

Chapter 601 – Soil Removal

Section 601.1 – Title

This Ordinance shall be known and cited as the Lenox Township Soil Removal Ordinance.

Section 601.2 – Intent

An Ordinance to regulate mining operations and mining sites within the Township of Lenox, to provide for the issuance of permits for such activities, to provide for payment of fees, to prescribe rules and regulations and conditions for the issuance of permits, to provide for bonds, to ensure compliance and satisfactory performance of the terms of said Ordinance, to provide for renewals of permits, to provide penalties for the violation of this Ordinance, and to provide for the relationship of this Ordinance to other laws and ordinances.

In the preparation and development of this Ordinance, based on the advice of experts and upon independent investigations, it has been recognized that there are activities and impacts which require regulation in view of the noise, dirt, dust, and temporary and permanent changes to the topography and environment which are inherent in mining operations. It is the intent of the Township to regulate, inspect, and monitor mining operations in order to minimize the existence of dangerously steep slopes, shifting earth, impairments or pollution of groundwater, 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 Lenox Township, to meet these objectives; such mining operations shall be licensed and the fees required for licensure shall be utilized to offset costs and expenses including but not limited to monitoring, inspection, administration, engineering, hydrogeomorphology, and legal review.

Section 601.3 – Definitions

Berm – A landscaped earth embankment of at least eight (8) feet in height, designed to act as a visual and sound barrier, with a slope no steeper than 1 on 4, properly landscaped with turf grass, trees, shrubs, and the like.

Completion or Cessation of Operations – The removal from the site of less than one thousand (1,000) cubic yards of earth materials per month for a continuous period of at least six (6) months.

Earth Materials – Any soil, topsoil, subsoil, sand, gravel, rock, clay, peat, minerals, or other similar material.

Fence – A six (6) foot high, cyclone type fence; but in no instance shall a fence be of lesser quality than No. 11 farm fence of four (4) feet in height.

Greenbelt or Planting – Shall consist of a dense evergreen or similar plant material designed to provide an obscuring buffer.

Mining Operations – The excavation and/or removal from their existing site of any earth materials.

Mining Site – A parcel of land where mining operations have been conducted that has not undergone reclamation and that is not covered by a performance, reclamation, or reserves bond.

Nuisance – Anything that annoys, injures, or endangers the safety, health, comfort, or repose of the public, interferes with, or destroys or renders dangerous any public thoroughfare, allows a cumulation of noxious matter on private or public property, or in any way renders the public insecure.

Operator – The owner of the site and/or the person who is responsible for the day-to-day activities at the mining site and/or the person responsible for payment of all application fees, annual permit fees, and performance bonds.

Pit Operations – Any excavation where ponded water results or lowers the surface to a point below the definition of a stripping operation.

Performance Bond – Cash, irrevocable letter of credit, or surety bond, acceptable to the Township Board, issued by a reputable surety company, authorized to do business in the State of Michigan.

Premises – A contiguous parcel of land in the same ownership.

Reclamation – The restoration of property in a fashion that makes its development possible by a use permitted in the applicable zoning district.

Reclamation Bond – A bond in the form of cash, letter of credit, or surety that guarantees the reclamation of a mining site to the standards of this Ordinance.

Reserves Bond – A bond in the form of cash, letter of credit, or surety that guarantees the reclamation of a mining site that is not currently active, but still contains marketable sand and/or aggregate reserves.

Reserves Survey – An estimate, prepared by a geologist or civil engineer based upon soil borings or similar analytical methods that detail the types and approximate quantities of sand and or aggregate reserves on a mining site.

Stripping Operation – Anyone of the following types of excavations where no ponded water results:

1. Any operation which results in the removal of all or part of a visible surface landform, or
2. Any operation which is limited to the removal of topsoil only and does not disturb the underlying subsoil, whether the subsoil is composed of sand, gravel, clay, or other material, or
3. Any operation which removes the surface soil(s) no lower than a point at least six (6) inches above the mean elevation of the centerline of the nearest existing or proposed street or road established or approved by the Macomb County Road Commission, or
4. Where there is no nearby street or road, an operation that removes the surface soils no lower than a point at least six (6) inches above the mean elevation of the surrounding land within one-quarter mile, as shown on the United States Geological Survey Data.

