

**ORDINANCE 84  
MINING**

**THE CHARTER TOWNSHIP OF EUREKA (“TOWNSHIP”) HEREBY ORDAINS:**

AN ORDINANCE TO ESTABLISH OPERATIONAL, MAINTENANCE, PERFORMANCE, AND RECLAMATION STANDARDS FOR MINES AND MINING SITES; TO PROVIDE FOR LICENSING THEREOF; AND TO ESTABLISH PENALTIES FOR VIOLATIONS OF THIS ORDINANCE.

**SECTION 1.0            TITLE**

The title of this Ordinance is the Eureka Charter Township Ordinance 84 Mining, and may be elsewhere referred to herein as “this Ordinance”.

**SECTION 2.0            INTENT AND PURPOSE**

It has been recognized that there are activities and impacts which require regulation due to the noise, dirt, dust, temporary and permanent changes to the topography and environment and other negative impacts which are inherent in mineral mining operations. It is the intent of the Township to regulate, inspect and monitor mining operations within the Township in order to minimize the existence of dangerously steep slopes, shifting earth, impairments or pollution of ground water, water table, surface water, and the watershed, and to protect the air, water and natural resources and the public trust therein, and the health, safety and general welfare of the residents of Eureka Charter Township. To meet these objectives, such mineral mining operations shall be licensed by the Township and the fees required for licensure shall be utilized to offset the costs and expense of monitoring, inspection and administration under this Ordinance. This Ordinance is enacted by the Eureka Charter 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 (being MCL 41.181 *et seq.*), MCL 42.15 *et seq.*, and any other authorization legislation.

**SECTION 3.0            INTERPRETATION**

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. Furthermore, it is not the intention of this Ordinance to unreasonably interfere with mining operations already existing, except that this Ordinance sets forth minimum standards which shall apply to all such existing operations as well as new and 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 4.0            DEFINITIONS**

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

- A. **“Active Mining Site”** – A mining site that was active as of the date of enactment of this Ordinance (i.e., had mined or removed more than 10,000 cubic yards of minerals or mined materials during any of the three (3) calendar years immediately prior to the enactment of this Ordinance).
- B. **“Aggregate Crushing”** – The pulverizing, splitting, grinding, or cutting of rocks and stone mined from or found on site for use in producing gravel for construction of roads and other structures.
- C. **“Expanding to a new development area”** – The extension or expansion of a mining operation or mining to a new or different parcel or lot upon which no mining had occurred before or during the prior 30 years.
- D. **“Inactive Mining Site”** – A mining site that is not an active mining site. A mining site that had not mined or removed at least 10,000 cubic yards of minerals or mined materials in at least one of the three (3) calendar years immediately prior to the enactment of this Ordinance.
- E. **“Licensed Operator”** – The person(s) who obtain a license under this Ordinance.
- F. **“Mining or mineral extraction”** – The excavation, digging, mining, removal and/or processing of peat, earth, gravel, sand, clay, top soil, stone or other soils or materials, including overburden, or the storage or transporting of such items on, to or from 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 or other activities are not included within the definition of mineral extraction or mining:
  - 1. Excavation approved and conducted by a governmental body of competent jurisdiction in conjunction with the installation or maintenance of publicly owned or publicly 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 public road or modification of an existing public 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 extraction or mining.
  - 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 constructing or installing buildings, septic tanks, swimming pools, graves, etc., so long as no more than 1000 cubic yards of material are mined or excavated in total.
  - 3. Excavation in conjunction with commercial 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 Planning Commission 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 extraction or mining sought to be prevented by this Ordinance. The Planning Commission'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.
  5. The transport or storage of mined materials (or materials frequently associated with mining operations) shall not be deemed "mining" or part of a "mineral extraction" if the materials transported or stored are not combined with minerals mined from the site to which the materials are transported or on which the transported materials are stored. The activity of transporting or storing mined materials that are not combined with other materials mined from the site to which the transporting occurs (or on which the transported materials are stored) shall constitute an industrial use and will not be considered mining or mineral extraction.
- G. **"Mining Site"** – A site or property where mining or mineral mining occurs (whether dormant or active).
- H. **"Person"** – Any person, firm, corporation, limited liability company, association, owner, operator, tenant, lessee, or other entity.
- I. **"Processing"** – The crushing, blasting, sifting, washing or mixing (including mixing with crushed concrete, crushed asphalt, peat, clay, or other materials or chemicals) of sand, gravel, stone, or aggregate.
- J. **"Rubble Crushing"** – The processing, pulverizing or grinding of concrete, asphalt or other solid materials brought into or onto the site from elsewhere for reuse on roads and other construction.
- K. **"Site"** – A parcel, property, lot or unit of land.
- L. **"Topsoil"** – The upper part or surface layer of the native soil before being disturbed by human alteration. Topsoil is usually black in color and rich in organic material.
- M. **"Township"** – Eureka Charter Township.
- N. **"Township Board"** – The Eureka Charter Township Board.
- O. **"Township Planning Commission"** – The Eureka Charter Township Planning Commission.

