

MONTEREY TOWNSHIP, ALLEGAN COUNTY, MICHIGAN

AMENDMENTS TO THE MONTEREY TOWNSHIP ZONING ORDINANCE

Ordinance No. 20-02

Adopted: August 3, 2020

Effective: August 21, 2020

AN ORDINANCE TO AMEND THE FOLLOWING SECTION 10.46 OF THE MONTEREY TOWNSHIP ZONING ORDINANCE FOR THE PURPOSE OF ALIGNING WITH CURRENT STATE LAW AND CLARIFYING REQUIREMENTS FOR EARTH REMOVAL AND PROCESSING WITHIN MONTEREY TOWNSHIP.

MONTEREY TOWNSHIP, ALLEGAN COUNTY, MICHIGAN, ORDAINS:

ARTICLE 1:

Amend Section 10.26, “Removal and Processing of Soil”, of the Monterey Township Zoning Ordinance in its entirety to read as follows:

SECTION 10.46 Removal and processing of soil.

- A. DEFINITION: Soil shall be defined as 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. INTENT AND PURPOSE: Soil Removal and processing may be carried out within the Township under two different categories:
 - 1. As a temporary accessory use to improve cultivation/farmland subject to the conditions of Section 10.46.C herein.
 - 2. As a primary or secondary use for commercial production of soil, subsoil, sand, gravel, rock, stone, aggregate, mineral or other similar material.
- C. TEMPORARY ACCESSORY REMOVAL FOR IMPROVEMENT OF CULTIVATION/FARMLAND: Application may be made to the Zoning Administrator. Temporary removal shall be permitted upon approval from the Zoning Administrator provided all of the following conditions are met:
 - 1. Removal and operations are carried out directly by landowners for the purposes of preparing their land for cultivation or in preparation of residential or agricultural building construction
 - 2. No area is created which fills with water, unless it is a farm watering pond or private recreational pond with bank gradients of no more than one (1) foot vertical to three (3) feet horizontal.
 - 3. Operations are not commercial in nature, wherein material removed shall not be

engaged in commerce, and do not involve on-site processing such as crushing, washing or grinding.

4. The area of the removal operation is limited to a maximum of one (1) acre in size or in the case of field grading and building development, to an area roughly equivalent in size to the site being prepared for development or cultivation.
5. The duration of operation is limited to a continuous twelve (12) month period of time.
6. The reclamation requirements of 10.46.G shall still apply.
7. Any operation that exceeds the above limits will be required to operate under a special use permit with conditions as specified in this chapter and Section 10.18 Special Use Permits. After preliminary review of applications for operations exceeding or likely to exceed one or more of the above limits, the Planning Commission may find such operations to be minor in nature and may waive, if found to be unnecessary, one or more of the applications and plan requirements itemized in Sections D, E, H, I, J and K below.

D. LOCATION.

1. All such operations shall be located on a primary road, as defined by the County, for ingress and egress thereto, or on a road which does not create traffic through an area primarily developed for residential purposes. The Township Board may require the applicant to improve a road to accommodate the truck travel necessitated by the operations as a condition, for the purpose of routing traffic around residential areas and preventing the breaking up of existing gravel roads.
2. Sufficient setbacks shall be provided from all property lines and public highways to assure adequate lateral support for adjacent public and private property. No cut or excavation shall be made nearer than two hundred (200) feet, measured at the top of the finished grade, to any adjacent property or street right-of-way; provided, however, that the Township Board may by resolution prescribe stricter requirements if the applicant cannot demonstrate adequate protection from noise, dust, vibration and other nuisances to adjoining properties, specifically residential property.
3. No part of 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, and shall, where practicable, be located at a lower level than the surrounding terrain to lessen noise and visual impact.
4. No such excavation operation shall be located within one hundred (100) feet of the banks of any lake, river, stream or waterway unless previously approved, in writing, by the Michigan Department of Environmental Quality or such other state commission having jurisdiction thereof. No such mining operation shall interfere with the natural established flow of surface waters to the detriment or damage of adjoining public or private properties.

E. SIGHT BARRIERS: Sight barriers shall be provided along all boundaries of the site which

lack natural screening conditions through existing contours or vegetation growth. Such barriers shall consist of one or more of the following:

1. Earth berms constructed to a height of six (6) feet above the mean elevation of the centerline of the adjacent public road or six (6) feet above the general level of terrain along interior property lines. Such berms shall have slopes in excess of one (1) foot vertical to three (3) feet horizontal and shall be planted with grass, trees, shrubs or other landscaping similar to existing vegetation to combat erosion.
2. Plantings of evergreen trees or shrubbery in rows parallel to the boundaries of the property, not less than four (4) feet in height at the time of planting and which grow to not less than six (6) feet in height at maturity and sufficiently spaced to provide effective sight barriers when six (6) feet in height.
3. Masonry walls or solid fencing made of uniform new materials, constructed to a height of not less than six (6) feet and maintained in good repair.