Section 601.4 – Removal of Earth Materials

A. Removal Permits:

After the effective date of this Ordinance, it shall be unlawful for any person to remove any earth material from any premises without a permit from the Township Board. No permit will be required where the removal of earth materials is carried on for the installation of the foundation and/or basement of any use permitted in the applicable zoning district, as regulated by the Lenox Township Zoning Ordinance, and covered by an active building permit. Usual and customary land balancing by cutting and filling in preparation for immediately planned and approved development in accordance with this and other applicable ordinances and law shall be exempted from the provisions of this section.

B. Application for Annual Permit:

1. Before the Township Board grants a permit, the Township Planning Commission shall review the plans and other data concerning such application and file its recommendation with the Township Board, in accordance with Section 4 of this Ordinance. For all new

mining operations, it shall also be necessary to obtain special land use approval from the Planning Commission pursuant to the Lenox Township Zoning Ordinance.

2. A separate permit shall be required for each separate site. Each application for a permit shall contain the following information as a condition precedent to the obligation to consider such request:
 - a. Full names and addresses of all parties of interest in said premises setting forth their legal or equitable interest. Proof of said legal and/or equitable interest.
 - b. Legal description of the property.
 - c. A boundary survey, sealed by a registered Land Surveyor, of the premises wherein the operations are proposed. The surveyor shall also set interior monuments at the one hundred fifty (150') foot setback line to facilitate observation of compliance by the Township. Monuments shall be the same as those used to mark plat corners and shall be preserved and protected by the operator during the life of the mining operation.
 - d. Topographical survey map at a scale of not less than one (1) inch equals two hundred (200) feet, showing existing and proposed grades at two (2) foot contour intervals or less, consistent with sound engineering practice. Said grades shall be prepared and sealed by a Civil Engineer or Land Surveyor, registered as such by the State of Michigan.
 - e. Calculations by a Registered Civil Engineer or Land Surveyor showing the cubic yards on the earth material to be removed and a detailed statement and engineering plan as to how the removal is to be accomplished; together with cross-section drawings showing proposed slopes after the removal operations are complete.
 - f. Detailed site engineering plan at a scale of not less than one (1) inch equals two hundred (200) feet which: identifies all types of materials to be removed and/or redistributed, indicates the specific places on the property, where the fill (redistributed material) is to be placed, indicates the maintenance areas, location of processing plants, storm drainage design including an off-site ditch and drain elevations, includes the final grading plan, method of operation, such as wet or dry method; identifies the type of machinery or equipment to be used, and the estimated period of time that such operations will cover, including the location, timing, and other relevant details with respect to the phasing of work on the site. Where restoration is not complete, as-built drawings showing the present contours of the excavation shall be submitted with each subsequent year's request for permit renewal.
 - g. Statement of other similar operations carried on by the applicant, including location by the municipality.

- h. The type and the daily number of vehicles to be used in the proposed operations, both on-site and over adjoining Township roads.
- i. Detailed statement as to exactly what type of earth materials are proposed to be extracted.
- j. Identification of access roads, on-site roads, a drainage plan that identifies grades for proper drainage and any special drainage devices, fencing, any existing or proposed structures on the site, and existing and proposed utilities.
- k. A detailed Reclamation Plan, at a scale of 1" = 100', showing that the entire property will be left in a form that is suitable for development with uses that are permitted in the zoning district, relating such reuse to uses existing or probable for surrounding properties. Among items to be included in such plan is feasible circulation patterns in and around the site, the treatment of the exposed soil or subsoil (including measures to be taken to replace topsoil in excavated areas) to make the property suitable for the proposed reuse, treatment of slopes to prevent erosion, and delineation of drainage ways and flood plains, which shall be left undisturbed.
- l. A map showing all parcels of property and names of each owner within 500 feet of the proposed mining site.
- m. A Community Impact Statement following the requirements of the Lenox Township Zoning Ordinance.

