

Public Notice Bruce Township

MACOMB COUNTY, MICHIGAN
ORDINANCE NO. 152

Bruce Township Soil Removal Ordinance

TITLE

AN ORDINANCE requiring the licensing of persons engaged in the business of soil removal operations and establishing a fee for the issuance of such license, establishing regulations for soil removal operations, requiring the reclamation of lands concurrent with or after cessation of such soil removal operations, requiring that financial guarantees be given the Township to assure reclamation of such lands, establishing a procedure for administration and enforcement of such ordinance, prescribing a penalty for a violation thereof and repealing any and all ordinances and/or resolutions in conflict therewith.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF BRUCE,
MACOMB COUNTY, MICHIGAN, ORDAINS:

SECTION 1. SHORT TITLE

This Ordinance may be known and cited as the "Bruce Township Soil Removal Ordinance."

SECTION 2. PURPOSE

The purpose of this Ordinance is to preserve and protect the public health, safety and welfare of persons and property residing and located in the Township of Bruce against public nuisances and/or hazardous conditions resulting from soil removal operations.

SECTION 3. DEFINITIONS

As used in this Ordinance,

(a) "soil" shall mean top soil, subsoil, sand, gravel, clay and any combinations of natural earthen materials located on or in the earth itself, not including oil, gases or valuable minerals.

(b) "person" shall mean any individual or combinations thereof, including partnerships, corporations, associations or firms.

(c) "Township Board" shall mean the Bruce Township Board of Trustees.

(d) "stripping" shall mean the removal of soil from above the mean grade.

(e) "pit" shall mean the excavation of soil below the mean grade.

(f) "mean grade" shall mean the arithmetic average of elevations of points on the boundary lines of the property uniformly spaced and not more than one hundred (100) feet apart. In no event shall such elevation points be determined below the surface elevation of any boundary waters.

(g) "finish grade" shall mean those earth elevations established and delineated on a topographic plan which will result upon completion of the proposed operation for which the license is issued.

(h) "existing grade" shall mean the various elevations of the surface of the land as it exists upon the site.

SECTION 5. LICENSE; APPLICATION

A. LICENSE It shall be unlawful from and after the effective date of this Ordinance for any person to remove any soil from any parcel of land situated in the Township of Bruce without first having secured a license therefor issued by the Township Board.

B. EXCLUSIONS Nothing in this Ordinance shall be construed or interpreted to prohibit the removal of excess soil from a building site, Provided, However, that approval to do so has been secured from the Township Building Inspector after a determination by the Building Inspector that the required finish grades have been attained, or sufficient soil will remain on the site to attain the required finish grades.

C. APPLICATION FOR LICENSE

1. Written application for a soil removal license shall be made by an owner of an interest in land to the Township Clerk accompanied by the necessary fees, financial guarantees and documents as provided

2. The application shall be accompanied by a site plan drawn to a scale of not less than one hundred (100) feet to the inch and containing the following information:

- (a) Location, size and legal description of the total land area proposed for soil removal activities;
- (b) Location of all existing and proposed structures thereon;
- (c) Location of processing and related equipment, if any;
- (d) All existing grade elevations shall be indicated at the intersection of perpendicular parallel lines not more than one hundred (100) feet apart and expressed to the nearest 10th of a foot.
- (e) Location of existing and proposed streets, roadways, parking areas, entrances and exits;
- (f) Location of all public facilities and services;
- (g) Finish grade plan conforming to the requirements of Section 8 showing proposed elevations upon completion at five (5) foot intervals;
- (h) Mean grade elevations at five (5) foot intervals;
- (i) The total area, expressed in acres, proposed to be excavated during the first year of operation;
- (j) Such additional information as the applicant deems necessary and/or pertinent to the application of proposed soil removal;

3. The application shall contain or be accompanied by a written statement of the extent, development, improvement and general purpose of the proposed soil removal operation and the anticipated duration thereof. Further, the application shall contain a statement as to the proposed method of removal, general haul route, and whether blasting or other use of explosives will be required.

