

**CHESTER TOWNSHIP
OTTAWA COUNTY, MICHIGAN
(ORDINANCE NO. 2012-01-02)**

MINERAL MINING LICENSING ORDINANCE

At a regular meeting of the Township Board for Chester Township held at the Township Hall on February 13, 2012 beginning at 7:00 p.m., the following Ordinance was offered for adoption by Township Board Member Goodno, and was seconded by Township Board Member Berenbrock:

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

THE TOWNSHIP OF CHESTER (“Township”) ORDAINS:

ARTICLE 1. TITLE

This Ordinance shall be known as the “Chester Township Mineral Mining Licensing Ordinance” and may elsewhere be referred to herein as “this Ordinance.”

ARTICLE 2. INTENT AND PURPOSE

In the preparation and development of this Ordinance, on the basis of the advice of experts and upon independent investigation, it has been recognized that there are activities and impacts which require regulation in view of the noise, dirt, dust, temporary and permanent changes to the topography and environment and other negative impacts which are inherent in mineral mining operations. It is the intent of the Township to regulate, inspect and monitor mining operations within the Township in order to minimize the existence of dangerously steep slopes, shifting earth, impairments or pollution of ground water, water table, surface water, and the watershed, and to protect the air, water and natural resources and the public trust therein, and the health, safety and general welfare of the residents of Chester Township. To meet these objectives, such mineral mining operations shall be licensed by the Township and the fees required for licensure shall be utilized to offset the costs and expenses of monitoring, inspection and administration under this Ordinance. This Ordinance is enacted by the Chester Township Board pursuant to the authority vested in it by Act 246 of the Public Acts of the State of Michigan for 1945, as amended (being MCL 41.181 *et seq.*), and any other authorization legislation.

ARTICLE 3. INTERPRETATION, EXISTING OPERATIONS AND RESTRICTIONS

It is not the intention of this Ordinance to repeal, annul, or in any way repeal any existing law or ordinance unless expressly so stated in this Ordinance. Furthermore, it is not the intention of this Ordinance to unreasonably interfere with mining operations already existing except that this Ordinance sets forth minimum standards which shall apply to all such existing operations as well as new and future operations. To the extent that any restrictions or standards imposed by this

Ordinance are more stringent or restrictive than existing restrictions or standards, this Ordinance shall control.

ARTICLE 4. DEFINITIONS

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

- A. “Licensed Operator” – the person(s) who obtain a license under this Ordinance.
- B. “Mining or mineral extraction” – the excavation, digging, mining, removal and/or processing of peat, earth, gravel, sand, clay, top soil, stone or other soils or materials, including overburden, or the storage or transporting of such items on, to, or from a mining site, or the reclamation of the site after removal or excavation of such items. For the purposes of this Ordinance, the following excavation or other activities are not included within the definition of mineral extraction or mining:
 - 1. Excavation approved and conducted by a governmental body of competent jurisdiction in conjunction with the installation or maintenance of publicly owned or publicly operated utilities, drainage facilities, roads, or other publicly owned or operated improvements, where the excavation is limited solely to the public utility or improvement. Notwithstanding the preceding, any excavating, removal and/or processing of minerals which occurs in conjunction with the creation of a new public road or modification of an existing public road where the existing grade is modified or disturbed to more than three (3) feet from its present elevation or where such mining in excess of 500 cubic yards will occur beyond the boundaries of the road right-of-way, shall be considered mineral extraction or mining.
 - 2. Excavation which by its nature is of limited scope and duration and which is undertaken primarily for the immediate use and development of the land excavated, such as for purposes of constructing or installing buildings, septic tanks, swimming pools, graves, etc., so long as no more than 1000 cubic yards of material are mined or excavated in total.
 - 3. Excavation in conjunction with bona fide farming operations conducted in accordance with generally accepted agricultural practices, including agricultural drainage work incidental to farming operations and irrigation or stock watering ponds, if no material is removed from the property.
 - 4. Other excavations not exceeding 5000 cubic yards in total where the Planning Commission determines, in its sole discretion, that the proposed excavation is unlikely to unreasonably interfere with the enjoyment of life or property and will not expose any person or property to the types of dangers inherent in mineral extraction mining sought to be prevented by this Ordinance. The Planning Commission’s determination may be based on a review of the purpose, location, extent or duration of the proposed excavation and other factors which may bear on the potential of any excavation activity to adversely affect the public health, safety, or general welfare of the community.
 - 5. The transport or storage of mined materials (or materials frequently associated with mining operations) shall not be deemed “mining” or part of a “mineral extraction” if the materials transported or stored are not combined with minerals mined from the site to which the materials are transported or on which the transported materials are stored. The activity of transporting or storing mined materials that are not combined with other materials mined from the site to which the transporting occurs (or on which the transported materials are stored) shall

