

**ORONOKO CHARTER TOWNSHIP
COUNTY OF BERRIEN
STATE OF MICHIGAN**

EARTH SOLIDS ORDINANCE

ORDINANCE NO. 63 (amended)

AN ORDINANCE TO REGULATE AND CONTROL EXTRACTION OF EARTH SOLIDS IN ORONOKO CHARTER TOWNSHIP AND TO SET FORTH AND TO RECOGNIZE THE PROCEDURES TO BE FOLLOWED AND STANDARDS TO BE CONSIDERED TO SECURE A SPECIAL USE PERMIT AND TO REGULATE AND CONTROL SUCH ACTIVITY INCLUDING RECLAMATION OF PROPERTY UPON TERMINATION OF SUCH ACTIVITY

CHARTER TOWNSHIP OF ORONOKO, BERRIEN COUNTY, MICHIGAN, ORDAINS:

SECTION 1: TITLE

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

SECTION 2: PURPOSE

Oronoko Charter Township recognizes that certain earth solids, minerals and valuable natural resources may exist in the Township which can only be used if extracted from the earth; that the extraction of earth solids, minerals and valuable natural resources by its nature can present very serious consequences that can be devastating to the environment, the value of property in the Township and surrounding area, the health and safety of residents and the general public welfare; that very serious consequences can occur from the process of extracting earth solids; that prior to any activity involving earth solids removal, processing or extraction, a special use permit for mining of earth solids must be secured from the Oronoko Charter Township Planning Commission as set forth in this Ordinance.

SECTION 3: DEFINITIONS

Generally, and for the purpose of this Ordinance, words and terms used herein shall have the meaning ascribed to them in this section, unless indicated to the contrary.

- A. *Earth Solid* means a natural resource or mineral including but not limited to sand, gravel, dirt and top soil, clay, marl and any product that can be extracted from beneath the surface of the ground.

- B. *Earth Solid Removal or Processing* means extraction at a property or portion thereof designed, constructed or used for commercial open pit or subterranean extraction of earth solids; this term also includes quarrying, groundwater diversion, soil removal, milling, crushing, storing, washing of any such material and other preparation of earth solid and asphalt, brick, concrete and other similar materials.
- C. *Extraction* means the removal by mining or any other process of earth solids.
- D. *Permit* means the Special use permit as recognized in Section XVIII of the Oronoko Charter Township Zoning Ordinance.
- E. *Person* means any individual or legal entity including but not limited to partnership, corporation or limited liability company.
- F. *Planning Commission* means the duly appointed Oronoko Charter Township Planning Commission.
- G. *Property* means the parcel of real estate upon which the activity regulated by the Special use permit is to be conducted even if the activity is limited to a specific part or portion of a specific legally described parcel.
- H. *Reclamation* means the process following termination of activity regulated by a Special use permit, which is necessary to cause the property to be returned to as existed prior to the regulated activity or to a condition as otherwise allowed by the Planning Commission.
- I. *Township* means Oronoko Charter Township, Berrien County, Michigan.
- J. *Valuable Natural Resource* means any earth solid extracted from which the removing person can reasonably expect to receive revenue and to operate the related business at a profit.

SECTION 4: APPLICABILITY

- A. This Ordinance shall apply to all operations in Oronoko Charter Township which involve earth solid removal as well as the storage of such materials extracted and storage and grinding or processing / reprocessing of asphalt, bricks and concrete. Provided this Ordinance shall only apply to such earth solid removal and / or asphalt, bricks or concrete storage, grinding or processing / reprocessing in excess of 400 cubic yards.
- B. This Ordinance shall not apply to earth solid 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 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 related to farming operations and which do not exceed an amount of earth solids to be removed from premises in excess of eight hundred (800) cubic yards;
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 Land Division Act, being Act 288 of Michigan Public Acts of 1967, as amended; and the Zoning Enabling Act, being Act 110 of Michigan Public Act of 2006 as amended.
5. Governmental agencies regarding operations necessary in / for the construction of highways, sewers, drains and flood control projects.

SECTION 5: SPECIAL USE PERMIT

- A. A special use permit as set forth in Article XVIII of the Oronoko Charter Township Zoning Ordinance shall be required for any person engaging in earth solid removal, except as provided in Section 4 A and B, above.
- B. The filing of an application and the procedure for issuing a special use permit shall be as set forth in Article XVIII of the Oronoko Charter Township Zoning Ordinance. In addition to the information required in Article XVIII, each applicant shall provide a feasible and detailed plan for reclamation and re - use of the property, consistent with the provisions of Section 7 below, which plan shall be consistent with the intent of the zoning district(s) in which the extraction or storage occurs. The plan at a minimum shall include:
 1. A written description of proposed land uses at the conclusion of extraction or storage activity.
 2. A plan illustrating a conceptual layout of the property for internal vehicular circulation, if any, areas of open water and the nature and extent of vegetation to be established.

C.