C. Review Procedure:

1. The Township Clerk shall distribute the application copies as follows:
 - ☐ 5 copies to Township Board
 - ☐ 4 copies to Planning Commission
 - ☐ 1 copy to Recording Secretary for Clerk's permanent file
 - ☐ 1 copy to Police Department
 - ☐ 1 copy to Fire Department
 - ☐ 1 Copy to Township Planner
 - ☐ 4 copies to Township Engineer
 - ☐ 1 copy to Township Attorney
2. After receiving the reports of all Township departments and consultants, the application shall be considered by the Planning Commission and recommendations shall be made to the Township Board for approval, approval with conditions, or denial of the mining permit.

3. After receiving the reports of all Township departments and consultants, the recommendation of the Planning Commission, and following such meetings or consideration as the Board deems appropriate with respect to the application, the Township Board may approve, approve with conditions, or deny the application for a mining permit.

D. Permit Fees:

To defray costs of engineering services, investigation, publication charges, and other administrative expenses incurred by processing such application, there is hereby established an initial application fee and an annual operating permit fee. Permits issued by the Township Board shall be for a period not to exceed one (1) year, expiring on December 31st of the second calendar year, and such permits may be renewed by the payment of an annual permit fee. The amount of the initial application fee shall be established from time to time by resolution of the Township Board. The annual permit fee shall be based on the surface area, in acres, of the proposed operation times the depth, in feet, of the pit as shown on the plans submitted for review. The annual permit fee may be limited to the volume of the cell or cells to be under excavation during the one (1) year period. The amount of the fee per acre will be set from time to time by resolution of the Township Board. Such permits shall be renewed as herein provided for so long as the permittee complies with all the provisions of this Ordinance, other Township ordinances, State Law, or other conditions of this permit.

E. Issuance of Permits:

1. After reviewing the information submitted by the applicant and other pertinent information and the recommendations of the Planning Commission, Township Engineer, Township Planner, Ordinance Enforcement Officer, and/or Township Attorney, the Township Board shall determine whether the issuance of the permit would or would not detrimentally affect the public health, safety, and welfare and whether granting the permit, as proposed, would or would not:
 - a. Permanently impair the intended land use potential of the property in question.
 - b. Detrimentially affect the adjoining and adjacent properties.
 - c. Be inconsistent with the planning, land use, and zoning of the area where the proposed operation is to be located.
 - d. Violate or defeat any of the requirements and standards set forth in this Ordinance.
2. Mining operations shall proceed in cells of ten (10) acres maximum. Each working cell shall be fully restored and rehabilitated prior to issuance of a permit for the next cell unless each

working cell's performance bond is converted to a cash bond or irrevocable letter of credit and escrowed to the Township Board.

3. The commencement of operations during the time frame covered by the permit shall constitute acceptance of all limitations and conditions which the Township may impose as a part of the permit.

F. Permit Content and Conditions:

1. The permit shall contain the following:
 - a. The name and address of the holder of the licensure permits, as well as the name and address of the landowner, if different from that of the licensure permit holder. In addition, the permit shall also include the name, address, and phone number of the person designated as agent, for all notices, correspondence, and communication.
 - b. The legal description of the property to which the permit shall apply.
 - c. The period for which the permit shall be valid, including its expiration date.
 - d. The allowable daily duration of the operation.
 - e. The number of feet from all the property lines and rights-of-way within which no cuts or excavations shall be made.
 - f. The steepest horizontal to vertical grade on finished slopes where excavations are to be made.
 - g. The location of each working cell (10-acre maximum) and the order in which they are to be excavated.
 - h. A statement essentially corresponding to the following: "This permit may be suspended or revoked upon a hearing of the Township Board, with notice by regular mail of said hearing to the applicant, based upon a failure to comply with one or more of the requirements of the Lenox Township Soil Removal Ordinance, as amended, or other applicable law, ordinance or regulation, and/or the terms and conditions of this licensure permit, or upon the ground that the use constitutes a nuisance or danger to the public health, safety, and/or welfare."
 - i. A statement to be countersigned by the applicant corresponding substantially to the following: "The undersigned has read this permit and understands and agrees that, incorporated by reference as a part of the terms and conditions hereof, are all

the statements and contents of the application for the permit as approved by the Lenox Township Board, the terms and conditions of the Lenox Township Soil Removal Ordinance, as amended, and of any other applicable laws, ordinances or regulations, and, further, that Lenox Township employees and agents are permitted to come upon the premises at any reasonable time for the purpose of inspecting, monitoring and/or administering this Ordinance.

