

STATE OF MICHIGAN  
COUNTY OF BERRIEN  
ORONOKO CHARTER TOWNSHIP

EARTH SOLIDS ORDINANCE #63

AN ORDINANCE TO REGULATE AND CONTROL EXCAVATION, REMOVAL, DEPOSIT AND RELOCATION OF SAND, GRAVEL, TOPSOIL, CLAY, MORROW, OTHER MINERALS, FILL MATERIALS, AND FOR THE CONTROL AND REGULATION OF GRINDING, REPROCESSING AND STORAGE OF ASPHALT, BRICKS AND CONCRETE IN ORONOKO CHARTER TOWNSHIP, BY REQUIRING A PERMIT FOR SUCH ACTIVITIES AND FOR THE ENUMERATING OF REQUIREMENTS OF SUCH PERMITS AND PROVIDING FOR THE EXEMPTION THEREOF.

The Charter Township of Oronoko ordains:

SECTION I  
TITLE

This Ordinance shall be known and cited as the Oronoko Charter Township Earth Solids Ordinance.

SECTION II  
APPLICABILITY

- A. This Ordinance shall apply to all operations in Oronoko Charter Township which involve excavation, removal, deposit, or relocation of sand, gravel, top soil, clay, morrow, other minerals and similar material, herein referred to as 'earth solids', as well as to the storage and grinding or reprocessing of asphalt, bricks and concrete. However, this Ordinance shall only apply to such earth solids and/or asphalt, bricks or concrete which involve an amount in excess of four hundred (400) cubic yards, and except as provided in Section II B: herein.
- B. This Ordinance shall not apply to the excavation, removal, deposit and/or relocation of earth solids involving:
1. Operations reasonably necessary to the construction of a building, when a building permit has been properly issued, and is in effect for such project and when the amount of earth solids to be excavated, removed, deposited or relocated will not exceed four thousand (4,000) cubic yards;

2. Uses accessory or incidental to another lawful and permitted use, and for which a building permit, when necessary, has been properly issued, including, but not limited thereto, parking areas, landscaping, gardening and other uses very similar to those as set forth herein, and which do not exceed an amount of earth solids to be excavated, removed, deposited or relocated in excess of eight hundred (800) cubic yards;
3. Uses immediately accessory or immediately incidental to farming operations;
4. Residential construction and improvements involving a plat duly approved and recorded pursuant to the Plat Act, being Act 172 of Michigan Public Acts of 1929, or the Subdivision Control Act, being Act 288 of Michigan Public Acts of 1967, and as amended; and
5. Governmental agencies regarding operations necessary in/for the construction of highways, sewers, drains, and flood control projects.

SECTION III  
PERMIT AND APPLICATION REQUIREMENTS

- A. A permit duly issued by the Oronoko Charter Township Board shall be required of any person, individual, firm, corporation, association or partnership to excavate, remove, deposit or relocate earth solids in Oronoko Charter Township, including the grinding or reprocessing and or storage of asphalt, bricks or concrete, excepting only as to earth solids as provided in Section II B. herein.
- B. Any applicant for a permit required under this Ordinance must file a written application with the Oronoko Charter Township Board. The application shall be addressed to the Oronoko Charter Township Clerk, and shall set forth the following information:
  1. Name and address of applicant;
  2. A description of land involved with a legal description of the property involved;
  3. Estimated or planned amount of earth solids to be excavated, removed, deposited or relocated and/or estimated amount of asphalt, bricks and or concrete to be stored, ground or reprocessed under the permit;
  4. The kind of earth solids to be excavated, removed, deposited, relocated or used for fill material;
  5. Measures to be taken to control noise, vibration, dust and traffic;

6. A description of any traffic control devices, public facilities or public services which could be reasonably necessary and/or required as a result of the proposed operations;
7. Any necessary measures the applicant proposes to take to ensure public safety and for the lateral support of surrounding land and structures;
8. The time span required for each of the proposed operations; and
9. A written statement explaining stabilization controls to be utilized and employed to leave the land, thereafter, in a reasonably level and usable condition after such permitted operations cease.

