

ENSLEY TOWNSHIP
NEWAYGO COUNTY, MICHIGAN

(ORDINANCE NO. 250-B)

MINERAL MINING LICENSING ORDINANCE

AN ORDINANCE TO ESTABLISH OPERATIONAL,
MAINTENANCE, PERFORMANCE, AND RECLAMATION
STANDARDS FOR MINING SITES

Because of the noise, dirt and dust emitted in the mining and processing of sand, gravel and other minerals, and because of the permanent changes in the topographical and geological characteristics of Ensley Township as a result of said mining, and because of the dangers inherent in said mining and said changes by virtue of steep hillsides, shifting earth, standing water and other like considerations, and for the purpose of protecting the health, safety and welfare of the residents of Ensley Township, and further protecting the property of said residents, this Ordinance is enacted. This Ordinance is enacted by the Ensley Township Board pursuant to the authority vested in it by Act 246 of the Public Acts of the State of Michigan for 1945, as amended, and any other authorization legislation.

THE TOWNSHIP OF ENSLEY (“Township”) ORDAINS:

SECTION 1. TITLE

This Ordinance shall be known as the “Ensley Township Mineral Mining Licensing Ordinance” and may elsewhere be referred to as “this Ordinance”.

SECTION 2. INTERPRETATION, EXISTING OPERATIONS AND RESTRICTIONS

It is not the intention of this Ordinance to repeal, annul, or in any way repeal any existing law or ordinance unless expressly so stated in this Ordinance. Further, it is not the intention of this Ordinance to unreasonably interfere with operations already existing except that this Ordinance sets forth minimum standards which shall apply to all such existing operations as well as future operations. To the extent that any restrictions or standards imposed by this Ordinance are more stringent or restrictive than existing restrictions or standards, this Ordinance shall control.

SECTION 3. DEFINITIONS

For the purposes of this Ordinance, the following terms shall have the following meanings:

- A. “Mineral Mining or Mining” – The excavation, removal and/or processing of peat, gravel, sand, clay, stone or other soils or materials, including overburden, or the storage or transporting of such items on a mining site, or the reclamation of the site after removal or excavation of such items. For the purposes of this Ordinance, the following excavation activities are not included within the definition of mineral mining or mining and are exempt from the licensing requirements of this Ordinance:
1. Excavation approved by a governmental body of competent jurisdiction in conjunction with the installation or maintenance of publicly owned or operated utilities, drainage facilities, roads, or other publicly owned or operated improvements, where the excavation is limited solely to the public utility or improvement. Notwithstanding the preceding, any excavating, removal and/or processing of minerals which occurs in conjunction with the creation of a new road or modification of an existing road where the existing grade is modified or disturbed to more than three (3) feet from its present elevation or where such mining in excess of 500 cubic yards will occur beyond the boundaries of the road right-of-way, shall be considered mineral mining or mining and shall be subject to this Ordinance.
 2. Excavation which by its nature is of limited scope and duration and which is undertaken primarily for the immediate use and development of the land excavated, such as for purposes of building construction, septic tanks, swimming pools, graves, etc., so long as no more than 500 cubic yards of material are mined or excavated in total.
 3. Excavation in conjunction with bona fide farming operations conducted in accordance with generally accepted agricultural practices, including agricultural drainage work incidental to farming operations and irrigation or stock watering ponds, if no material is removed from the property.
 4. Other excavations not exceeding 5000 cubic yards in total where the Township Board determines, in its sole discretion, that the proposed excavation is unlikely to unreasonably interfere with the enjoyment of life or property and will not expose any person or property to the types of dangers inherent in mineral mining sought to be prevented by this Ordinance. The Township Board’s determination may be based on a review of the purpose, location, extent or duration of the proposed excavation and other factors which may bear on the potential of any excavation activity to adversely affect the public health, safety, or general welfare of the community.
- B. “Person” – any person, firm, corporation, owner, operator, lessee or entity.
- C. “Site” – a parcel, property or unit of land.

- D. “Township” – Ensley Township.
- E. “Township Board” – the Ensley Township Board.
- F. “Township Planning Commission” – the Ensley Township Planning Commission.

SECTION 4. LICENSE REQUIRED

From and after the effective date of this Ordinance, no person shall commence, maintain or operate a new mineral mining site in the Township except in full compliance with this Ordinance and with a license issued under this Ordinance. A license issued pursuant to this Ordinance shall be nontransferable. All mineral mining operations which exist in the Township as of the effective date of this Ordinance (whether active or dormant) shall obtain a license and shall fully comply with all of the requirements of this Ordinance no later than ninety (90) days after the effective date of this Ordinance.