**SECTION 5.0            LICENSE REQUIRED**

- A.     After January 14, 2013, no person shall commence, own, lease, keep, maintain, or operate a new mineral mining site in the Township or engage in mining within 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 mining or mineral mining operations which existed in the Township as of January 14, 2013 (whether active or dormant) shall obtain a license from the Township under this Ordinance and shall bring their operations into compliance with all of the requirements of this Ordinance no later than June 1, 2013. Failure to obtain a license by June 1, 2013, shall constitute a violation of this Ordinance.
  
- B.     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 (and as the Township has approved the reclamation). Dormancy of a mining operation or mining site or the cessation of active mining without full reclamation (as approved by the Township) shall not relieve the owner and operator of the obligation to have a license under this Ordinance in effect at all times.
  
- C.     If a license is revoked by the Eureka Township Planning Commission pursuant to Section 31 of this Ordinance prior to reclamation being fully completed to the requirements of this Ordinance, all mining, processing and mining operations shall cease on the property (except for prompt reclamation efforts) until a new license has been issued.
  
- D.     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 for prompt reclamation efforts) until a new license has been issued by the Township.
  
- E.     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 Licensed Operator immediately and shall be fully completed within one hundred twenty (120) days thereafter.

**SECTION 6.0            LICENSING PROCEDURE**

- A.     All applicants for a license under this Ordinance shall use forms provided by the Township Clerk, accompanied by the documents required by that form and this Ordinance. Except as otherwise provided below for new mining operations, all licenses are for ten (10) years and all licenses expire on May 15 of the applicable year. Licenses are nontransferable. To be considered for renewal, two (2) copies of the proper application (with required attachments and fee(s)) 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 together with the required documents attached and fee(s) paid to the Township, the Township Clerk shall retain an official copy in the Township Clerk's office and shall forthwith distribute the remaining copy to the Township Zoning Administrator. For any new mining operation (i.e., one that is not an active or inactive mining site or operation), the initial license shall be for three (3) years. Thereafter, the renewal (and any subsequent) license shall be for ten (10) years.

- B. Upon receipt of a fully complete application and all required fees and attachments, the Township Zoning Administrator shall review the application and attachments, physically inspect the premises to determine compliance with the prior reclamation plan(s) and operational plan(s) (if any), and report to the Planning Commission in writing on such compliance. The Township Zoning Administrator shall also estimate the cost of reclamation upon abandonment for monetary security amount purposes, and shall make such additional comments to the Planning Commission regarding general safety, drainage, equipment removal, and other engineering considerations pertaining to the license application as appropriate.
- C. The Planning Commission shall give final approval, approval with reasonable conditions, or disapproval of the submitted reclamation plan, operational plan, and the license.
- D. Before approving a new license or license renewal under this Ordinance (or issuing any approval pursuant to this Ordinance), the Planning Commission shall find that all of the following standards and requirements will be met for the mining use or operation, as well as the mining site:
  - 1. All requirements of this Ordinance will be met, as well as all requirements of any other applicable Township ordinances.
  - 2. The use will not have significant negative impacts upon any adjoining properties or uses.
  - 3. The use will be reasonable.
  - 4. The use will not negatively impact the groundwater or any nearby lake, stream or wetland.
  - 5. The use will not have significant negative impacts upon traffic safety or the quality of area public roads.
  - 6. The use will not have significant negative impacts upon the environment.
  - 7. The use will be reasonably safe.

