

# **Charter Township of Orion**

## **Ordinance No. 99**

### **Earth Balancing & Excavation**

Adopted December 16, 1991

#### **AMENDED**

August 15, 1994

December 20, 1999 - Fees (Ord. 41)

April 20, 2015 (99-2)

**AN ORDINANCE TO REGULATE THE REMOVAL OF TOPSOIL, SUBSOIL, SAND, GRAVEL, AND OTHER MATERIALS, AND THE MOVING AND FILLING OF LAND; TO AUTHORIZE THE ISSUANCE OF PERMITS FOR EARTH EXCAVATING AND/OR FILLING; TO PROVIDE PERFORMANCE STANDARDS; TO PROVIDE FOR ENFORCEMENT AND FOR PENALTIES FOR THE VIOLATION OF ITS PROVISIONS; AND TO REPEAL ORDINANCE NO. 40 AND ALL PORTIONS OF OTHER ORDINANCES THAT ARE INCONSISTENT WITH THIS ORDINANCE.**

**Section 1 – Title**

This Ordinance shall be known and may be cited as the Orion Charter Township "**Earth Balancing and Excavation**" Ordinance, and it shall be deemed sufficient in any action for the enforcement of the provisions hereof to define the same by such short title and by reference to the number hereof.

**Section 2 – Purpose**

The purpose of this Ordinance shall be:

- A. to further secure and protect the general welfare and safety of the citizens and other persons within the Charter Township of Orion;
- B. to regulate the removal of topsoil, subsoil, sand, gravel, and other materials, and the moving and filling of land;
- C. to authorize the issuance of permits for earth excavation and/or filling; to provide performance standards;
- D. to provide for enforcement and for penalties for the violation of its provisions;
- E. to repeal Ordinance No. 40 and all portions of other ordinances that are inconsistent with this Ordinance.

**Section 3 – Definitions**

- A. BOARD OF APPEALS means the Orion Township Zoning Board of Appeals.
- B. EARTH BALANCING means the moving, grading, or leveling of earth or rock materials.
- C. FILLING means the depositing of sand, gravel or earth and/or construction debris, or other material, not originating on the property upon which it is to be deposited for the purpose of raising the elevation of the property or any part thereof or filling depressions, holes, swales or sloughs. *(added 04.20.15)*
- D. GROUNDWATER means any water found under the surface of the earth.
- E. PERSON means any individual, partnership, corporation, or association.
- F. PROCESSING shall mean any alteration in any manner of gravel, clay, sand, soil, earth, fill, or similar materials.
- G. SOIL EXCAVATION means the excavation or removal of any kind or nature from a site of gravel, clay, sand, soil, or similar materials.
- H. SUITABLE FILL MATERIAL means clean, natural earth materials (compactible), containing no more than five percent (5%) broken concrete. With the exception of the broken concrete, the fill shall be free of foreign matter such as brick, crockery, and other inert solid wastes, as well as other refuse or rubbish. All fill materials shall be free of chemical contamination.
- I. SURFACE WATERS means water occurring generally on the surface of the earth.
- J. LEGITIMATE COMPLAINT as determined by the Building Official or his designee, a legitimate complaint is a complaint supported by competent evidence which can be verified by the Building Department under the circumstances. *(added 04.20.15)*

