

**LOWELL CHARTER TOWNSHIP
KENT COUNTY, MICHIGAN
ORDINANCE NO. 02-2019
FILL LICENSING ORDINANCE**

At a regular meeting of the Township Board for Lowell Charter Township held at the Township offices on September 16, 2019, beginning at 7:00 p.m., the following Ordinance was offered for adoption by Township Board Member _____, and was seconded by Township Board Member _____:

AN ORDINANCE TO ESTABLISH OPERATIONAL, MAINTENANCE, PERFORMANCE, AND RECLAMATION STANDARDS FOR FILL ACTIVITIES; TO PROVIDE FOR APPROVALS AND THE LICENSING THEREOF; AND TO ESTABLISH PENALTIES FOR VIOLATIONS OF THIS ORDINANCE

THE CHARTER TOWNSHIP OF LOWELL (“Township”) ORDAINS:

ARTICLE 1.-TITLE

This Ordinance shall be known and may be cited as the “Lowell Charter Township Fill Licensing Ordinance” and may elsewhere be referred to herein as “this Ordinance.”

ARTICLE 2.-INTENT AND PURPOSE

A. The purpose of this Ordinance is:

1. To regulate filling and stockpiling activities in order to avoid or mitigate negative impacts of changes to existing drainage patterns and land topography.
2. To monitor the amount and type of fill material brought into the Township or transferred between sites within the Township
3. To prevent the creation of hazardous conditions or nuisances from filling or stockpiling activities
4. To prevent conflict with the installation of future underground public utilities.
5. To facilitate the future development and uses of filled areas.
6. To prevent conflict with area residential uses.

B. This Ordinance is not intended to apply to lawful land uses and businesses such as landscaping, nurseries, excavating, concrete crushing or other uses or businesses which

temporarily and regularly stockpile fill material as defined herein, on the same property as the business.

C. The Ordinance is not intended to apply to activities involving wetlands as regulated by P.A. 451 of 1994 as amended, the Natural Resources and Environmental Protection Act.

D. This Ordinance shall not apply to mining operations approved as special land uses pursuant to the Lowell Charter Township Zoning Ordinance.

ARTICLE 3.-DEFINITIONS. For purposes of this Ordinance, the following definitions shall apply:

A. Acceptable Organic Materials: Wood chips, shredded or chopped bark, sawdust, or similar material.

B. Earth Materials; Soil, topsoil, clay, sand, gravel and rocks.

C. Fill Material: Acceptable organic or earth material as defined herein which are free from any hazardous substances and petroleum products and which do not contain any cinders, ashes, trash, sewage, refuse, soft or plastic clays, vegetable or plant matter or other similar organic matter such as food waste, trees, branches, or stumps. Fill material shall be capable of being compacted.

D. Fill Activity / Operation: Fill materials, as defined herein, being brought into a property from an off-site location and being placed, dumped, stockpiled, discarded or spread on that same property.

E. Person: Any natural person, corporation, firm, limited liability company, trust, association, business, partnership or any other entity.

ARTICLE 4.-GENERAL FILL REQUIREMENTS

Any fill activity as defined herein and any alteration, re-grading or movement of the existing grades on a parcel pursuant to such fill activity shall not disrupt or alter the existing natural drainage patterns on that parcel to the detriment of contiguous or nearby properties, wetlands, or bodies of water. As part of any such activity, the existing grade shall be maintained along any side and rear lot lines for a distance of 50 feet from all lot lines.

ARTICLE 5.-LICENSE REQUIRED

A. After the effective date of this Ordinance, no person shall (1) commence, expand or continue an existing fill operation, (2) lease, keep, maintain, or conduct a fill operation on any property in the Township, (3) expand an existing fill operation site or area, or (4) engage in any fill activity within the Township except in full compliance with this Ordinance and with a fill license issued under this Ordinance. A fill license issued pursuant to this Ordinance shall be nontransferable.