## **SECTION 7.0            APPLICATION CONTENTS**

Every application for a license shall contain all of the following:

- A. Name of all 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 the applicant(s) making the request for the license.
- C. Name and address of the person, firm or corporation who will be conducting the actual removal and/or processing operation.
- D. Location, size, and legal description of the area from which the removal and/or processing is to be made.
- E. Type of materials or resources to be mined, stockpiled, processed or hauled away.
- F. Proposed method of removal, processing and general road haul route.
- G. General description of the types of equipment to be used.
- H. The estimated number of years to complete operations and number of phases where appropriate.
- I. Security:
  1. The applicant shall post a surety performance bond, cash deposit or irrevocable letter of credit naming the Township as the beneficiary thereof in a form and in an amount determined by the Planning Commission to be reasonably necessary to ensure compliance with all license and Ordinance requirements (“security”), including reclamation and repair of damage to any public roads. The Township shall also approve the form of the security and the bank or financial institutions supplying the security. Mined material and other items shall not be used for such security. Upon completion of the applicant’s activities on the parcel, lot or land described in the application and the land has been reclaimed to the approved reclamation plan and to the satisfaction of the Planning Commission, 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 and to comply with all other Ordinance and any license requirements. This security shall be kept in effect at all times by the applicant until the parcel, lot or land has been fully restored as required by this Ordinance and license or until such time that the Township (and its agents and contractors) is able to go on the applicant’s premises to fulfill the security requirements. No security shall be discharged, returned or voided until the Township deems full compliance to have occurred. In fixing the amount of security, the Planning Commission shall take into account the size and scope of the proposed operation, current prevailing costs of reclaiming the premises upon default of the operator, and such other reasonable conditions and factors as might be relevant in determining what sum is reasonable

in light of all facts and circumstances surrounding each application. The applicant shall notify the bank or financial institution 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.

2. Active mining sites are exempt from the requirement for a performance bond, cash deposit or irrevocable letter of credit naming the Township as the beneficiary, if all of the following requirements are met:
  - (a) The Licensed Operator must demonstrate to the Township on an annual basis that there is sufficient topsoil onsite to reclaim all portions of the site that have been mined or disturbed in compliance with Section 20.0 of this Ordinance.
  - (b) The Licensed Operator must annually file with the Township a letter from a certified public accountant licensed in the state of Michigan or a registered Michigan accounting firm stating that the Licensed Operator is solvent and has sufficient resources to fully reclaim the property pursuant to the requirements of this Ordinance.
  - (c) The area involving the mining for which the exemption from the security requirement is claimed is located on a lot or parcel upon which mining was actively occurring on the date that this Ordinance was enacted.
  - (d) There were no substantial violations of this Ordinance on the site involved during the prior calendar year for which a court of competent jurisdiction found the Licensed Operator responsible or guilty.

If any of the above requirements, being (a) through (d), inclusive, is not met for a given calendar year, then the Planning Commission shall have the authority to require that the Licensed Operator post the security specified in Subsection 1 above and that such mining site be treated as a new mining operation thereafter for purposes of the security requirement.

#### J. Plan of Operations

1. New Operations. As a part of the application, the applicant shall submit to the Township a plan of operation for approval by the Planning Commission prepared by a civil engineer or surveyor licensed by the state of Michigan and the applicant shall fully comply with the approved plan over the 10-year (or 3-year where applicable for a new mining operation or site) time period for which the license is issued. Said plan of operation shall include a topographic survey of the existing parcel, lot or land drawn to a scale of 1 inch = 50 feet for all sites or phases of excavation less than fifty (50) acres in area and not less than 1 inch = 100 feet for all sites or phases greater than fifty (50) acres and prepared by a registered civil engineer or registered land surveyor with contour intervals not to exceed five (5)

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, any proposed lake or pond, processing areas, fencing, and similar use areas. The plan of operation shall be accompanied by a projected schedule of mining operations, including the following specific dates:

- (a) Commencement and completion of mining and processing operations as provided by the plan of operation;
- (b) Commencement and completion of erosion and drainage control measures to be instituted during mining operations; and
- (c) 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.

2. Active Mining Sites.

As part of the license application, the Licensed Operator of an active mining site shall file with the Township the plan of operation specified in Subsection 1 above, but that document need not be prepared by a registered civil engineer or registered land surveyor. However, to the extent that the mining or mining operations of an active mining site expands onto another parcel or lot upon which active actual mining was not occurring at the time of the enactment of this Ordinance, the plan of operation for such expanded or extended operations must comply with Subsection 1, above.