SECTION IV  
APPLICATION FEE AND PROCESSING  
PERMIT CONDITIONS AND REQUIREMENTS

- A. Each application for a permit pursuant to Section III (A and B) of this Ordinance shall be accompanied by a fee of FORTY DOLLARS (\$40). In the event that an application is denied, in whole, one-half of said fee shall be refunded to the applicant.
- B. Each application for a permit and fee, as set forth in this Ordinance, shall be filed with the Oronoko Charter Township Clerk. Upon receipt of an application and fee, the application shall be transmitted forthwith by the Township Clerk to the Township Planning Commission for its consideration and any recommendations. No action shall be taken by the Township Board until the Township Clerk has received a written report from the Planning Commission, or until the expiration of forty (40) days from the filing date of the application and fee, whichever first occurs. The Planning Commission may make suggestions for conditions to be attached to any such permit that may be issued under this Ordinance and shall forward their recommendations, with proposed conditions, if any, to the Township Board. The Township Board shall consider such recommendations of the Planning Commission, and may incorporate any or all such recommended conditions, or any of their own, into any permit issued, as a requirement thereof. No application, which has been so amended by the Township Board, need be referred back to the Planning Commission as a result of any such condition/amendment by the Township Board, unless the Township Board so desires.
- C. No permit shall be issued unless the Township Board, after considering the application and any recommendations and/or proposed conditions of the Planning Commission, and after giving the applicant an opportunity to be heard, either in person or through counsel, shall find:
  1. That the proposed operations are not likely to cause any dangerous, unsanitary or unhealthful conditions;

2. That such will impose no undue financial burden upon the Township;
  3. That such operations will not be conducted in violation of any state law or township ordinance;
  4. That there is adequate assurance that the land will be left in such condition as to protect it from erosion; and
  5. That after completion of the operations, the land will be left in a reasonable level and usable condition.
- D. As a condition of granting the permit, the Township Board shall require the applicant to post a surety bond, or other adequate assurances as deemed acceptable by the Township Board, and upon recommendation of the Township Planning Commission, in such reasonable amount and/or upon such reasonable terms as the Township Board may determine, taking into consideration the scale of the operations, costs of rehabilitating the land, possible court costs and attorney fees, past practices of the Applicant, and other reasonable expenses which could be incurred, for the purpose of assuring the public that the terms and conditions of the permit, as issued, shall be complied with. The form of any such bond mandated shall be approved by the Township Attorney.
- E. The Township Board shall reach decision on an application and the applicant shall be so advised in writing by the Township Clerk, within a period not to exceed ninety (90) days from the date the application is first filed with the Township Clerk.
- F. Each permit shall apply only to the land described in the application.
- G. A permit may be revoked if the one owning the permit operates in any manner inconsistent with the representations, statements and conditions of the application and permit, as approved.
- H. The Township Board may, upon good cause, revoke a permit that has been issued and/or one that has been temporarily suspended. If a permit is to be considered for revocation, the permittee shall be given written notice, mailed or personally served at least seven (7) days prior to the date of the meeting at which revocation is considered, and shall be given the opportunity to be heard either in person or through counsel, or both. The notice shall specify the date, time and place of the meeting at which revocation will be considered and shall inform the permittee of the reason(s) that revocation is under consideration and of his/her right to be heard. Any revocation of a permit does not exempt the permittee from the regulations under this Ordinance and responsibility for any violations of this Ordinance, all as provided in Sections IV, V and VI.

- I. The Township Supervisor, or his/her appointed agent, may temporarily, without notice, suspend any permit issued under the provisions of this Ordinance if it appears evident in his or her opinion that a violation has occurred and that such violation is continuing or is reasonably deemed likely to continue, and if a condition of eminent danger to person or property is obviously apparent. If such suspension occurs, then the owner of the permit shall be granted a hearing, within seven (7) days and otherwise pursuant to the terms of Section IV H, herein.
  