F. NUISANCE ABATEMENT AND TOPSOIL PRESERVATION

1. Noise and vibration shall be minimized in their effect upon adjacent properties by the utilization of modern equipment designed to accomplish such minimization and by the proper use of berms, walls, and natural planting screens. All equipment shall be maintained and operated in such a manner so as to eliminate, as far as practicable, excessive noise and vibrations which are not necessary in the operation of such equipment.
2. Air pollution in the form of dust and dirt shall also be kept to a minimum by the use of modern equipment and methods of operation designed to avoid any excessive dust, dirt, or other air pollution injurious or substantially annoying to adjoining property owners or residents. Interior and adjoining roads used in the operations shall have their surface treated to minimize any such nuisance. Further, 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 hard 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.
3. Hours. The operation shall be restricted to daylight hours between dawn and dusk unless further restricted by the Planning Commission.
4. 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.
5. 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.
6. All vehicles transporting soil from or to a project over public streets in the township shall follow the established truck route or shall travel only over such route 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 the public street.

G. RECLAMATION OF MINED AREAS

1. Reclamation and rehabilitation of mined areas shall be accomplished as soon as practicable following the mining or excavation of an area. Rehabilitation and reclamation shall be commenced immediately upon the termination of the mining or excavation operations in any area consisting of one-half acre or more unless part of a larger operation where the Planning Commission has specified the timing and sequencing of reclamation. Substantial completion of reclamation and rehabilitation shall be affected within one year after termination of mining or excavation activity. Inactivity for one twelve (12) month consecutive period shall constitute justification for the Township Board to evaluate the operation for the purpose of determining whether the operator has terminated mining activity.
2. The following standards shall control reclamation and rehabilitation:
 - a. All excavation shall be reclaimed either to a water-producing depth of not less than five (5) feet below the average summer level of water in the excavation, or shall be back graded or back-filled with non-noxious, non-flammable and non-combustible solids to insure:
 - (1) That the excavated area shall not collect stagnant water and not permit the same to remain therein; or
 - (2) That the surface of such area which is not permanently submerged is graded or back-filled as necessary to produce a gently rolling surface that will minimize wind and water erosion, and which will be generally compatible with the adjoining land area.
 - b. The banks of all excavation shall be sloped to the waterline in a water-producing excavation, and the pit floor in a dry operation at a slope which shall not be steeper than one (1) foot vertical to three (3) feet horizontal.
 - c. Top soil of a quality equal to that occurring naturally in the area shall be replaced on excavated areas not covered by water, except where streets, beaches, or other planned improvements are to be completed within a one-year period. Where used, top soil shall be applied to a minimum depth of four (4) inches sufficient to support vegetation.
 - d. If there is a stripping operation, wherever top soil 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.

- e. 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 to minimize erosion.
- f. Upon cessation of mining operations by abandonment or otherwise as determined by the Township Board, the operating company, within a reasonable period of time not to exceed twelve (12) months thereafter, shall remove all plant structures, foundations, buildings, stockpiles and equipment, provided that all 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 they will be located under such plan may be retained.

H. SUBMISSION OF OPERATIONAL AND RECLAMATION PLANS: No earth removal, quarrying, gravel processing, mining and related mineral extraction businesses shall be allowed or commenced until a plan has been approved by the Planning Commission and Township Board showing compliance with all of the provisions of this Ordinance or the manner in which compliance shall be secured by the applicant. Such plans shall include at minimum the following:

- 1. A contour map with typography lines at five (5) foot intervals of the tract of land involved in the operations, including dimensions of the same, access to abutting streets, and whether or not the same are "all weather" roads, additional roads, if any, to be constructed, and the location and nature of abutting improvements on adjoining property.
- 2. The number of acres and the location of the same proposed to be operated upon within the following twelve (12) month period after commencement of operations.
- 3. The type of mining or processing proposed to be conducted and the nature of equipment to be used.
- 4. The location of the principal processing plant and the distance of any proposed excavation or mining from the boundaries of the site.
- 5. Soil tests shall be made around the perimeter of the excavation site in the event excavation or activities are to be conducted closer than one hundred fifty (150) feet from the boundaries of the site. Said soil tests shall disclose conditions satisfactory for lateral support of adjacent premises as determined by an engineer acceptable to the Township. The written consent of owners of adjoining premises and of the Planning Commission shall be required if mining operations shall be closer than specified within the Ordinance to the boundaries of the site.
- 6. A map or plan disclosing the final grades and elevations to be established following completion of the mining operations, including the proposed uses then contemplated for the land, future lakes, roads, and other such matters as may evidence the bona fide

nature of the reclamation and rehabilitation plans and the fact that the land will not be devastated and rendered unusable by the proposed mining activities.

I. REVIEW PROCEDURES AND REQUIRED INFORMATION. Application for the issuance of a special use permit to remove or process under the standards of this chapter shall be made under the provisions of Chapter 10.18 Special Use Permits. The site plan content requirements of Chapter 10.24 Site Plan Review and Approval as applicable shall be relied upon as the minimum informational requirements for site plans submitted as part of such application, as well as the requirements enumerated in Section H above. Applications approved shall satisfy the requirements of this Chapter and Chapter 10.18. In addition to these requirements, the applicant shall provide the following additional information and documentation as part of the application submittal.