K. Reclamation Plan.

1. Generally.

The applicant shall also submit to the Township for approval by the Planning Commission a plan of reclamation prepared by a civil engineer or surveyor 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:

- (a) The general area of completely reclaimed land.
- (b) The general area of reclamation under way.
- (c) The general area currently used for topsoil and overburden storage.

- (d) The general area proposed for reclamation during the three year period of the license and for final reclamation.
- (e) The general area proposed for topsoil and overburden storage.
- (f) The acreage for each item shown on the overlay or separate drawing.
- (g) If a lake or pond is to be created, details of the same, including depth contours.
- (h) 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.
- (i) 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.
- (j) The projected schedule of reclamation operations, including the following specific dates:
  - (1) Commencement and completion of reclamation operations as provided by the reclamation plan;
  - (2) Commencement and completion of erosion and drainage control measures to be instituted under the reclamation plan; and
  - (3) Commencement and completion of final grading, topsoil replacement, and replanting or landscaping as provided by the reclamation plan.

2. Active Mining Sites.

As part of the license application, the Licensed Operator of an active mining site shall file with the Township the plan of reclamation specified in Subsection 1 above, but that document need not be prepared by a registered civil engineer or registered land surveyor. However, to the extent that the mining or mining operations of an active mining site expands onto another parcel or lot upon which active actual mining was not occurring at the time of the enactment of this Ordinance, the plan of reclamation for such expanded or extended operations must comply with Subsection 1, above.

- 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, any lakes or ponds, and similar land use elements.

- M. All mining, operational and reclamation plans shall be reviewed by the Planning Commission and shall be subject to its approval, approval with reasonable conditions, or disapproval, renewal or nonrenewal together with the approval or denial of a license or a license renewal.

**SECTION 8.0      FEES**

Application, inspection, escrow, and permit fees for this Ordinance shall be set by the Township Board from time to time by resolution. Such sums shall be used to defray the cost of Township engineering, legal, and planning services, as well as investigation, enforcement, publication charges, and other miscellaneous administrative costs and expenses occasioned by processing applications under this Ordinance.

**SECTION 9.0      ISSUANCE OF A LICENSE; EFFECT**

- A. Upon finding that the applicant has complied with all of the terms and conditions of this Ordinance, other applicable ordinances and laws, and with the terms and conditions of prior licenses and prior submitted plans, if any, a license shall be issued by the Planning Commission.
- B. The issuance of a license by the Planning Commission pursuant to this Ordinance does not negate the requirement that both the applicant and property owner must still comply with the Eureka Charter Township Zoning Ordinance, all other applicable Township ordinances, and all other applicable county, state, and federal laws and regulations. Pursuant to the issuance or renewal of a license under this Ordinance, the Planning Commission is without authority to approve a use, structure, or item that is unlawful under the Eureka Charter Township Zoning Ordinance or any other Township ordinance or code.

**SECTION 10.0      CONDITIONS IN A LICENSE; PERFORMANCE GUARANTEES**

- A. Upon the issuance or renewal of a license, the Planning Commission may impose as conditions of the license any reasonable restrictions or requirements related to the location, design or operation of a mining site, or other relevant facts, as are 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.
- B. The Planning Commission shall require (unless specifically exempted in this Ordinance under Section 7.0(I)(2)) that the Licensed Operator post or file with the Township a cash deposit, bond, or irrevocable letter of credit (in amounts, with language, and from a financial institution that are all approved by the Township) to ensure full compliance with this Ordinance, any license issued hereunder, all reclamation requirements, and the payment of all escrow and other fees.

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

**SECTION 11.0      FENCING AND SIGNAGE**

- A. All excavated and mined areas shall be entirely fenced with a minimum four (4) foot high fence and shall be posted with appropriate signs so as to indicate the danger of trespassing in the mining area. Such signs shall be spaced a maximum of one hundred (100) feet apart. The minimum specifications for said fencing shall be as follows: #12 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. Gates shall be kept closed and locked when work is not occurring onsite. Generally, such fencing will be perimeter fencing and need only enclose excavated and mine areas that have not yet been fully reclaimed.
- B. Temporary slopes or hills need not have separate fencing so long as the perimeter fencing is in place under Subsection A above (or there is a waiver under Subsection C below) and the Licensed Operator keeps the temporary slopes and hills in a reasonable condition and at a safe slope.
- C. The Planning Commission may waive or modify the fencing requirements specified in Subsection A above, for an active mining site for part or all of that mining site, if the Planning Commission finds that any of the following requirements are met:
  - 1. There is not enough land in the area at issue (located between a boundary line and a mining area that occurred prior to the enactment of this Ordinance) upon which to place such fencing or the area at issue is between two mining operations.
  - 2. The Licensed Operator has proposed a reasonable and safe alternative to such fencing which will be implemented.
  - 3. The mining site is so located that it is unlikely that the mining areas will be an attractive nuisance or be trespassed upon.
  - 4. The portion of the mining site at issue borders another active mining site.