- j. A statement of the condition that in no event shall the area being mined exceed the lesser of forty (40) acres or fifty percent (50%) of the land constituting the subject of the permit.
 - k. A statement of the machinery, equipment, and methods used in the operation.
 - l. Any additional reasonable condition deemed appropriate by the Township Board.
 - m. Failure or refusal to allow Township inspection of the mining operations site shall be deemed a violation of this Ordinance under Section 601.8.
- 2. The applicant shall provide the Township Board with a signed affidavit, in a form suitable for recording with the Macomb County Register of Deeds, binding the applicant, and all heirs, successors, assigns and transferees of the applicant to the terms and conditions of the licensure permit.

G. Permit Renewal:

- 1. A licensee may apply for the renewal of a licensure permit. To promote uninterrupted operations, the application shall be made to the Township Clerk, no less than sixty (60) days and no more than ninety (90) days, prior to the expiration of the effective licensure permit. The application for renewal shall be made on the form provided by the Clerk.
- 2. Upon receipt of an application, the Clerk shall refer copies thereof to the Lenox Township Board, the Ordinance Enforcement Officer, and to the township engineer. The Ordinance Enforcement Officer and the township engineer shall forthwith report in writing to the Township Board with respect to compliance by the applicant with all aspects of this Ordinance during the period of the licensure permit which is about to expire. If there has been compliance in all respects with this Ordinance, a renewal of the licensure permit may be granted. In the event there has not been compliance, the Township Board may, in its discretion, either deny the renewal or grant the renewal for a period determined to be appropriate by the Township Board upon stated conditions.
- 3. In all events, if it appears that protection of the public health, safety, and general welfare and/or protection of the air, water, and natural resources, and the public trust therein,

requires denial of the licensure permit renewal, the Township Board may either deny renewal outright or consider renewal upon conditions which vitiate the underlying cause for denial.

H. Specific Requirements for Pit Operations:

1. The applicant shall erect a fence with appropriate KEEP OUT – DANGER signs surrounding the portion of the site where the excavation takes place. In no event shall such signs be more than two hundred (200) feet apart. Said fence is to be a six (6) foot high, cyclone-type fence or a four (4) foot high, No. 11 woven wire fence along all property lines protected by lockable gates.
2. Any roads used for the purposes of ingress and egress to said excavation site shall be always kept dust-free. This may be accomplished by surfacing with concrete or bituminous aggregate or approved chemical treatment at a frequency sufficient to control any dust problems as specified by the Township Board.
3. Side slopes around the perimeter of the site and the banks adjacent to ponded water shall not have a slope exceeding one (1) vertical foot for each three (3) horizontal feet. The slope extending into the water shall not exceed one (1) vertical foot for each seven (7) horizontal feet from the edge of the water out to a depth of five (5) feet.
4. To protect water wells and the water supply of the Township of Lenox, the pumping or drainage of water from such mining operations and/or de-watering is absolutely prohibited. A method of quarrying approved by the Township Board shall be utilized.
5. All existing pit operations shall be at least fifty (50) feet away from the nearest street or highway right-of-way or property line. If the excavation is closer than fifty (50) feet, the area shall be restored as part of the Reclamation Plan. No new cut or excavation shall be made closer than one hundred fifty (150) feet from the edge of the abutting street or highway right-of-way line or easement, or abutting property line; provided, however, that the Township Board may prescribe stricter requirements to prevent undermining surrounding property where geologic conditions warrant it.
6. All equipment shall be located and operated no closer than one hundred fifty (150) feet to the nearest abutting property line. All equipment shall be located and operated no closer than one hundred fifty (150) feet to the nearest abutting property line.