K. BUILDING OFFICIAL DESIGNEE shall include all Code Enforcement Officers and Township Engineers. *(added 04.20.15)*

#### **Section 4 – Permits, Procedures**

- A. Permit Required - From and after the effective date of this Ordinance, no person shall operate a soil excavation site, or perform earth balancing or filling operations on any property in Orion Township, except in accordance with a permit issued by the Board of Appeals, pursuant to the authority of this Ordinance. No permit shall be required for *(amended 04.20.15)*:
1. Excavations for the construction of buildings and structures for which a building permit has been issued;
  2. The moving, grading, or leveling of earth or rock materials by a property owner solely upon his property where the allowable balancing shall be fifty (50) cubic yards per half acre and not to exceed one hundred (100) cubic yards. This fill should be placed so it will not exceed a minimum slope ratio of four (4) feet horizontal to one (1) foot vertical from any adjacent property owner and not block any natural drainage course;
  3. The filling of land for purposes of construction or land balancing where the land is low and in need of fill, so long as the fill does not contain any refuse, is not a commercial operation, and not more than one hundred (100) cubic yards of fill are deposited in any calendar year;
  4. The removal of soil when no more than twenty (20) cubic yards are removed in any calendar year.
- B. Authority of Board of Appeals - The Board of Appeals shall receive applications, hold public hearings, grant or deny permits, and do all other acts authorized herein.
- C. Referral to Planning Commission - Before granting a new permit under this Ordinance, the Board of Appeals shall refer the application to the Township Planning Commission for findings and recommendations, except that a permit for earth balancing by a property owner solely upon his property need not be referred to the Planning Commission.
- D. Public Hearing and Granting of Permits - After receiving the report of the Planning Commission, the Board of Appeals shall hold a public hearing, and after considering all available facts and details, the Board of Appeals may issue a permit to expire on May 15 of the following year, which is renewable annually by the Board of Appeals without further public hearing. The Board of Appeals shall authorize the issuance of a permit, only if it finds that the granting of said permit will:
1. Not be injurious to the public health, safety, and welfare of the Township and its residents;
  2. Be in compliance with all the requirements and standards of this Ordinance, and the other applicable Township Ordinances, standards, and regulations;
  3. Not create an unreasonable hazard, annoyance, or inconvenience to the owners or occupants of nearby property;
  4. Not create any significant obstacle to the implementation of the plan for Township development as evidenced by the Zoning Ordinance and the Master Plan of the Township.

The Board of Appeals may attach such conditions to the granting of the permit as it finds necessary to ensure that the intent and purpose of this Ordinance is fulfilled. Any violation of a condition(s) included in the permit shall be construed as a violation of this Ordinance and shall be grounds for revoking the permit.

Where a permit is required due to the volume of cubic yards to be disturbed, yet a minimum impact is apparent, an administrative review performed by the Building Official will be allowed to prevent unnecessary and costly information from being submitted. A minimum administrative review fee of One Hundred Twenty-Five Dollars (\$125) will be charged to the applicant.

**Section 5 – Applications**

An applicant for an excavation or filling permit shall pay such fees and/or costs as are required by resolution of the Township Board and shall submit to the Board of Appeals an application containing the following information, except an applicant for a permit for earth balancing by a property owner solely upon his property need only comply with Subsections A, B, C, I and J of this section. *(amended 04.20.15)*

- A. A legal description of the premises wherein the operations are proposed.
- B. Names and addresses of all parties having an interest in said premises setting forth their legal interest. Proof of legal interest shall be provided. Any person with any ownership interest in the property, when differing from the applicant, must also sign the application as a co-applicant to ensure their responsibility for activity upon their property.
- C. Topographical survey map at a scale of 1 inch to 100 feet or 1 inch to 50 feet, as may be required by the Board of Appeals, showing existing and proposed final grades on a two-foot contour interval. Grades shall be prepared and sealed by a civil engineer registered as a professional engineer in the State of Michigan or land surveyor registered as a professional surveyor in the State of Michigan.

The required topographical map shall be complemented with a one hundred (100) foot minimum grid which is consecutively numbered. The applicant shall identify the grids intended for various activities such as excavation and restoration. If it is deemed by the Board of Appeals that a one hundred (100) foot grid is unnecessary, the requirements may be waived. *(amended 04.20.15)*

If the applicant is re-applying on a yearly basis to continue an on-going excavation project, the applicant may use the same topographical survey map up to a maximum of eight (8) years with any additional topographical survey to be submitted at the discretion of the Board of Appeals. Unless the final proposed grades and site use changes, the applicant need only submit one (1) final grading plan for the duration of their operation. *(amended 04.20.15)*