**SECTION 12.0      HOURS OF OPERATION**

- A. Except for active mining sites as addressed in Subsection B below, the hours of operation of a mining operation shall be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday, inclusive, and 7:30 a.m. to Noon on Saturdays. No mining, loading or transport operations whatsoever shall occur on Sundays, holidays (Christmas, Thanksgiving, Labor Day and Memorial Day) or during the hours outside of those expressly allowed in this Subsection. Mining operations may occur on a Sunday or holiday if approved in writing beforehand for a specific date or dates by the Zoning Administrator.

B. The hours of operation of any active mining site shall be limited to 5:00 a.m. to 10:00 p.m., Monday through Saturday, inclusive. Notwithstanding such hours and day limitations, for an active site, the following activities may occur at all times:

1. The moving, heating, and loading of materials entirely onsite.
2. Trucks and other vehicles transporting materials to and from the site.

No operations whatsoever, including loading, heating, and the transport of materials, shall occur on Sundays, Christmas or Thanksgiving Day unless approved in writing beforehand for a specific date or dates by the Zoning Administrator.

### **SECTION 13.0      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 Montcalm County Road Commission. When the operation of a licensed mining site results in 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. The Licensed Operator shall also be responsible for reimbursing the Montcalm County Road Commission, the Township and state of Michigan for any damage which the mining operation or its haul trucks do to public roads.

### **SECTION 14.0      ROAD MAINTENANCE**

Access roads within a licensed site shall be maintained by the operator of the site 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 15.0      OPERATION**

All equipment and facilities used in the mining and processing of sand, aggregate, gravel, and stone shall be conducted, maintained, and operated in such manner as to minimize noises, vibrations, or dust which unreasonably interfere with the use and enjoyment of surrounding properties.

### **SECTION 16.0      TRANSPORTATION VEHICLE STANDARDS**

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

### **SECTION 17.0      LIGHTING**

All lighting used to illuminate the mining area, access roads, stockpile area, and similar use areas shall be directed away from all surrounding properties. Shielding of lighting may be required by

the Planning Commission where such lighting would otherwise shine directly toward a residential use and/or a county road.

**SECTION 18.0      PROCESSING**

- A.      Crushing may occur on site when in compliance with this Ordinance and if approved by the Planning Commission as part of the license approval process.
  
- B.      To reduce the effects of airborne dusts, dirt, and noise, processing plants and related equipment shall be kept, stored, and used at least 250 feet away from all property lines and any public road right-of-way or private road easement. Such 250-foot setback shall not apply where another active mining site is located immediately adjacent to the area where the processing plant and related equipment are to be located on the mining operation at issue. Such 250-foot setback requirement may be reduced by the Planning Commission for any active mining site provided that the Planning Commission finds that all of the following standards will be met:
  - 1.      The location of the processing plant and operations will not be a nuisance to neighboring uses or users of land nor emit unreasonably loud noises beyond the parcel or lot upon which the processing is occurring.
  - 2.      The processing operation will not cause unreasonable vibration to be felt beyond the lot or parcel upon which the processing is occurring.
  - 3.      Dust from the processing operation will not settle on any residential dwellings in measurable quantities (apart from any dwelling owned by the Licensed Operator).
  
- C.      There shall not be more than 10,000 cubic yards of non-crushed rubble (concrete, asphalt or similar solid materials) kept or stored on site at any one time.
  
- D.      If the Planning Commission approves processing on site, the Planning Commission may attach reasonable conditions to any such approval regarding processing, which reasonable conditions can include, but are not limited to, the following:
  - 1.      Additional limitations on hours and days of the week regarding when processing can occur.
  - 2.      The specific location or locations on site where processing can occur.
  - 3.      The type and amounts of materials that can be used in such processing.

