ninety (90) days or by both such fine and imprisonment. Each act of violation and every day upon which any such violation shall occur shall contribute a separate offense. The imposition of any such sentence shall not exempt the offender from compliance with the ordinance.

#### **Section 27. Severability**

If any court of law of equity within the State of Michigan determines that any provision within this ordinance is unconstitutional, void, voidable, or unenforceable, the remaining provisions of the same section and other sections of this ordinance shall be deemed separate, distinct and valid in all respects from said provision.

#### **Section 28. Enforceability or Mandatory Injunction**

As a cumulative remedy to Section 26 above entitled PENALTY any person who violates any provision of this ordinance or any rule or regulation adopted or issued in pursuance thereof, may be made a party defendant in a suit in the Circuit Court for the County of Lenawee; the Charter Township of Madison shall have the power, through its attorneys, to request that said Circuit Court issue a Mandatory Injunction compelling the said Party Defendant in violation of this ordinance to forthwith comply with said ordinance.

#### **Section 29. Effective Date**

This ordinance shall become effective thirty (30) days after its adoption.