B. This Article shall also apply to all properties where filling or stockpiling is occurring or has occurred as of the date of adoption of this Ordinance. The owners of such properties shall apply for a fill license under this Ordinance within 90 days of the effective date of this Ordinance or such fill activities thereafter shall be deemed to be a violation of this Ordinance.

C. Existing fill operations which do not comply with the requirements of this Ordinance shall be required to meet the requirements of this Ordinance insofar as is reasonably practical as a condition of issuance of a fill license.

D. Regardless of all other regulations of this Ordinance, an applicant for a fill license under this Ordinance may be subject to a separate soil erosion and sedimentation control permit and/or a driveway permit issued by the Kent County Road Commission.

E. A fill license under this Ordinance is not required for the following fill activities:

1. Any fill activity for which the amount of fill material will involve or cover less than 20,000 square feet of land.
2. When the fill material is brought onto a property for which a Mineral Mining Special Use Permit has been issued and is regulated by the Lowell Charter Township Zoning Ordinance.
3. When the fill material is brought onto a site to complete a public improvement project being constructed on that site and which has been duly authorized by the appropriate public agency or agencies. For purposes of this Ordinance, a public improvement project shall be defined as a project funded with federal, state, and/or local monies such as public roads, utilities, public parks, public buildings or similar public projects.
4. The construction of a single-or two-family dwelling unit and associated driveway for which a permit has been issued by Lowell Charter Township or the Kent County Road Commission.
5. Construction for any use which is subject to site plan review and approval in accordance with the requirements of the Lowell Township Zoning Ordinance and where the site plan approval expressly addresses fill activities for the site.
6. Fill activity conducted in conjunction with bona fide farming operations in accordance with generally accepted agricultural management practices, including agricultural drainage work incidental to farming operations.

ARTICLE 6.-LICENSING PROCEDURE

A. An application for a fill license shall be filed with the Zoning Administrator, who shall provide the application form. The application shall include a fee and escrow amount as determined by resolution of the Township Board. In those instances where there will be only one operator of the filling operation, the application for a fill license may be made by the operator on behalf of the landowner (with the landowner co-signing the application form) or by the landowner.

B. When more than one operator will be filling in connection with a project, then application for a fill license shall be made by the landowner.

C. The Lowell Charter Township Planning Commission shall review and approve or deny all applications for fill activities which will cover or involve 20,000 square feet or more of land with fill material.

ARTICLE 7.-REVIEW BY PLANNING COMMISSION

The following information shall be provided to the Township for review by the Planning Commission:

A. Application. An application for a fill license shall contain all of the following information.

1. Name of all of the owner(s) of the land upon which fill operations will take place.
2. Name and address of the applicant(s).
3. Name and address of the person, firm or corporation who will be conducting the actual removal and/or processing operation.
4. Location, size, and legal description of the area to be filled including the permanent parcel number of the property where the fill activity will take place.
5. The nature of the proposed fill project, the type of fill material to be brought onto the site, an estimate of the number of cubic yards of materials involved, and the depth and composition of proposed fill materials.
6. A statement of the manner in which the project work is to be completed and the type of equipment to be used on site.
7. Estimated number of truck trips per day (A truck going in and coming out is two truck trips).
8. The proposed route which the applicant proposes to use over the public streets and over private property in transporting the fill materials.
9. The proposed hours and days of operation.
10. The time within which the project is to be commenced after the granting of the license and the time when it is to be completed.
11. The measures that will be taken by the applicant to control noise, vibration, dust and traffic, and the measures that will be provided during the project to prevent soil, dust, or other materials from being deposited on adjoining lands, public or private streets or in waterways through erosion by wind or water.
12. Any measures which the applicant proposes to take to ensure public safety especially the prevention of trespass by children or recreational vehicles on land where filling or stockpiling activities may create hazardous situations.
13. A description of the proposed use of the land following completion of all fill activities.
14. Proof of liability insurance with at least one million dollars of coverage.
15. If a soil erosion and sedimentation permit and/ or a driveway permit is required by the Kent County Road Commission, a copy shall be provided to the Township.
16. If a permit is required from the Michigan Department of Environment, Great Lakes and Energy, a copy shall be provided to the Township.