constitute an industrial use and will not be considered mining or mineral extraction.

- C. "Mining Site" – a site or property where mining or mineral mining occurs (whether dormant or active).
- D. "Person" – any person, firm, corporation, limited liability company, association, owner, operator, tenant, lessee, or other entity.[]
- E. "Processing" - the crushing, sifting, washing, or mixing (including mixing with crushed concrete, crushed asphalt, peat, clay, or other materials) of sand, gravel, stone, or aggregate.
- F. "Site" – a parcel, property, lot or unit of land.
- G. "Township" – Chester Township.
- H. "Township Board" – the Chester Township Board.
- I. "Township Planning Commission" – the Chester Township Planning Commission.
- J. "Crushing" – the pulverizing, splitting, grinding or cutting of rocks, stone, concrete, asphalt or other solid materials.

ARTICLE 5. LICENSE REQUIRED

- A. After the effective date of this Ordinance, no person shall commence, own, lease, keep, maintain, or operate a new mineral mining site in the Township or engage in mining within the Township except in full compliance with this Ordinance and with a license issued under this Ordinance. A license issued pursuant to this Ordinance shall be nontransferable. All mining or mineral mining operations which existed in the Township as of July 30, 2009 (whether active or dormant) shall obtain a license from the Township under this Ordinance and shall fully comply with all of the requirements of this Ordinance no later than October 30, 2009. Failure to obtain a license within such ninety (90) day time period shall constitute a violation of this Ordinance.
- B. Until a mining operation or mining site has been fully reclaimed, it shall be the responsibility of the owner of the property (as well as the operator of the mining operation, if different than the owner) to ensure that the license required under this Ordinance is in effect at all times. It shall be a violation of this Ordinance for the owner or operator of a mining site to allow a license hereunder to expire prior to reclamation being fully completed (and as the Township has approved the reclamation). Dormancy of a mining operation or mining site or the cessation of active mining without full reclamation (as approved by the Township) shall not relieve the owner and operator of the obligation to have a license under this Ordinance in effect at all times.
- C. If a license expires prior to reclamation being fully completed to the requirements of this Ordinance, all mining, processing and mining operations shall cease on the property (except for prompt reclamation efforts) until a new license has been issued by the Township. Additionally, if any mine or mining operation is dormant after the effective date of this Ordinance for over twelve (12) months, reclamation shall be undertaken by the owner/operator immediately and shall be fully completed within one hundred twenty (120) days.

ARTICLE 6. LICENSING PROCEDURE

- A. All applicants for a license under this Ordinance shall use forms provided by the Township Clerk, accompanied by the documents enumerated on that form and this Ordinance. All licenses are for three (3) years and all licenses expire on May 15 of the applicable year. Licenses are nontransferable. To be considered for renewal, two (2)

copies of the proper application (with required attachments and fee(s)) must be submitted to the Township Clerk on or before January 15 of the year in which the license expires. Upon receipt of the two (2) copies of the fully and properly completed application form together with the required documents attached and fee(s) paid to the Township, the Township Clerk shall retain an official copy in the Township Clerk's office and shall forthwith distribute the remaining copy to the Township Zoning Administrator.

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

ARTICLE 7. APPLICATION CONTENTS

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

- A. Name of all of the owner(s) of the land from which removal is to be made or upon which mining operations will take place.
- B. Name and address of the applicant(s) making the request for the license.
- C. Name and address of the person, firm or corporation who will be conducting the actual removal and/or processing operation.
- D. Location, size, and legal description of the area from which the removal and/or processing is to be made.
- E. Type of materials or resources to be mined, stockpiled, processed or hauled away.
- F. Proposed method of removal, processing and general road haul route.