7. All equipment and facilities used in the production, processing, or transportation of earth materials shall be constructed, maintained, and operated, in such a manner as to eliminate, to the maximum extent practicable, noises, vibrations, or dust that are injurious or unduly annoying.
 8. All trucks leaving the site shall have their loads covered to prevent blowing of material onto Township roads and/or private property.
 9. The applicant shall acquire approval as to haul routes, bonding requirements, weight limits, speed limits, and other matters within the jurisdiction of the agencies responsible for the public roads.
 10. Reclamation with appropriate turf, vegetation, soil, overburden, shrubs, and trees shall be implemented in a manner to prevent washout and erosion. Revegetation of the pit shall be started as soon as the first ten (10) acres are completely excavated and shall progress in stages as the excavation progresses. The slopes of the pit shall be graded, seeded, and mulched in accordance with the approved Reclamation Plan and in a manner that prevents erosion. Topsoil shall not be removed from the site.
 11. The Township Board shall require more stringent requirements where the Impact Assessment and/or Statement, or the report of the Township Engineer or Township Planner demonstrates the need for such, in the interest of the public health, safety, and general welfare.
 12. Operating hours shall be limited from 7:30 a.m. to 4:30 p.m. Monday through Friday and 7:30 a.m. to 12:00 noon on Saturday. There shall be no operations conducted on any Sunday nor on specific holidays prescribed by the Township Board.
 13. To prevent unnecessary dust, (including the blowing of sand), there shall be no stockpiling of sand in piles more than one thousand (1,000) cubic yards each and all stockpiles shall be restricted to a maximum height of fifteen (15) feet.
- I. Specific Requirements for Stripping Operations:
1. No earth materials as defined herein, or similar materials, shall be removed in such manner as to cause water to collect or to exist in a place of danger or to become a menace to public health. The premises shall always be graded so that surface water drainage off- site is maintained and is not interfered with.

2. Sufficient topsoil shall be stockpiled on said site so that the entire site, when stripping operations are completed, may be recovered with a minimum of four (4) inches of topsoil, and the replacement of such topsoil shall be made immediately following the termination of the stripping operations each year (topsoil need not be stockpiled for the area of building footprints, parking areas, drives and walks shown on an approved site plan). In the event, however, that such stripping operation continues over a period greater than thirty (30) days, the operator shall replace the stored topsoil over the stripped areas, in two (2) acre increments, as he/she progresses.
3. Any roads used for the purpose of ingress and egress to said excavation site shall be kept dust-free, always. This may be accomplished by surfacing with concrete or bituminous aggregate or approved chemical treatment at a frequency sufficient to control any dust problems as specified by the Township Board.
4. No stripping shall take place within one hundred fifty (150) feet from any street right-of-way line, adjoining residence, or any other property line; provided, however, that the Township Board may prescribe stricter requirements to protect nearby residences from any potential adverse impacts of the stripping operation.
5. All equipment shall be located and operated no closer than one hundred fifty (150) feet to the nearest abutting property line.
6. All equipment and facilities used in the production, processing, or transportation of earth materials shall be constructed, maintained, and operated, in such manner as to eliminate, to the maximum extent practicable, noises, vibrations, or dust that are injurious or unduly annoying.
7. All trucks leaving the site shall have their loads covered to prevent blowing of material onto Township roads and/or private property.
8. The applicant shall obtain approval as to haul routes, bonding requirements, weight limits, speed limits, and other matters within the jurisdiction of the agencies responsible for the public roads.
9. To prevent all unnecessary dust (and blowing of sand), there shall be no stockpiling of sand in piles of more than one thousand (1000) cubic yards each and all stockpiles shall be restricted to a maximum height of fifteen (15) feet.

10. The Township Board shall prescribe more stringent requirements if deemed necessary in the interest of the public health, safety, and welfare, as demonstrated by the Impact Assessment and/or Statement, or the report of the Township Engineer or the Township Planner.