B. Site Plan. The applicant shall submit to the Township nine paper sets of the site plan and a digital version drawn at a scale not exceeding 1" = 100' if the site is less than 50 acres and 1" = 200' if the site is 50 acres or more. The plans shall be drawn and sealed by a registered or certified

civil engineer, surveyor or landscape architect. The site plan shall all of contain the following information unless waived or modified by the Planning Commission:

1. North arrow.
2. The dimensions of the lot and acreage.
3. The dimensions of the area to be filled, areas of stockpiled fill material, and proposed phasing and method of stabilization for each phase.
4. The location of all roads bordering or on the property.
5. The location of any power and gas lines on the property.
6. The location of any easements on the property.
7. Existing drainage patterns on the site and how these will be maintained
8. All natural features such as significant vegetation, bodies of water, wetlands, and streams on the site as well as within 500 feet of the site.
9. Existing and proposed contour elevations at two feet intervals on the site and 100 feet beyond the boundaries of the site.
10. A current aerial photograph, or other accurate drawing or plan, showing the lands included in the application, and all other parcels or lots with addresses within 1000 feet thereof, and also showing the location of and distance to dwellings and other existing land uses.
11. Zoning and property lines on adjacent parcels or lots.
12. Proposed fencing, screening and landscaping.
13. The outline and use of buildings, structures, or other improvements on the land to which the license is to apply, as well as any buildings, structures, and land uses within 500 feet of the property to which the license is to apply.
14. Proposed ingress and egress to the property.
15. A reclamation plan with final contours at two feet elevations minimum which shows that the property can be used for its intended end purpose as recommended in the Township Master Plan.
16. Such additional information as the Planning Commission may reasonably require to assist in reviewing the application.

C. Public Hearing. The Planning Commission shall conduct a preliminary review of the application materials and before making a final decision on a fill license application (or reapplication or renewal) pursuant to this Ordinance, the Planning Commission shall hold a formal public hearing. Notice of the time, date, place, and reason for the public hearing shall be published in the newspaper at least 15 days before the public hearing date. In addition, the same notice of public hearing shall be mailed to both the applicant and the owners of all properties located within 300 feet of the lot or parcel for which the application applies (addressed to the owners as shown on the most recent property tax records for the Township).

D. Planning Commission Decision. Following the public hearing, the Planning Commission may approve, deny, modify, or approve with conditions, the application. In its review of the application, the Planning Commission shall consider, among other matters, the intent and purposes of this Ordinance and the approval standards in Article 9 of this Ordinance. If the proposed fill operation will be in compliance with the requirements of this Ordinance, the Planning Commission shall approve the application and issue a fill license. If the proposed fill operation fails to meet the requirements of this Ordinance, the Planning Commission shall notify the applicant in writing of the reasons for denial.

E. An approval granted by the Planning Commission (also called a “fill license”) shall be valid for a period of one year beginning on the date of approval of the application by the Planning Commission and all fill operations and reclamation shall be completed within one year, unless the Planning Commission requires completion of the fill operation within a shorter period of time. The Planning Commission may also allow the fill activity to extend beyond the one year license period upon evidence from the owner or operator that additional time is needed to complete the fill activity and reclamation plan because circumstances beyond the applicant’s control resulted in the additional time needed for completion or that the time needed to complete the operation is of a very short additional time duration and continued fill operations will not negatively impact adjacent properties.

ARTICLE 8.-CONDITIONS OF LICENSE

A. Upon the issuance or renewal of a fill 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 fill operation to lessen the impact of the fill operation on nearby properties and occupants and to ensure that the fill operations will not create a nuisance or unreasonably interfere with the enjoyment of life or property. Such fill license conditions may be in addition to the express requirements of this Ordinance.