**SECTION 19.0      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 use of adjoining properties; provided, however, that the maintenance of the natural flow of surface water shall not be deemed to be 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 where applicable under Section 11.0 of this Ordinance. Erosion control measures shall be instituted to comply with Act No. 347 of the Public Acts of 1972, as amended.

**SECTION 20.0      TOPSOIL**

- A. Sufficient topsoil shall be stockpiled on the site so that the entire site, when stripping and mining operations are completed, may be re-covered with a minimum of four (4) inches of topsoil for all mined and disturbed areas during reclamation and the replacement of such topsoil shall be made immediately following the termination of the stripping operations. All reclaimed areas shall have at least four (4) inches of topsoil on top at all places.
  
- B. If an active mining site does not have sufficient topsoil on site as of the date of enactment of this Ordinance, the Planning Commission may allow the mining operation to proceed without the required stockpile of topsoil from the past as specified in Subsection A above, so long as all of the following requirements are met:
  - 1. The Licensed Operator posts sufficient security with the Township pursuant to Subsection 7.0(I)(1) of this Ordinance to ensure that all mined or disturbed areas will be covered with at least four (4) inches of topsoil at the time of reclamation, or alternately, provides a written plan to the Planning Commission that convinces the Planning Commission that the Licensed Operator will be able to provide sufficient topsoil to comply with Subsection A above, when final reclamation occurs.
  
  - 2. Prior to any portion of the mining site being sold or transferred to any third party (other than another mining firm or mining business), full reclamation shall have occurred for all such land proposed to be sold or transferred, including the application of at least four (4) inches of topsoil in full compliance with Subsection A, above.
  
  - 3. All topsoil removed or stripped after the enactment of this Ordinance shall be stored on site for reclamation unless the Zoning Administrator certifies in writing that there already is sufficient topsoil stockpiled on site to meet all reclamation needs.
  
- C. Notwithstanding anything in this Section 20.0 or the definition of topsoil contained in Section 4.0 of this Ordinance, the topsoil that must be used for reclamation may be of a type, depth and composition as the topsoil that naturally covered the mining site before any mining or earth disturbance ever occurred on the site. If the type, depth and composition of the original topsoil on site cannot be reasonably determined, then the topsoil to be used for reclamation shall be substantially similar in type, depth and composition as the average of the current undisturbed topsoils on properties within one (1) mile of the mining site.

**SECTION 21.0      TERMINATION AND RECLAMATION**

Upon termination of mining operations (or dormancy for 18 months), the owner of the premises shall be responsible at his/her/its cost to fully reclaim the site in accordance with the Township-approved reclamation plans and this Ordinance. Reclamation shall occur in full compliance with the reclamation plan approved by the Township. 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 Planning Commission and may utilize the security proceeds provided pursuant to this Ordinance to defray the costs thereof. If the security posted by the Licensed Operator is not sufficient to cover all costs of reclamation, the Licensed Operator and the owner(s) of the property shall be jointly and severally responsible for reimbursing the Township for any shortfall. Any costs and expenses incurred by the Township in reclaiming the property shall be a lien on the property until paid in full.

**SECTION 22.0      EXCAVATION/FILLING; DEWATERING**

A. All excavation of mining areas shall be made either to a water-producing depth of at least 5 feet below the low water mark for at least 80 percent of the water area, or shall be graded or backfilled with noxious-free, nonflammable, nonradioactive, nonhazardous, and noncombustible materials, to assure:

1. That the excavated area shall not collect, and permit to remain therein, stagnant water; and
2. 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 a surface that will minimize erosion due to rainfall and be in substantial conformity to the adjoining land area.

B. No area shall be dewatered or have the groundwater table lowered by pumping or artificial means unless approved beforehand by the Planning Commission.

**SECTION 23.0      BANKS AND UNDERWATER SLOPES**

A. The final banks (for reclamation) of all excavations shall be sloped to the water line in a water-producing excavation, at a slope to a degree not less than 4:1 (four feet horizontal for every one foot vertical). The final banks (for reclamation) of all excavations (except at or in bodies of water) shall be sloped to a degree not less than 3:1 (three feet horizontal for every one foot vertical) and said banks shall be reclaimed with top soil and vegetation in a manner required by this Ordinance. For all water-producing excavations, the maximum 4:1 slope shall extend into the water at least up to a five (5) feet water depth.