1. No special use permit for earth solid removal shall be granted unless the person filing the application therefore demonstrates that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person and in addition to the standards set forth in Article XVIII of the Oronoko Charter Township Zoning Ordinance that no very serious consequences would result from the extraction, mining, storage or processing of the earth solid.
2. In determining that no very serious consequences would result, the Planning Commission shall apply the standards set forth in existing Michigan court decisions and may consider if applicable the following:
 - a. The relationship of extraction and associated activities with existing land uses.
 - b. The impact on existing land uses in the vicinity of the property.
 - c. The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.
 - d. The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.
 - e. The impact on other identifiable health, safety and welfare interests in the local unit of government.
 - f. The overall public interest in the extraction of the specific natural resources on the property.

SECTION 6: REQUIREMENTS

- A. A performance guarantee shall be filed with the Township Treasurer prior to issuance of the special use permit. The amount of such guarantee shall be \$10,000., plus \$5,000. Per acre for each acre to be extracted, or extracted but not yet restored in accordance with the plan and conditions of the special use permit. The performance guarantee shall be in the form of a letter of credit, a certified check, a cash bond or a performance bond with Oronoko Charter Township named as the principal. The bond shall be returned or cancelled when the special land use is terminated and the property reclaimed according to the conditions of the special use permit.

B. In operating, excavation or storage pursuant to the special use permit issued, the following shall apply:

1. Distance of excavation from County or State Road Right - of - Way:

- a. Excavation shall not be permitted within fifty (50) feet of either a county or state road right - of - way.
- b. Excavation beyond fifty (50) feet of a county or state road right - of way must maintain slopes which do not exceed one (1) foot in elevation for each two (2) feet of horizontal surface. If at any time the slope becomes steeper than one - to - one, excavation must be stopped and filling and / or holding operation shall begin.
- c. If terrain is not of highway or road level, but in the nature of a mound, high bank, or hill, excavation will be permitted to the highway / road right - of - way and to that road's highest level at that point.
- d. 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 a provided in Section 6 B 1b herein.
- e. If excavation as described in Section 6 B 1d herein takes place, and terrain remaining on road right - of - way is higher than road level, any requirements of the Berrien County Road Commission shall be met.

2. Distance of excavation from property lines:

- a. Excavation shall not be permitted closer than fifteen (15) feet of any property line.
- b. 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 one (1) foot in elevation for each two (2) feet of horizontal surface shall be maintained.

3. Hazards

- a. Excavation 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:

1. Two strands of plain wire
 2. Snow fencing
 3. Temporary board fencing
 4. Placement of saw horses connected to deter access
 5. Earthen berm (at least five (5) feet high)
- b. Any excavation within fifty (50) feet of public property or public road shall not be left overnight without adequate working blinker lights mounted on saw horses or similar support.
- c. Unpaved roads used to transport any materials which are located within five hundred (500) feet of a private residence, business or public recreation area, shall be treated by the owner of the permit as necessary for adequate dust control, as determined by the Oronoko Charter Township Zoning Administrator.
4. Miscellaneous Requirements:
- a. All access drives shall be clearly visible and posted. A sign no smaller than one foot by two feet (1' x 2') setting forth the name, address and telephone number of the permit owner shall be placed at the main access of the property.
 - b. Mud and debris shall be kept cleared from all adjacent roads at points of ingress and egress to the property.
 - c. Operations shall be permitted only on the days specified and the hours specified in the special use permit.
 - d. Duly authorized agents or representatives of Oronoko Charter Township shall be granted reasonable access to inspect the property subject to the Special use permit and activity conducted thereon.
 - e. All entrances to the property shall be secured as required in the Special use permit.
 - f. No processing or storage of earth solids other than those extracted directly from the property shall be allowed, unless specifically authorized in the Special use permit.
 - g. No equipment, machinery or other related items not routinely used in the regular operation occurring on the property shall be stored thereon unless specifically authorized in the Special use permit.

- h. Upon transfer of the special use permit, the Transferee shall provide updated information in the application Section 5 and Article XVIII of the Oronoko Charter Township Zoning Ordinance and the Planning Commission shall thereafter review the information in the same manner as the Annual Written Report required in Section 6 C, below.
 - i. The Planning Commission may impose as an additional condition of the special use permit regulations for hours of operation, blasting hours, noise levels, dust control measures and traffic not pre -empted by part 632 of the Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.63201 to 324.63223, however such regulations shall be reasonable in accommodating customary mining operations.
- C. The owner of the permit shall annually, prior to the anniversary date of issuance of the special use permit, file with the Oronoko Charter Township Zoning Administrator a Written Report setting forth information which has changed from the information submitted when the Special use permit was issued. The Planning Commission shall thereafter review the Written Report at a regular or special meeting and may make changes as deemed necessary to the Special use permit. A fee as determined by resolution of the Oronoko Charter Township Board shall be charged for the filing of the annual Written Report and review by the Planning Commission.
- D. The Planning Commission may revoke or suspend a special use permit if the permit owner operates in any manner inconsistent with information or documentation submitted for obtaining the special use permit, fails to comply with any condition or requirement of the special use permit or violates a provision of this ordinance, or otherwise in the determination of the Planning Commission operates in disregard for the public health, safety or welfare; however, no special use permit shall be revoked or suspended unless the permit owner is provided written notice, mailed or personally served at least ten (10) days prior to the date of the meeting at which such action will be considered, and the opportunity to be heard in person or by representative. The notice shall specify the date, time and place of the meeting at which action will be considered and inform the permit owner of all reasons why revocation or suspension is under consideration and of the right to be heard in person or through a representative. Public comments may be received at the meeting. Revocation or suspension shall in no way relieve the owner of the permit from the provisions of this Ordinance or the requirements contained in the Special use permit or penalty imposed for the determined violation. Revocation, suspension or other changes thereafter shall be as determined by a majority vote of the entire membership of the Planning Commission.