Until a mining operation or mining site has been fully reclaimed, it shall be the responsibility of the owner of the property (as well as the operator of the mining operation, if different than the owner) to ensure that the license required under this Ordinance is in effect at all times. It shall be a violation of this Ordinance for the owner or operator of a mining site to allow a license hereunder to expire prior to reclamation being fully completed. Dormancy of a mining operation or mining site or the cessation of active mining without full reclamation shall not relieve the owner and operator of the obligation to have a license under this Ordinance in effect at all times.

If a license expires prior to reclamation being fully completed to the requirements of this Ordinance, all mining, processing and mining operations shall cease on the property (except prompt reclamation) until a new license has been issued by the Township. Additionally, if any mine or mining operation is dormant after the effective date of this Ordinance for over eighteen (18) months, reclamation shall be undertaken by the owner/operator immediately and shall be completed within 90 days.

SECTION 5. LICENSING PROCEDURE

- A. All applicants shall use forms provided by the Township Clerk, accompanied by the documents enumerated on that form. All licenses are for two (2) years and all licenses expire on May 15 of each license year. To be considered for renewal, two (2) copies of the proper application with required attachments must be submitted to the Township Clerk on or before January 15 of the year in which the license expires. Upon receipt of the two (2) copies of the fully and properly completed application form with the required documents attached, the Township Clerk shall retain an official copy in the Clerk’s office and shall forthwith distribute the remaining copy to the Township Zoning Administrator or Building Inspector.

- B. Upon receipt of an application, the Township Zoning Administrator or Building Inspector shall review the application and attachments, physically inspect the premises to determine compliance with the prior reclamation plans and operational plans, and report to the Township Board in writing on such compliance. The Township Zoning Administrator or Building Inspector shall also estimate of the cost of reclamation upon abandonment for monetary security amount purposes, and shall make such additional comments regarding general safety, drainage, equipment removal, and other engineering considerations pertaining to the license application as appropriate.
- C. The Township Board shall give final approval, approval with conditions or disapproval of the submitted reclamation plan and operational plan and/or the granting or renewal or nonrenewal of the license.

SECTION 6. APPLICATION CONTENTS

- A. Name of the owner(s) of the land from which removal is to be made or upon which mining operations will take place.
- B. Name and address of applicant making the request for the license.
- C. Name and address of the person, firm or corporation who will be conducting the actual removal operation.
- D. Location, size, and legal description of the area from which the removal is to be made.
- E. Type of materials or resources to be mined, stockpiled, or hauled away.
- F. Proposed method of removal and general haul route.
- G. General description of types of equipment to be used.
- H. The estimated number of years to complete operations and number of phases where appropriate.
- I. The applicant shall post a surety performance bond, cash deposit or irrevocable letter of credit naming the Township as the beneficiary thereof in an amount determined by the Township Board to be reasonably necessary to insure compliance hereunder (“security”). Mined material and other items shall not be used for such security. Upon completion of applicant’s activities on the parcel described in the application and the land has been reclaimed to the approved reclamation plan and to the satisfaction of the Township Board, the security shall be void; otherwise, the Township shall have the right to use the security proceeds to the extent necessary to reclaim the property. This security shall be kept in effect at all times by the

applicant until the parcel or parcels have been fully restored as required by this Ordinance or until such time that the Township, and its agents and contractors are able to go on the applicant's premises to fulfill the security requirements. In fixing the amount of security, the Township Board shall take into account the size and scope of the proposed operation, current prevailing cost of reclaiming the premises upon default of the operator, and such other conditions and factors as might be relevant in determining the sum reasonable in light of all facts and circumstances surrounding each application. The applicant shall notify the company providing the security and provide proof thereof that the Township be notified in the event of any lapse in the effectiveness of the security. The amount of the security shall apply to all lands occupied by mining areas, roadways, storage areas, equipment, stockpiles, and similar elements.

J. As a part of the application, the applicant shall submit a plan of operation prepared by a civil engineer licensed by the State of Michigan and the applicant shall fully comply with such a plan over the 2-year time period for which the license is issued. Said plan of operation shall include a topographic survey of the existing parcel drawn to a scale of 1 inch = 100 feet and prepared by a registered civil engineer or registered land surveyor with contour intervals not to exceed 10 feet based upon U.S.G.S. datum. The drawing shall also clearly show the area to be mined, including existing areas and roads within 100 feet of all property lines, areas for stockpiling, maintenance areas, berms, fencing, and similar use areas. The plan of operation shall be accompanied by a projected schedule of mining operations, including the following specific dates:

1. Commencement and completion of mining operations as provided by the plan of operation;
2. Commencement and completion of erosion and drainage control measures to be instituted during mining operations; and
3. Commencement and completion of fencing, roads, utilities, or any other structures or improvements to be located on the site as provided by the plan of operation.