4. The applications and all plans and supplemental data in support thereof shall be filed in triplicate with the Township Clerk, together with a fee established by resolution of the Township Board in a sum which shall be sufficient to cover all reasonable expenses incurred by the Township Board in processing and examining the application. Any portion of the aforesaid fee not utilized by the Township Board shall be refunded to the applicant. In the event additional expenses are incurred by the Township Board, the applicant shall be required to deposit such additional sum with the Township Board prior to issuance of the license.

D. GRANTING AND ISSUANCE OF PERMIT After approval of the application by the Township Board, the Township Clerk shall issue a license upon the posting of required financial guarantees and the payment of all fees required herein. Said license shall be valid for a period of one (1) year unless renewed thereafter by the Township Board for like periods in accordance with the provisions of this Ordinance.

E. SUSPENSION OR REVOCATION

1. SUSPENSION Any license may be suspended by the enforcing agency for a period of not more than thirty (30) days whenever the enforcing agency shall determine that specific violations of this Ordinance by the licensee may result in immediate and irreparable injury, loss or damage, or physical injury, to persons or property, provided, however, the enforcing agency shall forthwith report its act of suspension and the reasons therefore to the Township Clerk.

2. REVIEW AND REVOCATION The Township Clerk will notify the licensee that the Township Board will review the action of the enforcing agency at its next regular meeting to determine whether the license shall be reinstated, suspended for a further period of time or permanently revoked.

SECTION 6. FINANCIAL GUARANTEES; ANNUAL RENEWAL OF LICENSE

A. Financial Guarantees shall be furnished the Township Board insuring the proper rehabilitation and reclamation of excavated areas to meet the finish grade plan filed with the township Board and upon which the license was issued. The amount of the guarantee shall not be less than One Thousand (\$1,000.00 Dollars per acre for the land area proposed to be excavated during the term of the license. The area covered by the financial guarantee shall include all areas proposed to be excavated, areas stripped of overburden, areas being excavated, areas used for stockpiling and areas which have been previously excavated during any preceding period and have not been reclaimed and rehabilitated to the proposed finished grade. Such financial guarantees shall be reviewed by the Township Board upon expiration of the soil removal license for adjustment and compliance with the foregoing requirements. Financial guarantees may be in any one of the following forms: cash, certified check, irrevocable bank letter of credit, or corporate surety bond of a licensed insurance company. In

no event shall such financial guaranteed be less than Ten Thousand (\$10,000.00) Dollars.

B. Licenses issued pursuant to Section 5 of this Ordinance may be renewed annually by the filing of a progress report as to areas of excavation and reclamation with reference to the initial engineering plans and information filed in support of the original application. Annual renewal of licenses need not be predicated upon an updated engineering plan and topographic survey, provided, however, that the Township Board finds that no significant variation from engineering data filed in support of the initial application has occurred.

SECTION 7. OPERATIONAL REGULATIONS

A. GENERAL REGULATIONS

1. No excavation of soil materials shall be conducted closer than fifty (50) feet to abutting property. The foregoing setback may be reduced where the Board finds that sufficient lateral support will adequately protect abutting property. If the conditions of the site indicate that the fifty (50) foot setback requirement would not be adequate to protect abutting property, the Township Board may require a greater setback. Further, the Township Board may require a five (5) foot fence along such property boundary.

2. No excavation of soil materials shall be conducted closer than seventy five (75) feet of the right-of-way of a dedicated street, road or highway, or the edge of the traveled portion of an existing and non-dedicated street, road or highway, except that excavation may be conducted within such setback area in order to reduce or raise the final elevation thereof to be in substantial conformity with the existing elevation of such street, road or highway. Any such excavation occurring along a street, road or highway within the seventy five (75) foot setback area shall be back-filled within twelve (12) months after completion of the excavation in order that the finish grade will be in substantial conformity to the adjoining street, road or highway.

3. Sight barriers shall be provided along all boundaries of the site which lack natural screening conditions through existing contours or vegetation. Such barriers shall consist of one of the following:

(Earth berms constructed to a height of eight (8) feet above the mean elevation of the center line of the adjacent public highway, or eight (8) feet above the general level of terrain along interior property lines, as the case may be. The slopes of such berms shall be not in excess of one foot vertical to three feet horizontal, and shall be planted with grass, trees, or shrubs.