- J. Permits issued under this Ordinance shall be effective for a period not to exceed one (1) year. In the event the permittee desires to continue like operations, a new application and fee shall be filed with the Township Clerk as set forth herein.

SECTION V GENERAL  
REQUIREMENTS

- A. Distance of excavation from County or State Road Right-of-Way:
  - 1. Excavation shall not be permitted within fifty (50) feet of either a county or state road right-of-way.
  - 2. Excavation beyond fifty (50) feet of a county or state road right-of-way must maintain a grade which is no steeper than a two-to-one slope. If at any time the slope becomes steeper than one-to-one, excavation must be stopped and a filling and/or holding operation shall begin.
  - 3. If terrain is not of highway or road level, but in the nature of a mound, high bank or a hill, excavation will be permitted to the highway (road) right-of-way and to that road's highest level at that point.
  - 4. Any further excavation or removal of dirt below the road's highest level must then be made fifty (50) feet from the road right-of-way and a slope no steeper than one-to-one must be maintained, and as provided in Section VA. 2. herein.
  - 5. If excavation as described in Section V A. 4. herein takes place, and terrain remaining on road right-of-way is higher than road level, then an agreement must be reached between the Road Commission, and persons doing such excavation, to remove such terrain from the road right-of-way and to the Road Commission's specifications and satisfaction.
  
- B. Distance of excavation from property lines:
  - 1. Excavation shall not be permitted closer than fifteen (15) feet of any property line and slope shall be no steeper than one-to-one.

2. Excavation from inclined terrain may be leveled fifteen (15) feet from property lines upon agreement of all adjoining property owners who are directly effected.
3. Excavation from level or declining terrain shall not be permitted within fifteen (15) feet of property lines and then only at a slope of not less than two-to-one.
4. When excavation takes place on both sides of a property line, excavation or removal of earth solids from the property line may be permitted provided that both affected property owners agree, and a slope no steeper than two-to-one shall be maintained.

C. Hazards:

1. Excavation taking place on private property within fifty (50) feet from a property line or within one hundred (100) feet from any road right-of-way with a slope steeper than a one-to-one and deeper than five (5) feet is considered hazardous and will not be left unmanned overnight unless at least one of the following is present at the point of danger:
  - a. Two strands of plain wire
  - b. Snow fencing
  - c. Temporary board fencing
  - d. Placement of saw horses
2. Any excavation within fifty (50) feet of public property shall not be left overnight without adequate working blinker lights mounted on saw horses or similar support.
3. Unpaved roads used to transport any materials covered by a permit issued under this Ordinance, which are located within five hundred (500) feet of a private residence, business or public recreation area, shall be adequately treated by the owner of the permit as reasonably necessary for dust control.

D. Condition of Property Areas after Excavation, etc. is completed:

1. Within two (2) years after excavating operations have ceased, excavated areas must be leveled to a grade of no steeper than a two-to-one slope.
2. Where operations described herein have caused a pond or water hole, the permittee shall grade a slope which is not steeper than three-to-one within seventy-five (75) feet of any place in said pond or water hole.

3. Where any permit owner neglects, omits or refuses to comply with any provision of this Ordinance concerning the restoration of the land to a reasonable level and to usable condition, the Township Board shall issue an Order to the permit owner to correct said dangerous, unsanitary, unhealthful and/or land-eroding condition. If the permit owner does not comply with such Order within forty-five (45) days, the Township Board shall cause the land to be restored to a reasonable level and useable condition, and the cost thereof to be assessed against the permit owner, if said permit owner has not posted a surety bond as set forth in Section IV D of this Ordinance. If the permit owner shall refuse upon demand to pay such expenses, then such expenses so incurred shall be assessed against the subject real estate as a tax lien, and shall be collected and treated in the same manner as are taxes under the general laws of the State of Michigan.