K. The applicant shall also submit a plan of reclamation prepared by a civil engineer licensed by the State of Michigan. The plan of reclamation shall be submitted in three parts: (1) a recent aerial photograph with a general plan of reclamation as an overlay or as a separate drawing; (2) a reclamation contour plan, (3) and a description of reclamation methods and materials proposed for renewal of topsoil and replanting. The general plan of reclamation shall be presented at the same scale as the aerial photograph and shall provide all of the following information:

1. The general area of completely reclaimed land.

2. The general area of reclamation under way.
 3. The general area currently used for topsoil and overburden storage.
 4. The general area proposed for reclamation during the two year period of the license.
 5. The general area proposed for topsoil and overburden storage.
 6. The acreage for each item shown on the overlay or separate drawing.
 7. If a lake or pond is to be created, details of the same.
 8. A reclamation contour plan with contour intervals not to exceed two (2) feet indicating the general grade and slopes to which excavated areas are to be reclaimed.
 9. A description of the methods and materials proposed for restoration of topsoil to the required fertility and the amount of any type of planting as a part of the reclamation plan.
 10. The projected schedule of reclamation operations, including the following specific dates:
 - (a) Commencement and completion of reclamation operations as provided by the reclamation plan;
 - (b) Commencement and completion of erosion and drainage control measures to be instituted under the reclamation plan; and
 - (c) Commencement and completion of final grading, topsoil replacement, and replanting or landscaping as provided by the reclamation plan.
- L. Mining operational and reclamation plans shall be prepared to clearly depict and describe the sequence of mining operations including existing conditions, mining underway, mining completed, reclamation underway, reclamation completed, mining proposed, reclamation proposed, stockpiles, roadways, and similar land use elements.
- M. All mining, operational and reclamation plans shall be reviewed by the Township Board and shall be subject to its approval, approval with conditions, or disapproval, renewal or nonrenewal and/or granting or refusing to grant a license.

SECTION 7. FEES

All applications shall be accompanied by a processing fee to be paid by the applicant in an amount established by resolution of the Township Board.

SECTION 8. ISSUANCE OF A LICENSE

Upon finding that the applicant has complied with all of the terms and conditions of this Ordinance and with the terms and conditions of prior licenses and prior submitted plans, if any, a license shall be issued.

SECTION 9. CONDITIONS IN A LICENSE

Upon the issuance or renewal of a license, the Township Board may impose as conditions of the license any reasonable restrictions or requirements related to the location, design, or operation of a mining site, as required to secure the public health, safety, and general welfare of the community or to ensure that the mining operations will not create a nuisance or unreasonably interfere with the enjoyment of life or property. Such license conditions may be in addition to the express requirements of this Ordinance.

In addition to other conditions, the Township Board may set a reasonable time limit for when all mining and related operations must be completed on a property and when reclamation must be commenced and completed.

SECTION 10. FENCING AND SCREENING

All excavated and mined areas shall be entirely fenced with a four (4) foot high fence and shall be posted so as to indicated the danger of trespassing in the area. The minimum specifications for said fencing shall be as follows; #9 gauge top wire; #12 gauge bottom wire with spacing of 6 inches by 12 inches. All stays shall be of 14 gauge wire with spacing of support posts to be no greater than 16 feet apart.

SECTION 11. HOURS OF OPERATION

The hours of operation of any mining operation shall be limited to 7 a.m. to 7 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday. No hours of operation shall be permitted on Sundays and legal holidays. In emergency situations, this time period may be modified by the prior written consent of the Township Supervisor, provided such emergency order shall not be effective for more than 72 hours.

SECTION 12. ROAD ACCESS

All sites licensed under the provisions of this Ordinance shall have direct access to an improved county road having a minimum right-of-way width of 66 feet and improved to the specifications of the Newaygo County Road Commission. When the operation of a licensed area results in the mined material, overburden and/or similar material being deposited or spilled upon the public roadway, it shall be the responsibility of the licensed operator to remove such material immediately.

SECTION 13. ROAD MAINTENANCE

Access roads within the licensed site shall be maintained by the operator so as to minimize the dust arising from the use of said roads. Such maintenance shall be accomplished through the application of chloride, water and/or similar dust retardant material. Application of oil shall be prohibited. Entrances, exits and any access points shall be securely locked at all times during hours of inoperation.