11. Operating hours shall be limited from 7:30 a.m. to 4:30 p.m. Monday through Friday and 7:30 a.m. to 12:00 noon on Saturday. There shall be no operations conducted on any Sunday nor on specific holidays prescribed by the Township Board.

J. Plans for Reclamation:

1. Reclamation shall occur immediately upon completion of each ten (10) acre working cell. The property shall be fully reclaimed, in accordance with the approved Reclamation Plan, no later than one (1) year after extractive operations are complete. Non-compliance with this requirement shall be grounds for forfeiture of the operator's performance bond.
2. All excavations shall be made either to a water-producing depth of at least eight (8) feet below the low-water mark for at least eighty (80%) percent of the water area, or shall be graded or backfilled with earthen materials, to ensure:
 - a. That stagnant water in the excavated area shall not collect and be permitted to remain therein; or,
 - b. That the surface of such area which is not permanently submerged is graded or backfilled as necessary to reduce the peaks and depressions thereof, and to produce a gently rolling surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area.
3. Vegetation shall be restored using sufficient soil and overburden and by appropriate seeding of grasses or planting of shrubs or trees in all parts of the mining area where such area is not submerged underwater.

K. Operations Existing Prior to Passage of this Ordinance:

All existing mining operations shall obtain a removal permit in conformance with the requirements of this Ordinance. To obtain a permit as required under this Ordinance, previously existing operations shall comply with all provisions of this Ordinance, except that in cases where excavations already exist which are closer to property lines or road rights-of-way than permitted in this Ordinance, such non-compliance will be permitted,

but the excavation may not be extended in any manner which would increase the existing non-compliance. All existing operations shall provide the same information required in Section 601.8 of this Ordinance but will not be subject to Planning Commission review for special land use approval.

L. Unreclaimed Mining Sites, Bond Required:

1. It is understood that there may exist within the Township mining sites that have been disturbed but are not currently being operated and that are not protected by a performance bond, reclamation bond, or reserves bond. All such mining sites are hereby declared to be a nuisance, per se, until such time as they are covered by one of the following:
 - a. A mining permit, reclamation plan, and performance bond, or
 - b. A reclamation plan and reclamation bond, or
 - c. A reserves survey and reserves bond.
2. The owner(s) of all unreclaimed mining sites shall be required to furnish a reclamation bond or a reserves bond to the Township in an amount determined by the township engineer to be reasonably necessary to return the site to a safe condition and one that can support one or more uses permitted in the underlying zoning district.

M. Performance Bond:

1. The Township Board shall, to ensure strict compliance with any regulations contained herein or required as a condition for the issuance of a permit for the removal of earth materials, require the operator to furnish a bond in the form of cash, an irrevocable bank letter of credit, or a surety bond acceptable in form and amount to the Lenox Township Board, executed by a reputable surety company authorized to do business in the State of Michigan. The amount of such bond shall be at least one thousand dollars (\$1,000.00) for each acre of land owned or leased by the operator and may be greater if deemed necessary by the Township Board to ensure compliance with this Ordinance. In fixing the amount of such bond, the probable cost of rehabilitation of the premises upon default of the operator, estimated expenses to compel the operator to comply with court orders, and any other relevant factors shall be considered. Excess cash funds, if any, shall be returned with interest to the depositor, upon completion of the rehabilitation of the premises.

The operator shall ensure that the surety company and/or the bank shall give the Township thirty (30) days' notice in writing, of any cancellation of a surety bond or letter of credit.

2. The owner and/or operator shall submit the performance bond for the first cell of operation to the Township. When application is submitted for the next cell the first cell's performance bond shall be converted to a cash bond and escrowed with the Township unless the restoration of the first cell is complete. A new performance bond for the next cell shall be submitted to the Township before a permit is issued to begin mining the next cell.

N. Insurance Requirements:

Insurance shall be a precondition to the commencement of operations, and maintenance in full force and effect of insurance shall be a precondition to the right to continue operations. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried by an insurance company licensed to do business in the State of Michigan during all times that 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. This insurance shall be carried in amounts no less than one million dollars (\$1,000,000.00) for personal injury, and not less than one million dollars (\$1,000,000.00) for injury and damage to more than one person's property arising out of a single occurrence. This insurance shall cover injury or damage occurring upon the site of the operation, as well as injuries occurring upon adjoining property as the result of conditions or activities conducted upon the subject property. The Township shall be named as an additional insured and the Township must receive a copy of the policy and/or the binder when it is issued.