- D. An estimate by a civil engineer registered as a professional engineer in the State of Michigan or land surveyor registered as a professional surveyor in the State of Michigan as to the cubic yards of material to be removed and/or placed, and a detailed statement as to how the filling and/or removal is to be accomplished.
- E. A statement as to all types of materials to be removed and/or placed, and indication of specific places on the property where each of the materials or fill are to be removed or placed, a detailed statement as to the methods of operation, the type of machinery or equipment to be used, and the estimated period of time that such operations shall cover.
- F. Details of similar operations carried on by the applicant, if any.
- G. The type and daily number of vehicles to be used in the proposed operations.
- H. Identification of access roads; on-site roads; grades for proper drainage and any special draining devices, if necessary; fencing; any structures on site, existing or proposed; existing and proposed utilities; and an explanation of any on-site testing or other survey data, including soil surveys, water tables, and sub-surface characteristics.
- I. A statement which specifies in detail the proposed use of the land after the excavation or filling. The final grades presented shall be consistent with the purposes for use of the property after completion of operation.
- J. A specific acknowledgement, after the applicant and property owners have granted a license to Township officials and employees to enter onto the licensed property for the purpose of inspections and to bring the property into compliance with the provisions of the Ordinance, if necessary. Unless covered by the permit application fee, any inspection or additional inspection, testing or investigation, will be completed at the expense of the permittee/applicant; including any and all expenses or costs of the Township and/or Township Engineers. The permittee shall reimburse the Township for all inspection costs within seven (7) days of receiving a detailed invoice from the Township. *(amended 04.20.15)*
- K. Such other information and material as the Board of Appeals may require.

**Section 6 – Bonds and Insurance**

- A. Bonds - The applicant shall post a surety bond or some other security satisfactory to the Board of Appeals, naming the Township of Orion as the Beneficiary thereof, in an amount determined by the Board of Appeals to be reasonably necessary to ensure compliance hereunder. In no case will the sum of the surety bond be less than Five Hundred Dollars (\$500) for each acre or fraction thereof of land to be covered by the permit. Every applicant for a filling operation permit must also post an escrow in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) to cover any costs of inspections or tests conducted in accordance with this Ordinance. Every bond shall guarantee compliance with this Ordinance, the permit requirements and conditions, and that the operation will be carried out according to the approved plans and specifications. *(amended 04.20.15)*

Upon failure of a licensee to fulfill any of the conditions of the bond, the Township may use the proceeds of the bond to go upon the licensee's premises and perform any acts necessary to produce compliance. By filling out an application, every applicant shall be deemed to have granted a license to the Township officials and employees to enter onto the licensed property for the purpose of inspections and bringing such property into compliance with the provisions of the Ordinance.

In fixing the amount of such surety bond, the Board of Appeals shall take into account the size and scope of the proposed operation, current prevailing costs of rehabilitating the premises, and other conditions and factors as might be relevant. The applicant shall notify the bonding company and provide proof thereof that the Township be notified in the event of any lapse in the effectiveness of the bond.

For each acre restored and reclaimed in accordance herewith, or otherwise, a bond may be proportionately reduced as determined by the Board of Appeals.

- B. Insurance - The applicant shall secure and file with the Township Clerk certificates of insurance, insuring the applicant, his employees and/or agents or representatives, and the Township for general comprehensive liability in an amount of at least One Million Dollars (\$1,000,000) per person per occurrence. The certifications or renewals thereof shall provide that the Township shall be notified upon discontinuance or alteration of any such insurance coverage for any reason. *(amended 04.20.15)*

**Section 7 – Performance Standards**

No soil excavation or removal, and no filling of land, is permitted within the Township unless the following standards are complied with:

- A. Sound - The pressure level of sounds shall not exceed the following decibel levels when adjacent to the following types of uses:

Sound Level	Adjacent Use	Where Measured
75dBA	Residential	Common Property Line
85dBA	Commercial	Common Property Line
90dBA	Industrial & Other	Common Property Line

The sound levels shall be measured using A-weighted decibel measurements (reference to 20 micropascals) and with a type of audio output meter approved by the U.S. Bureau of Standards. Objectionable noises due to intermittence, beat, frequency, or shrillness, shall be muffled so as not to become a nuisance to adjacent uses.

- B. 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 lot line of its source.
- C. Odors - The emission of noxious, odorous matter in such quantities as to be readily detectable at any point along property lines, when diluted in the ratio of one (1) volume of odorous air to four (4) or more volumes of clean air, or as to produce a public nuisance or hazard beyond property lines, is prohibited.