B. The Planning Commission may require the posting of monetary security with the Township pursuant to an approved fill license. Such monetary security shall be in the form of a surety bond, cash or irrevocable letter of credit, of the type, amount and details as required by the Township. Such monetary security may be used by the Township to ensure that the applicant and land owner fully comply with all of the requirements of this Ordinance and also the fill license, including, but not limited to, fulfilling all reclamation requirements in a timely fashion.

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

ARTICLE 9.-STANDARDS FOR APPROVAL

The following standards shall serve as the basis for decisions involving fill licenses. The Planning Commission not issue a fill license unless it finds all of the following:

A. That the proposed fill activity and reclaimed area shall not interfere with existing drainage patterns so as to cause a negative impact on adjacent properties.

B. That the proposed fill activity and reclaimed area will not have a negative impact on existing nearby natural features such as wetlands, streams, ponds or other bodies of water.

C. That the operation shall not result in hazardous traffic situations from vehicles entering or leaving the site.

D. That the proposed method of fill will result in the filled area being readied for building placement or other site improvements without the need for excessive or expensive measures such as removing the fill to permit site development.

E. That the proposed operation and reclamation will be carried out in a manner which will not be detrimental to nearby persons or property by reason of excessive production of traffic, noise, dust, fumes or odors.

F. That the fill material is not hazardous, toxic or otherwise a threat to the public health, safety, and general welfare, and complies with the type of fill permitted by this Ordinance.

G. That the restored elevation of the land and reclaimed area will be compatible with elevations on adjacent properties.

ARTICLE 10.-OPERATION REQUIREMENTS

Every person to whom a fill license is granted shall comply with all of the following.

A. Topsoil. The topsoil for the area to be filled shall first be removed before any fill is brought to the site. If stockpiled on site, the topsoil pile shall be no higher than 20 feet and shall also comply with Subsection G, below. This topsoil shall be kept on site and used for site restoration.

B. Hours of Operation. The hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday only. No operations or activities shall occur on Saturdays, Sundays or legal holidays. No fill related activity of any kind shall occur outside of these hours of operation.

C. Noise.

1. Equipment and vehicles used to conduct the fill activity shall not emit any noise louder than 70 dBA when measured at the nearest dwelling or occupied building on a lot or parcel other than where the fill operation is occurring.

2. Fill activity sites shall not (a) be unreasonably loud, or (b) be operated in such a fashion that the noises of operation or equipment or vehicle vibration cannot reasonably be considered disturbing to neighboring uses, users, or occupants of land. Objectionable noises due to tailgate slamming, beat, frequency, or shrillness shall be muffled so as not to become a nuisance to the owners or occupants of adjoining properties.

D. Road Access; Drives All sites licensed under this Ordinance shall have direct frontage on a county public road having a minimum right-of-way width of 66 feet. When the operation of a licensed fill activity results in fill material being deposited or spilled upon the public roadway, it shall be the responsibility of the licensed operator to remove all such material immediately.

E. Gate. The entrance or entrances to the site shall each have a gate which shall be located so that there is room on the site and outside the public roadway to accommodate all vehicles waiting outside the gate. Gates shall be closed and locked when fill operations are not actively occurring. The entrance gate shall be posted with the name and current telephone number of the fill operator.

F. Dust Control. 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 internal roads. Such maintenance shall be accomplished through the application of chloride, water and/or similar dust retardant material. Application of oil shall be prohibited.

G. Drainage. Proper drainage shall be provided at all times to prevent the collection and stagnation of water. Surface water shall at all times be directed in such a manner so as not to interfere with the owner or user of adjoining properties; provided, however, that the maintenance of the natural flow of surface water shall not be deemed to be an interference

H. Setbacks. The following setbacks shall apply, although the Planning Commission may require a greater setback distance in order to minimize the negative impacts of the fill operation on adjoining properties.