B. For all mineral mining operations that were lawfully in existence at the time of adoption of this Ordinance, the Planning Commission, after careful consideration of the safety, health, and welfare of the Township's residents and landowners, may allow for a steeper slope as a condition of a license issued or renewed under the Ordinance and may also

require certain land improvements (i.e., higher or increased fencing, berming, landscaping or guardrails) that, at the discretion of the Planning Commission, will reasonably protect the public safety, health, and welfare.

- C. All temporary slopes and banks shall be maintained in such fashion and slope as to be reasonably safe and not be an attractive nuisance to trespassers.

**SECTION 24.0      SETBACKS**

- A. No mining or mineral removal activities (including processing and stockpiling of materials) shall occur within fifty (50) feet of any property line unless adjacent to another licensed mining operations.
- B. No mining or mineral removal activities (including processing and stockpiling of materials) shall occur within seventy-five (75) feet of any public road right-of-way or private street easement.
- C. No mining or mineral removal activities (including processing and stockpiling of materials) shall occur within two hundred (200) feet of any adjacent residence or dwelling unless owned by the mining operator/owner.
- D. Per MDNR Part 305 R281.150 Flat River System boundaries (g), no mining, mineral removal activities, disturbances, structures, and other activities related to the industry may be located within 300 feet from the ordinary high-water mark of the Flat River and Wabasis Creek in Eureka Township.
- E. No vehicle parking or storage shall occur within fifty (50) feet of any property line.
- F. Processing plants and related equipment (whether temporary or permanent) shall not be kept, stored, or used within two hundred fifty (250) feet of any property line, public road right-of-way, or private street easement, unless a waiver is approved pursuant to Section 18.0 of this Ordinance or there is an exemption under Section 18.0.

(Within such setback areas, no soils, mining materials, equipment, vehicles, or similar items shall be kept, stored, or placed except for any berms as approved by the Township.)

Where an existing lawful mining site or mining operation was operating as an active mining site as of the effective date of this Ordinance and any portion of the above setbacks are not met, mining operations may be completed within the area where the setbacks are not met but no further encroachment into the required setback areas shall occur except as is reasonably necessary to finish up mining operations already occurring within the required setback areas and to reasonably reclaim the same.

**SECTION 25.0      VEGETATION**

Subject to the other provisions of this Ordinance, vegetation shall be established pursuant to reclamation by the use of sufficient topsoil and overburden. If groundcover vegetation is not established naturally within one year, appropriate seeding of grasses or planting of shrubs or

trees shall occur over all parts of said reclaimed area that have not established groundcover vegetation naturally and where such area is not to be submerged under water or is not within 25 feet of the shoreline of a body of water.

**SECTION 26.0      FILL MATERIAL; MIXING MATERIALS; NO JUNK**

- A.     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.
- B.     No junk, trash, scrap metal, or junk vehicles shall be kept, buried, or stored on site.

**SECTION 27.0      CESSATION OF MINING**

Upon cessation of all mining operations, except stockpiles, and within a reasonable period of time not exceeding six (6) 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 Planning Commission 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 28.0      INSPECTIONS; ANNUAL REVIEW; ENFORCEMENT**

- A.     The Township Engineer (or other Township official 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, topsoil for reclamation, or changes in scope from the approved license) and the license and such expert shall file a report with the Township regarding the same. Such annual inspection and report by the Township Engineer (or other Township official designated by the Township Board) shall be paid for by the holder of the license issued under this Ordinance and the license.

The results of such annual inspection shall be forwarded to the Planning Commission for an annual review by the Planning Commission. If the Planning Commission determines that there are any violations of the license, approved plan of operation or this Ordinance, the Planning Commission shall request that the Licensed Operator be present or attend a Planning Commission meeting to address any such apparent violation(s).

- B.     Additionally, if there is a specific complaint regarding a Licensed Operator's operation or if the Zoning Administrator observes any apparent violation of this Ordinance, the Township Zoning Administrator shall also have the right to inspect any mining site during the hours of operation to ensure compliance with this Ordinance and the license.
- C.     The Zoning Administrator shall generally enforce and administer this Ordinance.

**SECTION 29.0      SPECIAL USE APPROVAL**

Where a mining operation or mining site has received approval from the Township pursuant to a special use process under the Eureka Charter Township Zoning Ordinance, as amended, or where a specific item or topic is addressed by both this Ordinance and the special use approval, the stricter regulation or condition shall apply. However, if pursuant to the special use approval process or the Zoning Ordinance, the Township specifically allowed a lesser setback distance for a given structure, item, or use, that approved lesser setback shall apply.