- D. Gases - The escape of, or emission of, any gas in concentration so as to be injurious, destructive, or explosive shall not be allowed.
- E. Glare or Heat - Any operation producing intense glare or heat shall be performed within an enclosure so as to completely obscure and shield such operation from direct view from any point along the property line, except during the period of construction of the facilities to be used and occupied.
- F. Light - All lighting used to illuminate buildings, signs, and/or parking areas shall conform to the BOCA Code. Such lighting shall be arranged or shielded so as to direct light away from adjoining properties. The lighting source shall not be directly visible from the adjoining property.
- G. Smoke, Dust, Dirt and Ash Fly - There shall be no discharge into the atmosphere from any single source of emission or any air contaminate for a period or periods aggregating more than four (4) minutes in any one-half (1/2) hour which is:
1. As dark or darker in shade as that designated as No. 2 on the Ringelmann Chart as published by the United States Bureau of Mines. The Umbrascopes readings of smoke densities may be used when correlated with the Ringelmann Chart. A Ringelmann Chart shall be on file in the office of the Building Department.
  2. Of such opacity as to obscure an observer's view to a degree equal to or greater than the smoke described in (1) above, except when the emission consists only of water vapor. The quantity of gas borne or air borne solids shall not exceed 0.20 grains per cubic foot of the carrying medium at a temperature of 500 degrees Fahrenheit.
- H. Drifted and Blown Material - There shall be no drifting or airborne transmission beyond the property line of dust, particles, or debris from any open stockpile.
- I. Radioactive Materials - Radioactive materials shall not be emitted to exceed safe quantities.
- J. Hours of Operation - Hours of operation shall be 7:00 a.m. to 5:00 p.m. unless otherwise specified by the Board of Appeals. No operation shall be permitted on Sundays and legal holidays. In emergency situations, this time period may be modified by the Township Building Department, provided such emergency shall not be effective for more than 72 hours.
- K. Drainage - Natural drainage shall not be blocked or diverted in such a manner as to cause the natural water flow to back up onto adjacent property, or to flow in a different course upon leaving the property upon which the blocking or diversion occurs, unless an application is made and a permit is issued by the Building Department, pursuant to plans which provide for a drainage flow which will not be detrimental to surrounding properties.
- L. Mud, Dirt, Clay on Public Roads - The permit holder shall take whatever steps are necessary to prevent any motor vehicle from carrying onto any public right-of-way any mud, dirt, clay, or refuse. If mud, dirt, clay, or refuse is carried or tracked onto a public right-of-way, the permit holder shall clean the right-of-way when and as often as is necessary. In any case, a permit holder shall not leave any such debris on a public right-of-way after the end of a working day. If notified during a working day by the Township that cleaning is required, it shall be accomplished within one (1) hour, weather permitting, of the giving of such notice.

### **Section 8 – Requirements: Soil Excavation and Removal**

- A. Setbacks - No cut or excavation shall be closer than one hundred (100) feet from the nearest street, highway, or alley right-of-way line, nor from the nearest perimeter property line; provided, however, that the Board of Appeals may prescribe greater setbacks if it determines it necessary in order to give sub-lateral support to surrounding property; provided further that the Board of Appeals may prescribe lesser setbacks near a property line, if it is determined that sub-lateral support to surrounding property is not necessary.
- B. Standing Water - No soil, sand, gravel or other similar material shall be removed in such a manner as to cause water to stand or accumulate, or to result in a place of danger or a menace to the public health or safety. The premises shall at all times be graded so that surface water drainage is not interfered with. Where removal or grading operations result in a body of water forming, the permit holder shall erect "KEEP OUT - DANGER" signs on the required fence around the excavation not more than two hundred (200) feet apart, or as otherwise required by the Board of Appeals.