Section 601.5 – Dumping of Earth Materials or Other Materials

A. Dumping Restriction:

No earth materials or other material of any sort shall be dumped or otherwise deposited on any property within Lenox Township except in conformance with a valid permit for a landfill issued by the Lenox Township Board. Nothing in this section shall prevent a person from improving their property by the application of topsoil, peat, or similar earth material when used as a soil conditioner or supplement.

Section 601.6 – Excavations or Holes

The existence within the limits of Lenox Township of any unprotected, unbarricaded, open or

dangerous excavations, holes, pits, or wells which constitute a hazard to the public health, safety, or welfare, is hereby prohibited, and such excavations, holes, pits, or wells are hereby declared a public nuisance. However, the provisions of this Article shall not prevent excavations for which a permit has been issued pursuant to the provisions of this Ordinance or the Building Code of Lenox Township where such excavations are properly protected, and provided further, that this section shall not apply to drains created or existing by authority of the State of Michigan, Macomb County, Lenox Township, or by other governmental agencies.

When the Ordinance Enforcing Officer shall determine a nuisance to exist as herein defined, he shall notify the owner or the lessee as shown on the latest tax rolls in writing of such finding and require the owner or lessee to abate such nuisance within a reasonable time, in no event more than thirty (30) days.

Section 601.7 – Drainage and Erosion Control

Existing drainage patterns shall not be altered to result in flooding and/or interruption of the flow of surface water to or across any adjacent or surrounding properties. All operations involving the moving or removal of earth materials shall comply fully with Act 347 of the Michigan Public Acts of 1972 (Soil Erosion and Sedimentation Control Act).

Section 601.8 – Inspections

A. Enforcement Officer:

The Ordinance Enforcement Officer or his/her designate or agent shall be responsible for inspections under this ordinance and shall at all reasonable times have the right to peaceably enter upon the mining property for the purpose of conducting inspections to ensure compliance with this Ordinance, and with all other applicable law, ordinances and/or regulations the Township is authorized to enforce. Any refusal to permit such inspection shall be deemed a violation of this Ordinance and shall be cause for a summary proceeding to suspend and/or revoke the license issued pursuant hereto pending such inspections. In addition to discretionary inspections, the Ordinance Enforcement Officer shall make regular inspections during operations and reclamation with such frequency as shall be necessary to ensure and monitor compliance under all the circumstances, and further, shall utilize the services of such experts as the Township Board shall authorize for such purpose. The Ordinance Enforcement Officer shall make annual reports to the Township Board concerning compliance with this Ordinance.