(b) Plantings of evergreens or shrubbery in rows parallel to the boundaries of the property, not less than six feet in height at the time of planting and which grow to not less than eight feet in height at maturity and sufficiently spaced to provide effective sight barriers when eight feet in height.

4. Both permanent and/or temporary processing plants and accessory structures shall not be located closer than two hundred fifty (250) feet from the interior property lines and adjoining public rights-of-way and shall, where practicable, be located at a lower elevation than the surrounding terrain to lessen visual and noise impact. The foregoing requirement shall not apply to any excavating apparatus or to stockpiling, loading and transportation equipment.

* 5. The hours of operation shall be limited both as to equipment and vehicles, and operations shall be allowed only between the hours of 6:00 A.M. and 11:00 P.M. and is prohibited entirely on Sunday and legal holidays. Variances may be granted to any person from the hours of operation requirement if findings are made by the Township Board that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances. Variances shall be issued only upon application in writing and after providing such information as may be requested. No variance shall be issued for a period of more than fourteen (14) days except upon due notice to the public with an opportunity to comment.

6. Roads on soil excavation sites shall be designed and constructed so that traffic will flow smoothly and will not be interrupted by inclement weather. Non-paved roads on the site shall be treated by oil, water and/or other chemical substance, whichever is most effective to minimize or eliminate dust, whenever such roads are used by vehicles and/or equipment. Roads on site shall mean roads designated on approved plans, and such other areas used by vehicles and/or equipment for travel on a regular basis.

7. The licensee shall not permit any motor vehicle to carry or track any soil materials from the site onto any paved public road or

* amended
May, 2004

highway. If dust materials are carried or tracked onto a paved public road or highway, the licensee shall remove the same by the close of the working day.

8. The following performance standards shall be applicable to all soil removal operations:

(a) **NOISE** No person shall cause or permit noise to intrude into the property of another person which noise exceeds the maximum permissible noise levels set forth in this section. The noise limitations established are as set forth in the following table after any applicable adjustments provided for herein are applied.

	Abutting Residential Use	Abutting Commercial USE	Abutting Industrial Use
6 A.M. to 6 P.M.	60 dBA	65 dBA	70 dBA
6 P.M. to 11 P.M.	57 dBA	62 dBA	67 dBA

An additional 5 dBA is allowable for not exceeding 6 minutes of each hour. An emergency order may be issued by the enforcement agency in cases where compliance with the required noise limits becomes impossible due to an emergency situation. Variances may be granted to any person from the noise level requirement if findings are made by the Township Board that immediate compliance with such requirement cannot be achieved because of special circumstances rendering immediate compliance unreasonable in light of economic or physical factors, encroachment upon an existing noise source, or because of nonavailability of feasible technology or control methods. Any such variance or renewal thereof shall be granted only for the minimum time period found to be necessary under the facts and circumstances. Variances shall be issued only upon application in writing and after providing such information as may be requested. No variance shall be issued for a period of more than 14 days except upon due notice to the public with opportunity to comment. All terminology used in this ordinance, not defined below, shall be in conformance with applicable publications of the American National Standards Institute (ANSI) or its successor body. "A-WEIGHTED SOUND LEVEL" means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or DBA. DECIBEL (dB) means a unit for measuring the volume of a sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

"NOISE" means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

"VIBRATION" means an oscillatory motion of solid bodies of deterministic or random nature described by displacement, velocity, or acceleration with respect to a given reference point.

(b) **SMOKE** No individual or individuals shall cause, suffer, or allow to be discharged in the atmosphere from any source, smoke, the shade or appearance of which is equivalent to or greater than the density described as No. 2 of the Ringelmann Chart, provided, however, that smoke, the shade or appearance of which is equivalent to but not darker than No. 2 on the Ringelmann Chart for a period or periods aggregating four (4) minutes in any thirty (30) minutes shall be permitted; and provided further, that smoke, the shade or appearance of which is equivalent to but not darker than No. 3 on the Ringelmann Chart for a period or periods aggregating three (3) minutes in any fifteen (15) minutes shall also be permitted when building of new fire or when breakdown or malfunctioning of equipment occurs such as to make it evident that the emission was not reasonably preventable.