- C. Fence - A fence, or some other suitable substitute, as shall be approved by the Board of Appeals, not to exceed six (6) feet in height, may be required to enclose the excavation, results in a place of danger or a menace to the public health or safety, and to prevent access by unauthorized persons.
- D. Roads - All private roads used for ingress or egress located within four hundred (400) feet of occupied residences shall be kept dust free by oiling or chemical treatment or by hard-topping with cement or bituminous substance. The first seventy-five (75) feet of the property entrance shall be paved in asphalt or cement and a mud mat shall be installed and maintained at the exit of the property. *(amended 04.20.15)*
- E. Topsoil Replacement - Whenever topsoil exists, suitable for growing turf or for other land use, at the time the operations begin, a sufficient quantity of the existing topsoil shall be stockpiled on said site so that the entire site, when stripping or removal operations are completed, may be re-covered with a minimum of four (4) inches of topsoil. The replacement of such topsoil shall be made immediately following the termination of the stripping or removal operation. In the event that such stripping or removal operations continue over a period of time greater than thirty (30) days, the operator shall replace the stored topsoil over the stripped area as he progresses. The replacement of the topsoil shall be in a manner suitable for growing turf or other vegetation.
- F. Processing - Processing of materials mined from any property shall be permitted only in an LI-2 (Limited Industrial 2) zoned district.
- G. Slopes - The slopes of the banks of any excavation shall not exceed a minimum ratio of three (3) feet horizontal to one (1) foot vertical except in the immediate area of excavation and this area shall be paralleled by approved construction fencing as required in Paragraph C. In addition, where ponded water results from the operation, the slope must be maintained and extended into the water to a depth of five (5) feet. Vegetation sufficient to prevent erosion shall be placed on all finished slopes.
- H. Ordinance Applicability - Upon the adoption of the 2015 amendments to this Ordinance the amendments will take effect immediately and apply to all pending applications and/or permits being considered by the Board of Appeals. All of the requirements of this Ordinance and its amendments shall apply to and be in effect immediately as to new mining operations, or for new areas of existing mining operations, for which there are no plans approved by the Township. For other mining operations which are operating under an existing permit and have approved plans, there shall be compliance with all of the requirements of this Ordinance and the amendments, unless, based on good cause shown by the applicant/permittee, the Board of Appeals specifically grants a delay of one or more of the 2015 amendments, but in no event shall the implementation be delayed more than three (3) months from the effective date of this Ordinance or the issuance of a 2015 permit, whichever occurs later. *(amended 04.20.15)*
- I. Soil Erosion Control - Approved temporary and permanent soil erosion control measures shall be placed and maintained to protect all drainage courses, wetlands, and adjacent properties from soil erosion and runoff.
- J. Phasing - The Board of Appeals may require that soil excavation operations or earth balancing operations be conducted on property in phases, with all activity, including restoration and reclamation, being completed on one (1) phase before any activities commence on another phase.

## **Section 9 – Restoration and Inspection**

- A. All areas within any soil excavation site operating under a single permit shall be restored progressively. Restoration shall be in accordance with the plan as approved by the Board of Appeals at the time the permit is secured.
1. Upon completion of the restoration, or upon completion of a part thereof, the permit holder may make application for refund or reduction of the bond. Upon determination by the Board of Appeals that said restoration is in keeping with the approved plan therefore, the Board of Appeals may refund or reduce the bond *pro rata*.
  2. In the event that the restoration does not comply with the approved plan therefore, in the event said restoration is not complete within sixty (60) days after expiration of all permits issued pursuant to this Ordinance, the Township may utilize the bond proceeds to restore the site and affected areas to comply with the approved plan and perform whatever work needs to be done to avoid harmful movement of gases or contamination to the ground or surface

water and/or environment for five (5) years after completion or expiration of permits. Should the cost of said restoration exceed the amount of the bond, the permittee shall pay the Township the amount of such excess.

3. An inspector from the Building Department, or other persons as may be appointed by the Township Board, shall conduct inspections and shall notify the owner and/or operator, by certified (return receipt) mail, of any portions of the site that it deems abandoned and/or ready for restoration. Upon receipt of such notification, the owner and/or operator shall have said areas restored within thirty (30) days, or within such additional time as may be allowed by the Board of Appeals. Any and all inspections will be completed at the permittee's expenses and may include any necessary engineering or other necessary third party expenses and costs. Within thirty (30) days of completion of any inspection or investigation, the Township will supply the permittee with a detailed invoice of all inspection related expenses, and the permittee must remit payment to the Township within seven (7) days thereafter. Failure of a permittee to pay within seven (7) days will allow the Township to withdraw full payment from the permittee's escrow and the permittee will have seven (7) days to replenish the escrow to the required amount. In the event the escrow does not cover the Township's expenses, the permittee is required to pay the difference within seven (7) days of notice of same. *(amended 04.20.15)*