**SECTION 30.0      STOP WORK ORDER**

Upon written notice from the Zoning Administrator 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 or any license, 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 certified, return receipt requested 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. A stop work order may be appealed to the Planning Commission pursuant to a written request for an appeal filed by the Licensed Operator with the Township within ten (10) days of the date that the stop work order is imposed. The Planning Commission shall determine any such appeal within twenty-one (21) days of the date that the appeal is filed with the Township. A stop work order shall be dissolved by the Township once any of the following occurs:

- A. The Licensed Operator provides evidence to the Township proving that the violation or violations (if any) of the Ordinance or the license has/have ceased.
- B. The Planning Commission holds in favor of the mining operation on all matters pursuant to an appeal.
- C. A court order lifts or dissolves the stop work order.

**SECTION 31.0      SUSPENSION OR REVOCATION OF A LICENSE**

Any license issued under this Ordinance may be suspended or revoked at any time upon a hearing by the Planning Commission, with notice by certified, return receipt requested mail of said hearing to the Licensed Operator, based upon failure to comply with one or more of the requirements of this Ordinance, as amended, or the license issued thereunder, or other applicable law, ordinance or regulation and/or the terms and conditions of the license, or upon the ground that the use constitutes a nuisance or danger to the public health, safety and/or welfare.

**SECTION 32.0      APPLICATIONS FOR LICENSE MODIFICATIONS**

Should a Licensed Operator desire to modify its plan of operation, reclamation plan or other conditions or requirements of the license then in effect, the Licensed Operator may file an application with the Township requesting such modification from the Planning Commission.

Pursuant to any such request, the procedures and standards specified in this Ordinance for a new license shall also apply with regards to the issue or modifications requested.

**SECTION 33.0      VIOLATIONS**

- A. Any violation of this Ordinance or of a license issued hereunder shall constitute a municipal civil infraction. Any person, firm or corporation who violates any provision of this Ordinance or of a license issued hereunder is responsible for a municipal civil infraction, and shall be subject to payment of a civil fine, as well as any other action by the Township to abate the violation. The minimum fine for a municipal civil infraction under this Ordinance shall be Fifty Dollars (\$50.00), plus costs, attorney fees and other sanctions, for each violation. Increased civil fines shall be imposed for repeated offenses by the same person. As used in this section, the term “repeated offenses” means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this Ordinance which is committed by a person, firm or corporation within twelve (12) months of a prior municipal civil infraction for which the person, firm or corporation admits responsibility or was determined to be responsible. Each day on which a violation of this Ordinance continues shall constitute a separate offense and shall be subject to penalties or sanctions as a separate offense.
- B. Any violation of this Ordinance shall also constitute a nuisance *per se*, but only for purposes of Township enforcement of this Ordinance. The Township is authorized to take any and all actions appropriate to prevent, abate, enjoin or remove any such violation, and such remedies shall be in addition to any other remedies that the Township may have.
- C. Any violation of a license shall be deemed a violation of this Ordinance.

**SECTION 34.0      JOINT AND SEVERAL RESPONSIBILITY**

Both the owner of the property and the licensed operator are jointly and severally responsible and liable for complying with this Ordinance and any license issued hereunder.

**SECTION 35.0      REMEDIES; CONFLICT**

- A. In addition to any other remedy available at law or equity, 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.
- B. Where any provision of this Ordinance conflicts with the Eureka Charter Township Zoning Ordinance or any other Township ordinance or this Ordinance imposes standards different than any other Township ordinance, the stricter ordinance provision shall govern.

**SECTION 36.0      SEVERABILITY**

This Ordinance and each section, subsection, paragraph, subparagraph, or any provision thereof shall be deemed to be severable. If any section, subsection, paragraph, subparagraph, or any

other provision of this Ordinance 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 and shall remain in full force and effect.

**SECTION 37.0      EFFECTIVE DATE**

This Ordinance shall take effect upon the expiration of thirty (30) days after publication of this Ordinance or a summary thereof appears in the newspaper as provided by law.

ADOPTED: January 14, 2013  
PUBLISHED: January 19, 2013  
EFFECTIVE: February 18, 2013

REVISION ADOPTED: December 9, 2013  
REVISION PUBLISHED: December 14, 2013  
REVISION EFFECTIVE: January 13, 2014