B. Noncompliance, Notice, Hearing, Suspension, or Revocation:

1. Should the Ordinance Enforcement Officer, discover any non-compliance with the terms and conditions of this Ordinance and/or the licensure permit issued hereunder, and/or with any other applicable law, ordinance, or regulation, the Ordinance Enforcement Officer shall prepare a notice of this fact detailing the violations, shall send copies of same to the licensee and to the Township Board. Within fifteen (15) days following such notice, the licensee shall advise the Township, in writing, whether it concurs that a violation exists; and, if it is agreed that a violation does exist, the licensee shall take steps to remedy the violation. If the licensee does not agree, it shall, within the same period, state the reasons for such lack of agreement.
2. The licensee shall correct any and all violations forthwith, and in all events in a period not to exceed sixty (60) days from the date of the violation notice unless, due to circumstances beyond licensee's control, completion of the corrective measures are not possible within such period, in which event the licensee may, upon approval of the Township Board, and if sought within the sixty (60) day period, be granted reasonable additional time within which to make the correction.
3. In the event of a dispute with respect to the existence of a violation, the Township Board shall set a reasonable time for a hearing, and shall notify the licensee of the time, date, and place of the hearing. After a review of the reasons stated by the licensee for its position that no violation exists, the Township may, in its discretion, include in the notice of hearing, responsive allegations with respect to the claimed violation.
4. In the event the licensee has concurred that a violation exists but has not remedied the same in a timely manner as provided for herein, a notice of violation shall be sent, and a hearing thereon established utilizing the same form and procedure as set forth above with respect to the notice and hearing on a violation.
5. At the Township Board meeting, the matter of the disputed violation of the failure to timely cure a violation shall be considered, which consideration may be adjourned from time to time. Such consideration shall include a hearing conducted at the meeting or meetings and shall further include the opportunity of the licensee to appear in person or by a duly authorized representative to present argument, witnesses, and other evidence on behalf and in the defense of the licensee, or in addition to or in lieu thereof, to file a written presentation prior to the commencement of the meeting. The licensee shall also be afforded the opportunity to examine individuals who have made statements or submitted other evidence supporting the existence of a violation or the failure to timely cure a violation, provided such examination shall be limited in scope to matters relating directly to the statements made and evidence supporting the existence of a violation or the failure to timely cure a violation. The Township Board shall ascertain whether the licensee made a reasonable effort to prevent the occurrence of the violation or to cure the same in a timely manner.

6. In the event the Township Board shall determine that a violation of this Ordinance exists, or that the licensee has failed to cure a violation in a timely manner, the Township Board is authorized to act in the following manner, taking into consideration whether the licensee made a reasonable effort to prevent the occurrence of a violation and/or cure the same in a timely manner.
 - a. If the violation constitutes the first uncured violation, and/or the first failure to cure a violation in a timely manner, and the same has not resulted in damage to person or property, the Board is authorized to suspend the license for a period of up to one (1) month.
 - b. If the license has previously had one (1) uncured violation and/or one (1) failure to cure a violation in a timely manner, and there is an additional uncured violation and/or failure to cure a violation in a timely manner, and/or if any violation or failure to cure a violation results in property damages, the Board is authorized to suspend the license for a period of up to three (3) months.
 - c. If the licensee is found to be in violation of this ordinance on a third occasion, and/or if the licensee is found to *have* failed to cure a violation in a timely manner for the third time, or any combination of these, and/or if there are violations and/or failure to cure in excess of three (3), and/or if a violation has resulted in personal injury of one (1) or more individuals, the Township Board may suspend the license for a period of up to one (1) year, or revoke the license permanently.
7. In the event the Township Board shall determine, in its discretion, that serious and irreparable harm and damage is likely to occur to a person or property, or that impairment or pollution of the environment is likely to occur, the Township Board may order an emergency summary suspension of the license, which shall become effective upon service of same upon the licensee. The Township Board shall, thereafter, as soon as is practical, conduct a hearing with the same notice and procedural standards set forth above for violation hearings, to determine whether:
 - a. To revoke the suspension order, or
 - b. To continue the suspension order for a fixed period, or
 - c. To revoke the license permanently.

8. The board shall state the reasons for its determination. If the licensee wishes to expedite the hearing procedure, the licensee may waive the advanced notice requirement and proceed immediately to a hearing.
9. Following the entry of a determination by the Township Board to suspend or revoke licensure, the institution of a lawsuit in the circuit court, or another court, shall not constitute a stay of the suspension or revocation.
10. The procedures and remedial action authorized under this section shall be in addition to, and not in lieu of, additional actions the Township may seek pursuant to other Township ordinances or laws of the State of Michigan.

Section 601.9 - Violation and Penalties

A. Penalties

Any person violating any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than five hundred (\$500.00) dollars or imprisonment for not more than ninety (90) days, or both such fine and such imprisonment, as determined by the Court, together with costs.

B. Separate Offense:

A separate offense shall be committed upon each calendar day during which a violation shall occur or continue.

C. Rights and Remedies:

The rights and remedies provided in this section are cumulative and in addition to such other remedies provided in this Ordinance, and/or in equity. The Township shall not be prohibited from pursuing any lawful remedy it may have to bring about compliance with this Ordinance.