### **Section 10 – Requirements: Filling Operations** *(added 04.20.15)*

A. All filling operation permittees must comply with the following:

1. All fill shall comply with Section 3(H). No fill material shall contain pieces of asphalt, steel, hazardous materials, rubbish or other waste material. As set forth in Section 3(H), no more than five percent (5%) concrete shall be allowed.
2. No soil, sand, clay, gravel or similar materials shall be deposited in such a manner as to cause water to collect or to result in a place of danger or a menace to the public health.
3. No fill material deposited on any lot or parcel of land within the Township shall be allowed to remain in an ungraded condition for a period of longer than seven (7) days.
4. In addition to the requirements set forth in Section 5, at the cost to the permittee, all permittees must:
  - a. maintain a log of each fill material and one photograph of each truckload which shall depict the contents of the fill material, and, including the date and time of the delivery and the contents of the truckload.
    - i. The permittee will forward to the Township Building Department copies of all logs and photographs on a monthly basis or earlier if requested by the Building Official or his designee.
  - b. submit the following information annually to the Board of Appeals:
    - i. Updated proposed grades and site use changes,
    - ii. Anticipated areas of operation for the permit year,
    - iii. Anticipated amounts of fill to be deposited, and
    - iv. Any elevation changes.
  - c. submit any impacts the fill material may have on storm water.
  - d. submit any other information or documents deemed by the Board of Appeals as necessary to enforce this Ordinance.
5. Within sixty (60) days following final completion of the filling, the parcel of land must be graded in such a manner as to prevent the collection of water, to provide proper drainage and to leave the ground surface fit for the growing of turf and other land uses permitted in the Zoning District.
6. If required by the Board of Appeals as a condition for the issuance of a filling permit, a fill may be required to be

*Revised 04/23/15*

compacted; including to a standard of ninety-five percent (95%) of the maximum density as determined by the AASHTO T method. Compliance with this Section shall be verified in writing by a testing laboratory approved by the Township planner or engineer. Any costs incurred to obtain written verification of compliance with the compaction standard shall be borne by the permit applicant.

7. The natural drainage characteristics of adjacent properties shall not be blocked, diverted or altered by the filling operation.
8. Inspections: The Township reserves the right to complete an inspection of the permittee's filling operations in accordance with the following:
  - a. At the discretion of the Township's Building Official or his designee and upon receipt of a legitimate complaint regarding a permittee's filling operations or as allowed herein, the Township Building Official or Township's Engineer may conduct an inspection, investigation or testing of the operation at the permittee's expense.
  - b. At the discretion of the Township's Building Official or his designee, the Township may complete random inspections or investigations of a permittee's filling operation.
  - c. Any inspections or investigations will be completed at the permittee's expenses and may include any necessary engineering or third party expenses and costs. Within thirty (30) days of completion of any inspection or investigation, the Township will supply the permittee with a detailed invoice of all related expenses, and the permittee must remit payment to the Township within seven (7) days thereafter. Failure of a permittee to pay within seven (7) days will allow the Township to withdraw full payment from the permittee's escrow and the permittee will have seven (7) days to replenish the escrow to the required amount. In the event the escrow does not cover the Township's expenses, the permittee is required to pay the difference within seven (7) days of notice of same.
  - d. Upon the Township Building Official or his designee providing notice of an intent to inspect the premises or any fill material, the permittee shall stop filling and continue to set aside and collect all fill materials for purposes of the inspection. The permittee will not be required to grade the fill material as set forth in Section 10A(3) until seven (7) days after the inspection. The Township must conduct the inspection within fourteen (14) days, after which the grading and filling may resume. Nothing herein will affect the Township's right to inspect or test as otherwise allowed herein.