1. Approvals from outside agencies:
 - a. Written approval of entrance/egress, impact statements, as well as proposed trucking/haul route with requirements enumerated in item 2 below by the Allegan County Road Commission.
 - b. Written approval of overall site plan including excavation depths and proximity to any ground water by the Allegan County Health Department and Michigan Department of Environmental Quality or its equivalent where required.
 - c. Written approval of overall site plan by Allegan County Drain Commissioner, if required.
2. Projected Roadway Impacts: A written and graphic characterization of the expected haul routes and proposed access to the site shall be presented and shall include:
 - a. An identification of the expected primary and secondary routes that traffic will use when travelling to and from the site.
 - b. A characterization of the routes including:
 - (1) Types of surface
 - (2) Number of lanes and current roadway (travel lanes) width
 - (3) Typical roadway speeds or speed limits
 - (4) Known or potential trouble spots for heavy traffic including intersections, hills, and curves
 - (5) Identification of documented or potential problems such as inadequate clear vision, roadway width, steep grades, surface condition, maintenance or land use and traffic conflicts
 - c. Number and location of homes and other land uses along the routes including schools, daycare operations, churches and businesses.
 - d. Projected traffic increases by type and route
 - e. Characterization of projected truck traffic by size, type, and weight of trucks and direction of travel, empty and full on average and extreme daily and

- average annual basis
 - f. Proposed location of access(es) and width, type of surface, including design features, deceleration and acceleration tapers, culverts, etc.
 - g. Minimum site distances
3. Documentation of Need for the Resource Material. The need for the material being excavated and/or processed shall be quantified and verified so the Planning Commission can weigh the value of the material being made available against the potential negative impacts of the operation in the proposed location. The types of information may include:
- a. Verification to the presence of valuable natural resources located on the relevant property.
 - b. Need for natural resources by the person or in the market served by the person
 - c. No serious consequences would result from the extraction, by mining, of natural resources.

J. HEARING.

1. After receiving an application for Special Use for Removal and Processing of Soil, accompanied by the required plans, specifications and permit fees, the Planning Commission shall hold a public hearing pursuant to Section 10.18
2. Following such hearing, the Planning Commission shall grant or deny the application and recommend approval or denial of the accompanying site plan to the Township Board and set forth reasons for its decision. Such recommendation shall be based upon the criteria set forth within the ordinance.
3. In making any decision or recommendation, the Planning Commission and Township Board shall have the right and authority to impose additional conditions and safeguards as it deems necessary to for the protection of the health, safety and general welfare of the neighborhood, adjoining residents and property owners.
4. It may also limit the length of time that the special use permit is to be effective and will require annual review either by Commission, Board or Administrative staff to ascertain compliance with the conditions and limitations imposed upon the same.
5. The operator shall be required to pay an annual fee to cover the cost of inspections and any additional meetings of the Planning Commission as may be established by the Township Board.
6. The Township or its designated agent shall be empowered to renew or extend a special use permit where all standards and conditions are complied with.
7. In the event that noncompliance with any requirements of the special use permit is determined by the Zoning Administrator, the operator shall be given written notice of any violation, and the Planning Commission shall review the permit conditions and staff report to consider revocation of said permit.

K. BONDING, INSURANCE AND LIABILITY REQUIREMENTS.

1. Liability insurance shall be a pre-condition to commencement of all operations, and maintenance in full force and effect of insurance shall be a pre-condition to the right to continue operations. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried out by an insurance company licensed to do business in the State of Michigan during all times which any reclamation is left to be done, and during all times any machinery and/or equipment remains on the site, or any structures, equipment or improvements to be removed remain on the site, said insurance to contain a hold-harmless clause regarding liability of the Township during any reclamation phase. Insurance coverage will be set at a minimum of \$1,000,000 with Township added as a named insured.
2. Reclamation Bond. Prior to commencement of any operation and as a condition of approval of such, the applicant shall file or deposit with the township treasurer, performance securities in the form of a performance bond written by an insurance company licensed to do business in the State of Michigan, insuring to the benefit of the township and satisfactory to the township attorney, cash, a certified or cashier's check payable to the township, or any irrevocable bank letter of credit, in a form satisfactory to the township attorney. The Planning Commission, in establishing the amount of the bond, shall consider the scale of the operations, the prevailing cost to rehabilitate the property upon default of the 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 these regulations and any special performance security if the Planning Commission shall, by resolution, determine that any such standard, condition, restriction, or requirement has been violated.
3. The Township retains the right to verify any and all information submitted by hiring engineers or other professional experts specific to individual fields. Fees relative to the expert analysis studies will be taken from an escrow fund established by the applicant as established by the Monterey Township Fee Schedule.

ARTICLE II. SEVERABILITY:

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby and shall remain valid and in effect.

ARTICLE III. REPEAL AND EFFECTIVE DATE:

This Ordinance is ordered to take effect the eighth day following publication of notice of its adoption in accordance with the Michigan Public Act 110 of 2006 as amended. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Jennifer Frank

Date: August 3, 2020

Jennifer Frank, Monterey Township Clerk

Publication date: August 13, 2020

Effective date: August 21, 2020