(c) **VIBRATIONS** All machinery shall be so mounted and operated as to prevent transmission of ground vibration exceeding a displacement of .003 of one inch measured at any property line of its source.

9. All dust produced as a result of the soil mining operations must be confined within the boundaries of the site. The Township Board may require the erection of a snow fence, greenbelt, or other barrier to contain blowing soil material, or may require the spraying of material with water of a dust control chemical.

B. PIT OPERATIONS

1. Any excavation in excess of five (5) feet in depth shall not be permitted unless the site is completely enclosed by a fence not less than five (5) feet in height designed to prevent both vehicular and pedestrian access. All gates within such fence, also designed to prevent vehicular and pedestrian access, shall be closed and locked during the period when operations are not being conducted on the

site. This provision shall not apply to the excavation of a man made lake or lagoon in accordance with a recorded subdivision plat for the development thereof.

2. Where access to the site of excavation is barred by the erection of fences, no restrictions upon the slope of excavations shall be applicable. Where no fence or other similar barrier barring access to the site of excavation has been erected, the slope of banks of such excavation shall not exceed twelve (12°) degrees horizontally when ponded water results from such operation. Such slope shall be maintained and extended into the water to a depth of five (5) feet.

3. Where soil removal operations resulted in a body of water, the licensee shall erect warning signs around said premises spaced not less than two hundred (200) feet. The pumping or draining of water from such soil removal operations is prohibited.

4. All of such soil removal operations shall conform with the performance standards established in the preceding subsection. The Township Board may require such other or greater performance standards as may be necessary to protect the health, safety and general welfare of residents of the Township when unique conditions of the site so require.

5. All equipment and facilities used in the production, processing, or transportation of soil materials shall be constructed, maintained and operated in such a manner as to eliminate noise, vibration or dust which violate the performance standards herein established.

6. Temporary stockpiling of soil materials near road intersections and similar operational problems shall be subject to approval of the Township Board.

C. STRIP OPERATIONS

1. No soil shall be removed below a point six (6) inches above the mean elevation of the center line of the nearest existing or proposed street or road established or approved by the Macomb County Road Commission, except as required for the installation of utilities and pavements.

2. No soil shall be removed in such manner as to cause water to collect or to result in a place of danger or menace to the public health. The premises shall at all times be graded so that normal surface water drainage is maintained.

3. Sufficient top soil shall be stockpiled on said site in order that the entire site, when stripping operations are completed, may be recovered with a minimum of four (4) inches of top soil. In the event that such stripping operations continue over a period of time greater than thirty (30) days, the licensee shall replace the stored top soil over the stripped areas as the operation progresses.

4. The Township Board may impose such other and further requirements as is deemed necessary in the interest of the public health, safety and general welfare of the residents of the Township of Bruce.

Section 8. RECLAMATION

Reclamation of excavated areas shall be accomplished as soon as practicable following the excavation of an area. Where possible, such reclamation shall be accomplished concurrently with soil removal operations. Substantial completion of reclamation shall be effected within two (2) years after termination of soil removal operations. The following standards shall control such reclamation:

1. All excavations shall be either to a water producing depth of not less than eight (8) feet below the average summer level of water in the excavation, or shall be graded or back-filled with non-noxious, non-flammable and non-combustionable solids to insure:

(a) That the excavated area shall not collect stagnant water and not permit the same to remain therein; or

(b) 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.

2. The banks of all excavations shall be sloped to the water line in a water producing excavation, and to the pit floor in a dry operation, at a slope which shall not be steeper than one (1) foot vertical to five (5) feet horizontal.

3. Topsoil 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 desired. Where used, topsoil shall be applied to a minimum depth of four (4) inches sufficient to support vegetation.

4. 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.