## **Section 11 – Enforcement**

This Ordinance shall be enforced by the Building Department for the Township of Orion and by any Ordinance Enforcement Officer appointed by the Township Board. The Township Building Official and his designee, and Enforcement Officers, shall have the authority to issue Appearance Tickets for a violation hereof, pursuant to Act 175 of Public Acts of 1927, as amended, of the State of Michigan. By accepting a permit issued under this Ordinance, and/or the Township Zoning Ordinance, the owner and/or operator of any operation shall be presumed to have consented to regular and routine inspections of the property. Said consent shall be authority to go on to any property under permit for purposes of any inspection. Any and all inspections and investigations shall be completed at the expense of the permittee and may include any necessary engineering or third party expenses and costs. The permittee shall reimburse the Township for all inspection costs within seven (7) days of receiving a detailed invoice from the Township. *(amended 04.20.15)*

## **Section 12 – Violation and Penalties**

### **A. Municipal Civil Infraction / Payment of Fine.**

Any person, firm, or corporation violating a provision of this Ordinance, upon an admission or a finding of responsibility for such violation, shall be deemed responsible for a municipal civil infraction as that term is defined and used in MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended, and shall pay a civil fine as prescribed by ordinance or as determined by the district court, district court judge, or district court magistrate. Each day in which a violation of this Ordinance exists shall be deemed to constitute a separate offense and may be prosecuted as such at the discretion of the Township's Building Official or his designee. *(amended 04.20.15)*

**B. Costs.**

A person, firm, or corporation ordered to pay a fine under Subsection A shall be ordered by the district court judge or magistrate to pay costs of not less than Nine Dollars (\$9) or more than Five Hundred Dollars (\$500), which costs may include all expenses, direct or indirect, to which the Township of Orion has been put in connection with the violation of the Ordinance up to the entry of the court's judgment or order to pay fines and costs.

**C. Additional Writs and Orders.**

A person who admits or is found responsible for violation of this Ordinance shall comply with any order, writ, or judgment issued by the district court to enforce this Ordinance pursuant to Chapter 83 and Chapter 87, of the Revised Judicature Act, MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended.

**D. Default on Payment of Fines and Costs.**

A default in payment of a civil fine, costs, or damages, or expenses ordered under Subsection A or B or an installment of the fine, costs, or damages or expenses as allowed by the court, may be collected by the Township of Orion by a means authorized for the enforcement of a judgment under Chapters 40 or 60 of the Revised Judicature Act, MCL 600.101, *et seq.*; MSA 27A.101, *et seq.*, as amended.

**E. Failure to Comply with Judgment or Order.**

If a defendant fails to comply with an order or judgment issued pursuant to this section within the time prescribed by the court, the court may proceed under Subsection G.

**F. Failure to Appear in Court.**

A defendant who fails to answer a citation or notice to appear in court for a violation of this Ordinance is guilty of a misdemeanor, punishable by a fine of not more than Five Hundred Dollars (\$500) plus costs and/or imprisonment not to exceed ninety (90) days.

**G. Civil Contempt.**

1. If a defendant defaults in the payment of a civil fine, costs, or other damages or expenses, or installment as ordered by the district court, upon motion of the Township of Orion or upon its own motion, the court may require the defendant to show cause why the defendant should not be held in civil contempt and may issue a summons, order to show cause, or bench warrant of arrest for the defendant's appearance.
2. If a corporation or an association is ordered to pay a civil fine, costs, or damages or expenses, the individuals authorized to make disbursements shall pay the fine, costs, or damages or expenses, and their failure to do so shall be civil contempt unless they make the showing required in this subsection.
3. Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court shall find that the default constitutes a civil contempt and may order the defendant committed until all or a specified part of the amount due is paid.
4. If it appears that the default in the payment of a fine, costs, or damages or expenses does not constitute civil contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment or revoking the fine, costs, or damages or expenses.
5. The term of imprisonment on civil contempt for non-payment of a civil fine, costs, or damages or expenses shall be specified in the order of commitment and shall not exceed one (1) day for each Thirty Dollars (\$30) due. A person committed for non-payment of a civil fine, costs, or damages or expenses shall be given credit toward payment for each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of Thirty Dollars (\$30) per day.