1. All fill activities (including stockpiling) shall be setback a minimum of 150 feet from all lot lines. The Planning Commission may reduce this distance if evidence is presented by the applicant that a lesser setback is needed to achieve compatibility with the grades on adjacent property. Fill activities may also be located closer than 150 feet to a lot line if the adjoining parcel has also been issued a fill license under this Ordinance.

2. Filling and stockpiling shall not occur within 100 feet of the banks of any lake, wetland, stream or waterway.

I. Final Grades. The restored elevation of the land shall be compatible with the surrounding area and the land shall be left in a condition suitable for subsequent development for uses permitted in the zoning district in which the land is zoned by the Lowell Township Zoning Ordinance. In no case shall the final grade on any portion of the site exceed 4:1 (four to one – four feet horizontal for every one foot vertical or rise) and all areas shall be reclaimed with at least 4 inches of top soil and vegetation in the manner set forth in this Ordinance.

J. Phasing and Reclamation. Fill material which is deposited or stockpiled on site shall not cover an area greater than one-half acre as measured on the outside boundaries of the area covered. Once this limit is reached, the fill material shall be spread in conformance with the reclamation plan and stabilized with ground cover by the applicant to prevent erosion by wind and water.

ARTICLE 11.-TERMINATION AND RECLAMATION

Upon the termination of a fill operation, 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 plan, the fill license, and this Ordinance. Reclamation shall occur in full compliance with the fill license and also the reclamation plan as 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. The owner of the land shall reimburse the Township for all costs and expenses incurred by the Township in reclaiming the property.

ARTICLE 12.-STOP WORK ORDERS; ENFORCEMENT; INTERPRETATION

A. Should any question or issues arise regarding the application or interpretation of this Ordinance, the Zoning Administrator may make a binding interpretation/determination regarding the same. If the licensee or landowner disagrees with the interpretation/determination by the Zoning Administrator, the licensee/landowner may appeal that determination/interpretation by filing a written appeal with the Township within 21 days of the date of the Zoning Administrator's interpretation/determination. Thereafter, a hearing on the appeal shall be held by the Planning Commission pursuant to Article 7, Subsection C of this Ordinance. The Planning Commission shall decide the appeal.

B. Upon written notice from the Zoning Administrator to the licensee or landowner that any use or activity on the property involved where the fill permit is occurring in a fashion contrary to this Ordinance or the fill license, such work or use shall immediately cease. Such written notice shall constitute a stop work order. The stop work order shall be in writing, shall be posted on the property involved and shall be sent by First Class United States mail to the owner of the property involved at the owner's last known address as shown in the current Township tax assessment roll. Should operations continue on the property after the stop work order has been issued, that shall also constitute a violation of this Ordinance. Any party aggrieved by such stop work order may file a written appeal within 21 days of the date of the stop work order with the Township. The appeal shall be heard by the Planning Commission, which shall hold a public hearing as specified in Article 7, Subsection C of this Ordinance.

C. Pursuant to a timely appeal under Subsections A or B, above, the Planning Commission shall hold a public hearing on the appeal and shall determine the appeal. The public hearing shall be conducted as specified in Article 7, Subsection C of this Ordinance. The Planning Commission shall have the authority to uphold the Zoning Administrator, uphold the Zoning Administrator with additional conditions or overturn the Zoning Administrator's decision.

D. Any appeal or enforcement action pursuant to this Article shall not preclude the Township from pursuing any other remedy or enforcement action allowed by this Ordinance or by law or equity.

E. The Planning Commission may revoke a fill license at any time after a hearing is held pursuant to Article 7, Subsection C of this Ordinance.

ARTICLE 13.-INSPECTIONS

A. The Township Engineer (or such other expert as is designated by the Township Board) shall have the right to inspect any fill activity site to ensure compliance with this Ordinance and the fill license. Such expert shall file a report with the Planning Commission and Zoning Administrator regarding the same. Such inspection and report by the Township Engineer (or such other expert

as may be designated by the Township Board) shall be paid for by the holder of the license issued under this Ordinance and the license.