E. Miscellaneous Requirements:

1. Access drive(s) must be clearly visible and posted. A sign, no smaller than one foot by two feet (1'x2'), setting forth the name and the assigned address of the pit or excavation site, must be placed at the main access drive to the earth solids removal area;
2. Mud and debris must be kept cleared from all adjacent roads at points of ingress and egress to and from the pit or excavation area;
3. Dust must be reasonably controlled on a regular basis by whatever means are deemed appropriate by the permit owner, so long as said means are deemed reasonably adequate by the Township Board;
4. Operations under any such permit issued under this Ordinance are allowed only during daylight hours unless otherwise clearly specified in writing on said permit;
5. The Oronoko Charter Township Zoning or Building Administrator shall be granted reasonable access, from time-to-time, at reasonable times, to inspect and to ensure compliance with the permit and conditions thereof;
6. All entrances to the pit or excavation site are to be reasonably secured in reasonable fashion;
7. No processing or storage of materials is allowed, other than those mined directly from the site, unless applied for and approved by permit;
8. Equipment and/or items not used routinely in the day-to-day operations may not be stored at the site unless the permit otherwise specifically so provides; and

9. A Special Use Permit is required if any material is to be buried during the reclamation process, at the subject site.

SECTION VI  
PENALTIES

Any person, individual, firm, corporation, association, or partnership found to be in violation of any of the provisions of this Ordinance, upon conviction shall be punished by a fine not to exceed FIVE HUNDRED DOLLARS (\$500) or by imprisonment in the county jail for a period of not to exceed ninety (90) days or by both fine and imprisonment. Each day that such violation continues after each notice of each violation has been served may constitute a separate offense at the discretion of the Township Board.

SECTION VII  
SEVERABILITY

If any portion of this Ordinance or the application thereof to any person, individual, firm, corporation, association, or partnership is adjudged to be invalid by a court of competent jurisdiction, then such determination shall not affect the validity of any other portion of this Ordinance, or the application of any portion of this Ordinance to any such person or other person, individual, firm, corporation, association, or partnership; and for this purpose each and every provision of this Ordinance is hereby declared to be severable.

SECTION VIII  
EFFECTIVE DATE

This Ordinance shall become effective thirty (30) days after adoption and publication.

SECTION IX  
ADOPTION

This Ordinance was amended and adopted by the Oronoko Charter Township Board, Berrien County, Michigan, at a regular meeting thereof, held on the 13th day of April, 2004.

First introduced and read prior to enactment by Township Board Trustee Maquera on the 9<sup>th</sup> day of March, 2004.

Motioned for adoption and passage by Township Board Clerk Renton 13th day of April 2004.

Supported by Township Board Trustee Riess

Roll Call Vote:

Ayes:            Trustee Pagel                    Trustee Riess Treasurer Ladd  
                    Trustee Holman                Supervisor Hildebrand  
                    Clerk Renton

Nays:            None

Abstain:        None

Absent:         Trustee Maquera

Ordinance Enacted:        Yes

The foregoing amended Ordinance was enacted by the Charter Township of Oronoko, State of Michigan, on the 13th day of April, 2004, and entered by its Supervisor and Clerk on said date.

CHARTER TOWNSHIP OF ORONOKO:

Ernest Hildebrand  
Township Supervisor

ORDINANCE NO. 63 (as amended) WAS FIRST PUBLISHED IN THE *JOURNAL ERA*, ON THE 31st DAY OF March, 2004, AFTER FIRST BEING INTRODUCED. SAID AMENDED ORDINANCE WAS THEREAFTER PUBLISHED IN THE *JOURNAL ERA*, AFTER ENACTMENT, ON THE 21st DAY OF April, 2004. EFFECTIVE THIRTY (30) DAYS AFTER FINAL PASSAGE AND PUBLICATION.

Suzanne G Renton  
Township Clerk

A true copy of this Ordinance may be obtained for purchase at reasonable cost, or for inspection, at the Oronoko Charter Township Hall, located at 583 East Snow Road, Berrien Springs, Michigan, during normal business hours of 8:30 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.