5. Upon cessation of soil removal operations by abandonment or otherwise, the licensee, within a reasonable period of time not to exceed twelve (12) months thereafter, shall remove all plant structures, building, stockpiles and equipment, provided 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 they will be located and under such other plan, may be retained.

SECTION 9. RELATION TO ZONING

The mining and/or extraction of sand and/or gravel may be allowed only as a use subject to special conditions in the AG zoning district established by Ordinance No. 134 of the Bruce Township Ordinances, as amended. All other soil removal operations may be allowed anywhere in the Township of Bruce subject to the provisions of this Ordinance and subject further to a finding by the Township Board that the establishment of such soil removal operation will not adversely affect the public health, safety and welfare of residents of the Township of Bruce by reason of its location, method of operation, haul route, affect on the value of adjacent lands and such other factors as may be deemed pertinent by the Township Board.

SECTION 10. VARIANCES; ADMINISTRATION AND ENFORCEMENT

A. Variances from a literal application of the provisions of this Ordinance may be granted by the Township Board upon written application demonstrating that the applicant's condition is unique and a strict application of the provisions of this Ordinance will result in practical difficulties and/or undue hardship not suffered by other persons subject to the Ordinance provisions in question. Variances as to noise and/or hours of operation are separately addressed herein and this section shall not be construed as substitution therefor.

B. This Ordinance shall be administered and enforced by the Township Supervisor or any other persons authorized by the Township Board of Trustees from time to time.

SECTION 11. VIOLATION; PENALTY

Any person, firm or corporation who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a penalty not to exceed Five Hundred and 00/100 (\$500.00) Dollars, or imprisonment in the Macomb County Jail for a period not to exceed Ninety (90) days, or by both such fine and imprisonment.

SECTION 12. REPEAL OF CONFLICTING PROVISIONS

All resolutions, ordinances or parts thereof in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

SECTION 13. SEVERABILITY

If any section, paragraph, clause or provision of this Ordinance is for any reason held to be invalid or unconstitutional, the invalidity or unconstitutionality of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 14. PUBLICATION

This Ordinance shall be published in full in the ROMEO OBSERVER a newspaper of general circulation in the Township of Bruce, within thirty (30) days after its adoption.

SECTION 15. EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days from and after the date of publication of a true copy thereof in a newspaper circulating within the Township of Bruce, as heretofore provided by Section 4.

CERTIFICATE OF TOWNSHIP CLERK

I hereby certify that the foregoing constitutes a true and complete copy of an Ordinance duly adopted by the Township Board of Bruce Township, Macomb County, Michigan, at a meeting held on the 13th day of November, A.D., 1984.

I hereby further certify that the following Township Board members were present at said meeting: Gary Schocke, Karol Regius, W. Duane Evans, and Alfred Guimond and that the following Township Board members were absent: Mary Lou Witzke.

I further certify that Karol Regius moved adoption of said Ordinance, and that motion was supported by W. Duane Evans.

I further certify that the following Bruce Township Board members voted for the adoption of said Ordinance: Gary Schocke, Karol Regius, W. Duane Evans, and Alfred Guimond and that the following Bruce Township Board members voted against the adoption of said Ordinance: None. Absent: Mary Lou Witzke.

Publish: December 5, 1984

Karol Regius
Bruce Township Clerk

PUBLIC NOTICE

**TOWNSHIP OF BRUCE
COUNTY OF MACOMB**

NOTICE OF ADOPTION OF AMENDMENT TO ORDINANCE NO. 152-01-04

Notice is hereby given that at the regular meeting of the Bruce Township Board of Trustees, April 21, 2004, the Board adopted Ordinance No. 152-01-04—Bruce Township Soil Removal Ordinance-Hours of Operation Amendment. This amendment states that hours of operation shall be limited both as to equipment and vehicles, and operations shall be allowed only between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday, 8:00 a.m. through 6:00 p.m. on Saturday and is prohibited entirely on Sunday and legal holidays.

The Ordinance becomes effective 30 days after the publication of this notice.

Copies of the entire text of the Bruce Township Soil Removal Ordinance are available for inspection at the Township offices during regular business hours.

**Karol Regius
Bruce Township Clerk**

Publish: May 19, 2004