B. Additionally, the Zoning Administrator shall also have the right to inspect any fill operation at any time to ensure compliance with this Ordinance and the fill license.

ARTICLE 14.-RENEWAL OF A LICENSE

Any fill license authorized by this Ordinance is granted for a period of one year (unless a shorter time period is approved by the Planning Commission) and may be renewed in the discretion of the Planning Commission for an additional one year time period. Such renewal shall be subject to all of the following terms and requirements:

A. The applicant or operator shall file with the Township a complete application for renewal of the fill license prior to the expiration of the use, or prior to the expiration of any annual or other time increment in which fill operations are allowed under the terms of the approval.

B. Prior to consideration of an application for renewal, the Township Engineer (or other designated Township official) shall inspect the land involved to determine ordinance and license compliance for the fill activities to date and shall submit a report to the Planning Commission.

C. Upon receiving the completed application for renewal, including the report of the Township Engineer, the Planning Commission shall approve, disapprove or approve with conditions the requested renewal. All payments to the Township of any required escrow or administration fee shall be paid in full as a condition of renewal.

D. In determining whether to approve a renewal of the fill license, the Planning Commission shall apply the standards and conditions for approval that are then in effect and that are applicable to an original application under this Ordinance, taking into consideration current land use conditions in the vicinity, the operational history of the use and any complaints, comments or other information that have been received concerning the uses and operations thereunder and the report of the Township Engineer.

E. The consideration of any such renewal shall take place at a public hearing with public notice given in the same manner and to the same extent as that required for the original granting of a fill license.

F. In approving a renewal of the fill license, the Planning Commission may include terms and conditions which are in addition to or different from those specified in the original fill license approval.

G. Except as otherwise expressly provided in this Ordinance, the procedures and standards utilized for the renewal of a fill license shall be the same as are applicable for a new fill license pursuant to this Ordinance.

ARTICLE 15.-VIOLATIONS; PENALTIES

A. Any violation of this Ordinance (or of a fill license issued pursuant to this Ordinance) shall constitute a municipal civil infraction. Any person, firm, or corporation who violates any provision

of this Ordinance or of a fill 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 not be less than \$100 nor more than \$500 for the first offense and not less than \$250 nor more than \$2,500 for subsequent offenses, in the discretion of the District Court, and in addition to all of the costs, damages, and expenses, including reasonable attorneys' fees and costs, incurred by the Township by reason of the violation, as provided by law.

B. 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 12 months of a prior municipal civil infraction for which the person, firm, or corporation admitted responsibility or was determined to be responsible, and for which the person, firm, or corporation admits responsibility or is 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.

C. Any violation of this Ordinance shall also constitute a nuisance per se. 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.

D. Any violation of a fill license or a stop work order shall also be deemed to be a violation of this Ordinance.

E. The civil fines, costs, assessments, damages and/or expenses imposed against a person found responsible for violating this Ordinance shall be paid to the Township immediately upon entry of the court order. If the civil fines, costs, assessments, damages and/or expenses are not paid to the Township within 30 days, the Township may file a lien against the land, building, or structure involved in the violation by recording a copy of the court order requiring payment of the fines, costs, assessment, damages and/or expenses with the Kent County Register of Deeds records. The lien may be enforced and discharged by the Township in the manner prescribed by the General Property Tax Act.

ARTICLE 16.-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 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.

ARTICLE 17.-EFFECTIVE DATE This Ordinance shall take effect upon the expiration of 7 days after publication.

The vote to adopt this Ordinance was as follows:

YEAS: _____

NAYS: _____

ABSENT/ABSTAIN: _____

ORDINANCE DECLARED ADOPTED.

CERTIFICATION

I hereby certify that the above is a true copy of the Ordinance adopted at the time, date, and place specified above pursuant to the required statutory procedures.

Monica Burt, Clerk
Lowell Charter Township