SECTION 14. OPERATION OF USE

All equipment and facilities used in the mining of sand, gravel, and stone shall be conducted, maintained, and operated in such manner as to eliminate insofar as practicable, noises, vibrations, or dust which interfere with the reasonable use and enjoyment of surrounding property.

SECTION 15. NOISE

Mining sites shall be operated such that the noises of operation or equipment vibration cannot reasonably be considered disturbing to neighboring uses or users of land. Objectionable noises due to intermittence, beat, frequency, or shrillness shall be muffled so as not to become a nuisance to adjacent uses or users.

SECTION 16. TRANSPORTATION VEHICLE STANDARDS

All vehicles used to transport excavated material shall be required to be loaded in such manner that the material may not unintentionally be discharged from the vehicle. Vehicles shall be cleaned of all material not in the load-bed prior to entering the public streets.

SECTION 17. LIGHTING

All lighting used to illuminate the mining area, access roads, stockpile area, and similar use areas shall be directed away from all surrounding property. Shielding of lighting may be required by the Township Board where such lighting shines directly toward a residential use and/or a county road.

SECTION 18. DRAINAGE

Proper drainage shall be provided at all times to prevent the collection and stagnation of water, and surface water shall at all times be directed in such a manner so as not to interfere with the adjoining property owners; provided, however, that the maintenance of the natural flow of surface water shall not be deemed an interference. There shall be no interference with the water table or wells in the area. Any water areas, retention ponds, settling ponds, or similar water areas shall be fenced in accordance with

Section 10 of this Ordinance. Erosion control measures shall be instituted to comply with Act No. 347 of the Public Acts of 1972, as amended.

SECTION 19. TERMINATION AND RECLAMATION

Upon termination of mining operations (or dormancy for 18 months), the Owner of the premises shall be responsible at its cost to reclaim the site in accordance with the approved reclamation plans and this Ordinance. If the owner or operator fails to fully or timely reclaim the site, the Township, through the provisions of this Ordinance and by the administrative proceedings provided herein, or through the judiciary, may come upon the site and reclaim the land in accordance with the reclamation plan provided under this Ordinance and approved by the Township Board and may utilize the security proceeds provided pursuant to this Ordinance to defray the costs thereof. If the security posted by the applicant is not sufficient to cover all costs of reclamation, the applicant shall be responsible for reimbursing the Township for any shortfall.

SECTION 20. EXCAVATION/FILLING

All excavation of mining areas shall be made either to a water-producing depth of at least 10 feet below the low water mark for at least 80 percent of the water area, or shall be graded or backfilled with noxious-free, noninflammable, nonradioactive, nonhazardous, and noncombustible materials, to assure:

- A. That the excavated area shall not collect, and permit to remain therein, stagnant water; and
- B. That the surface of any area which is not permanently submerged is graded or backfilled as necessary so as to reduce the peaks and depressions thereof, and so as to produce gently rolling surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area.

SECTION 21. BANK SLOPES; SETBACKS

The banks of all excavations shall be sloped to the water line in a water-producing excavation, and to the pit floor in a dry operation at a slope to a degree not less than 2:1 (two to one) and said banks shall be reclaimed with vegetation in a manner set forth hereunder.

The following setback requirements shall be met unless formally altered pursuant to a zoning approval under the Ensley Township Zoning Ordinance, as amended. All mining and removal activities shall be setback a minimum of 100 feet from any adjoining residential use or residentially zoned district. No storage or truck parking shall be located within 200 feet of any adjacent residence or within 50 feet of any property line. No mining or mining activities shall be located within 50 feet of any property line. Within such setback areas, no overburden, mining materials or similar materials shall be stored, placed or kept except in the form of a berm approved by the Township.

SECTION 22. VEGETATION

Vegetation shall be reclaimed by the use of sufficient soil and overburden and by appropriate seeding of grasses or planting of shrubs or trees in all parts of said reclaimed area where such area is not to be submerged under water or within 25 feet of the shoreline as hereinabove provided.

SECTION 23. FILL MATERIAL

In the event filling of the mined area is necessary during reclamation, said fill material shall be inert material only as defined by the Michigan Solid Waste Management Act, Act No. 641 of the Public Acts of 1978, as amended.