6. A defendant committed to imprisonment for civil contempt for non-payment of a civil fine, costs, or damages or expenses shall not be discharged from custody until one of the following occurs:
  - a. Defendant is credited with an amount due pursuant to Subsection G(5).
  - b. The amount due is collected through execution of process or otherwise.
  - c. The amount due is satisfied pursuant to a combination of Subdivisions G(6)(a) and (b).

7. The civil contempt shall be purged upon discharge of the defendant pursuant to Subsection G(6).

H. Lien Against Land, Building, or Structure.

If a defendant does not pay a civil fine or costs or installment ordered under Subsection A or B within thirty (30) days after the date upon which the payment is due for a violation of this Ordinance involving the use or occupation of land or a building or other structure, the Township of Orion may obtain a lien against the land, building, or structure involved in the violation by recording a copy of the court order requiring payment of the fine and costs with the Register of Deeds for Oakland County. The court order shall not be recorded unless a legal description of the property is incorporated in or attached to the court order.

1. The lien is effective immediately upon recording of the court order with the Register of Deeds.
  2. The court order recorded with the Register of Deeds shall constitute the pendency of the lien. In addition, a written notice of the lien shall be sent by Orion Township by first class mail to the owner of record of the land, building, or structure at the owner's last known address.
  3. The lien may be enforced and discharged by Orion Township in the manner prescribed by its Charter, by the General Property Tax Act, Act No. 206 of the Public Acts of 1893, being Sections 211.1, *et seq.*, of the Michigan Compiled Laws, or by an ordinance duly passed by the Township. However, property is not subject to sale under Section 60 of Act No. 206 of the Public Acts of 1893, being Section 211.60 of the Michigan Compiled Laws, for non-payment of a civil fine or costs or an installment ordered under Subsections A or B unless the property is also subject to sale under Act No. 206 of the Public Acts of 1893 for delinquent property taxes.
  4. A lien created under this section has priority over any other lien unless one or more of the following apply:
    - a. The other lien is a lien for taxes or special assessments.
    - b. The other lien is created before the effective date of the amended ordinance that added this section.
    - c. Federal law provides the other lien has priority.
    - d. The other lien is recorded before the lien under this section is recorded.
  5. The Township may institute an action in a court of competent jurisdiction for the collection of the fines and costs imposed by a court order for a violation of this Ordinance. However, an attempt by the Township to collect the fines or costs does not invalidate or waive the lien upon the land, building, or structure.
  6. A lien provided for by this subsection shall not continue for a period longer than five (5) years after a copy of the court order imposing a fine or cost is recorded, unless within that time an action to enforce the lien is commenced.
- I. In addition to the remedies provided in Subsections A through H, the Board of Appeals may notify the owner and/or operator of any violation of a permit and/or this Ordinance, and upon failure of the owner and/or operator to abate said violation within five (5) days after mailing of said notice, said operation site may be closed, and the permit, therefore, suspended or revoked, and the Township may resort to the bond for restoration. Any owner and/or operator aggrieved by any notice sent pursuant to this section may file a written request for hearing before the Board of Appeals. The request should set forth why the operation site should not be summarily closed, the permit suspended or revoked, and the resort had to the bond. If a request for hearing is received, the Board of Appeals may summarily close the site and suspend or revoke the permit, pending the hearing, if it is determined the health and safety of persons and/or property requires it.
- J. Violations of this Ordinance shall be deemed a nuisance *per se*, and the Township shall be authorized to abate such nuisance by seeking injunctive relief in the appropriate court, in addition to the other remedies available pursuant to the Ordinance or otherwise provided by law.

**Section 13 – Repeal**

All Ordinances and parts of Ordinances inconsistent with the provisions of this Ordinance are hereby repealed, and specifically, Ordinance No. 40 is repealed in its entirety.

**Section 14 – Severability**

This Ordinance and the various parts, sections and clauses thereof are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid, it is hereby provided the remainder of the Ordinance shall not be affected thereby.

**Section 15 – Effective Date**

The Orion Township Clerk shall certify to the adoption of this Ordinance and cause the same to be published in The Lake Orion Review a newspaper of general circulation in the Township of Orion, as required by law. This Ordinance shall take effect upon publication, as so certified.

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