SECTION 7: RECLAMATION

Upon termination of earth solids removal, the following provisions shall apply:

- A. All extraction and storage areas shall be reclaimed progressively as they are worked out. Reclaimed sites shall be left in a natural and inconspicuous condition and shall be lacking in hazard. All excavation shall be either to a water - producing depth or shall be graded or backfilled to ensure that the excavated area will not retain or collect stagnant stormwater. For the purpose of this subsection, a water - producing depth shall be defined as not less than ten (10) feet below the average summer level and below water level to a depth of six (6) feet shall be graded to slopes which do not exceed one (1) foot in elevation for each two (2) feet of horizontal surface and they shall be treated to prevent erosion or any other potential deterioration.
- B. In the event filling of the extracted area is necessary in the course of reclamation, the fill material shall not consist of or contain any organic waste, hazardous materials, toxic materials, radioactive materials, agricultural waste, industrial waste, sludges or sewage residues, whether or not compounded, mixed, combined, bound, or contained within any other materials through any chemical or physical process or a combination thereof, or in any other fashion, and moreover, such fill material shall not contain any machinery or equipment or parts thereof, or any material which will, or is likely to impair or harm the air, water and natural resources, and public trust therein, and / or the public health and safety. Only material which will settle firmly without pockets shall be used.
- C. Top soil of a quality that will allow for vegetation to be established shall be used.
- D. Vegetation shall be restored by the appropriate seeding of grasses or the planting of trees and shrubs to establish a permanent vegetative cover on the land surface and minimize erosion.
- E. Within twelve (12) months of completion of extraction or storage operations, all plant structures, buildings, stockpiles and equipment shall be removed, provided, however, that buildings and structures which have a function under the reclamation plan and which can be lawfully used under the requirements of the zoning district in which the property is located may be retained.
- F. Within two (2) years after extraction or storage operations have ceased, excavated areas must be level to a grade of no steeper than one (1) foot in elevation for each two (2) feet of horizontal surface.

- G. If the owner of a permit neglects, omits or otherwise fails to comply with any provision of the Special use permit or of this Ordinance concerning the reclamation of the property subject thereto, the Oronoko Charter Township Planning Commission shall direct in writing that the owner of the permit or owner of the property subject to the special use permit correct the condition. If the owner of the permit or owner of the property fails to comply with the directions within forty - five (45) days, the township may cause the property to be reclaimed to the previously existing condition or as set forth in the plan set forth in Section 5 B above and the cost thereof may be assessed and recovered from the performance guarantee provided in Section 6 A. or may be assessed against the property as a lien and shall be treated and collected in the same manner as delinquent taxes under the general laws of the State of Michigan.

SECTION 8: EXISTING OPERATIONS.

Any existing earth solids operations which are active at the effective date of this Ordinance shall be considered in existence as if a special use permit had been secured and shall be thereafter subject to all the provisions of this Ordinance and the annual Written Report requirement of Section 6 C, above.

SECTION 9: PENALTIES

Any person 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 10: SEVERABILITY

If any portion of this Ordinance or the application thereof to any person 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 11: EFFECTIVE DATE

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

SECTION 12: PUBLICATION OR POSTING

The Township Clerk shall certify to the adoption of this Ordinance and cause the same to be posted or published as required by law.

MOTION TO ADOPT ORDINANCE:

Proposed by Board member Trustee August Zielke

Supported by Board member Treasurer Kendall Hill

Roll Call:

Ayes: Treasurer Hill, Trustee Riess, Trustee Hildebrand, Clerk Renton, Trustee Kerlikowske, Trustee Zielke, Supervisor Hildebrand.

Nays: None

Abstain: None

Absent: None

ORDINANCE DECLARED ENACTED

The foregoing Ordinance was enacted by the Oronoko Charter Township Board of Trustees, Berrien County, State of Michigan on the 9th day of May, 2012 and approved by its Supervisor and Clerk on said date.

ORONOKO CHARTER TOWNSHIP

By: _____
Ernest Hildebrand, Supervisor

and

By: _____
Suzanne Renton, Clerk

First Reading: April 10, 2012

Second Reading: May 9, 2012

Publication of Notice: May 16, 2012