SECTION 24. CESSATION OF MINING

Upon cessation of all mining operations, except stockpiles, and within a reasonable period of time not exceeding three (3) months thereafter, all tanks, buildings, stockpiles, and equipment shall be removed unless such building or structures can be lawfully used for other uses in the zoning district in which the same are located. Storage and stockpiling of mined products after cessation of mining activities may be permitted by the Township Board by annual license for that purpose only. In no event shall any additional materials be allowed to be added to these stockpiles and such a license shall not interfere with or excuse reclamation as provided by this Ordinance.

SECTION 25. VIOLATIONS; PENALTIES; SUSPENSION/REVOICATION OF LICENSE

The Township Building or Zoning Administrator inspector may at his/her discretion notify the licensee of any violation of the license or of this Ordinance and upon failure of the licensee to abate said violation within 5 days after mailing of said notice, said mineral mining site may be summarily closed, and the license therefore, suspended or revoked, and the security may be utilized by the Township for restoration. Any licensee aggrieved by any notice sent pursuant to this section may file a written request for a hearing before the Township Board. The request should set forth why the mining site should not be summarily closed, the license suspended or revoked, or resort had to the security. If a request for a hearing is received by the Township Board, the Township Board shall provide to the licensee notice of the time and place of the hearing, an opportunity to be heard, and shall make an impartial determination of whether a violation of the Ordinance has occurred and whether the health and safety of persons or property require the suspension or revocation of said license. Upon receipt of a request for a hearing, the Township Board may summarily close the site pending the hearing, if it is determined that the health and safety of persons or property require such action.

SECTION 26. INSPECTIONS

The Township Engineer (or such other expert as is designated by the Township Board) shall have the right to inspect any mining site at least once a year to ensure compliance with this Ordinance (including, but not limited to, checking slopes) and shall file a report with the Township Board regarding the same. Such annual inspection and report by the Township Engineer (or such other expert as is designated by the Township Board) shall be paid for by the holder of the license issued under this Ordinance.

Additionally, the Township Zoning Administrator or Building Inspector shall also have the right to inspect any mining site at any time to ensure compliance with this Ordinance.

SECTION 27. STOP WORK ORDER

Upon written notice from the Zoning Administrator or Building Inspector to the owner or operator of a mining operation or mining site that any use or activity is being conducted on the property contrary to the provisions of this Ordinance, such use or operation shall be ceased immediately. The stop work order shall be both posted on the property and a copy of the stop work order shall also be mailed by registered mail to the owner of the property involved at the owner's address as listed on the latest license application. Any person who shall continue to use or operate a mining operation (or any owner who does not cause an operator to cease such use or operation) after a stop work order has been issued shall be in violation of this Ordinance.

SECTION 28. VIOLATIONS

Any person who shall violate any of the provisions of this Ordinance shall be guilty of a criminal misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed Five Hundred Dollars (\$500.00), together with court costs and imprisonment in jail not to exceed ninety (90) days in the discretion of the court. Each day during which a violation occurs or continues shall be deemed a separate offense.

Both the owner of a mining site as well as the operator or lessee of mining operations on the site shall be responsible for ensuring compliance with this Ordinance.

SECTION 29. REMEDIES; CONFLICT

In addition to any other remedy available at law, the Township may bring an action for an injunction or other process against a person, or an agency of a person, to restrain or prevent any violation of the provisions of this Ordinance.

Where any provision of this Ordinance conflicts with the Ensley Township Zoning Ordinance or any other Township ordinance or this Ordinance proposes standards different than any other Township ordinance, the stricter ordinance provision shall govern.

SECTION 30. SEVERANCE

This Ordinance and each section, subsection, paragraph, subparagraph, or any provision thereof shall be deemed severable. If any section, subsection, paragraph, subparagraph, or any other provision is adjudged by a court of competent jurisdiction to be invalid or unenforceable or unconstitutional for any reason, it is hereby provided that the remainder of this Ordinance shall not be affected thereby.

SECTION 31. EFFECTIVE DATE; REPEAL OF PRIOR ORDINANCES

This Ordinance shall be effective thirty (30) days after publication. Upon the effective date of this Ordinance, Ensley Township Ordinance Nos. 250 and 250(A) shall be deemed repealed and replaced by this Ordinance.

The above Ordinance was offered for adoption by Township Board Member _____, and was seconded by Township Board Member _____, the vote being as follows:

YEAS: _____

NAYS: _____

ABSENT: _____

ORDINANCE DECLARED ADOPTED.

Patricia Bergman
Ensley Township Clerk

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance which was adopted by the Ensley Township Board at a regular meeting held on _____, 2000, at Township Hall, pursuant to the required statutory procedures.

Patricia Bergman
Ensley Township Clerk

05852 (002) 86265.01