- G. General description of the types of equipment to be used.
- H. The estimated number of years to complete operations and number of phases where appropriate.
- I. The applicant shall post a surety performance bond, cash deposit or irrevocable letter of credit naming the Township as the beneficiary thereof in a form and in an amount determined by the Planning Commission to be reasonably necessary to insure compliance with all license and Ordinance requirements (“security”), including reclamation and repair of damage to any public roads. The Township shall also approve the form of the security and the bank or financial institutions supplying the security. Mined material and other items shall not be used for such security. Upon completion of the applicant’s activities on the parcel, lot or land described in the application and the land has been reclaimed to the approved reclamation plan and to the satisfaction of the Planning Commission, the security shall be void; otherwise, the Township shall have the right to use the security proceeds to the extent necessary to reclaim the property and to comply with all other Ordinance and any license requirements. This security shall be kept in effect at all times by the applicant until the parcel, lot or land has been fully restored as required by this Ordinance and license or until such time that the Township (and its agents and contractors) is able to go on the applicant’s premises to fulfill the security requirements. No security shall be discharged, returned or voided until the Township deems full compliance to have occurred. In fixing the amount of security, the Planning Commission shall take into account the size and scope of the proposed operation, current prevailing costs of reclaiming the premises upon default of the operator, and such other conditions and factors as might be relevant in determining what sum is reasonable in light of all facts and circumstances surrounding each application. The applicant shall notify the bank or financial institution providing the security and provide proof thereof that the Township be notified in the event of any lapse in the effectiveness of the security. The amount of the security shall apply to all lands occupied by mining areas, roadways, storage areas, equipment, stockpiles, and similar elements.
- J. As a part of the application, the applicant shall submit to the Township a plan of operation for approval by the Planning Commission prepared by a civil engineer or surveyor licensed by the state of Michigan and the applicant shall fully comply with the approved plan over the 3-year time period for which the license is issued. Said plan of operation shall include a topographic survey of the existing parcel, lot or land drawn to a scale of 1 inch = 50 feet for all sites or phases of excavation less than fifty (50) acres in area and not less than 1 inch = 100 ft. for all sites or phases greater than fifty (50) acres and prepared by a registered civil engineer or registered land surveyor with contour intervals not to exceed 5 feet based upon U.S.G.S. datum. The drawing shall also clearly show the area to be mined, including existing areas and roads within 100 feet of all property lines, areas for stockpiling, maintenance areas, berms, any proposed lake or pond, processing areas, fencing, and similar use areas. The plan of operation shall be accompanied by a projected schedule of mining operations, including the following specific dates:
 - 1. Commencement and completion of mining and processing operations as provided by the plan of operation;
 - 2. Commencement and completion of erosion and drainage control measures to be instituted during mining operations; and
 - 3. Commencement and completion of fencing, roads, utilities, or any other structures or improvements to be located on the site as provided by the plan of operation.

- K. The applicant shall also submit to the Township for approval by the Planning Commission a plan of reclamation prepared by a civil engineer or surveyor licensed by the state of Michigan. The plan of reclamation shall be submitted in three parts: (1) a recent aerial photograph with a general plan of reclamation as an overlay or as a separate drawing; (2) a reclamation contour plan, (3) and a description of reclamation methods and materials proposed for renewal of topsoil and replanting. The general plan of reclamation shall be presented at the same scale as the aerial photograph and shall provide all of the following information:
1. The general area of completely reclaimed land.
 2. The general area of reclamation under way.
 3. The general area currently used for topsoil and overburden storage.
 4. The general area proposed for reclamation during the three year period of the license and for final reclamation.
 5. The general area proposed for topsoil and overburden storage.
 6. The acreage for each item shown on the overlay or separate drawing.
 7. If a lake or pond is to be created, details of the same, including depth contours.
 8. A reclamation contour plan with contour intervals not to exceed two (2) feet indicating the general grade and slopes to which excavated areas are to be reclaimed.
 9. A description of the methods and materials proposed for restoration of topsoil to the required fertility and the amount of any type of planting as a part of the reclamation plan.
 10. The projected schedule of reclamation operations, including the following specific dates:
 - (a) Commencement and completion of reclamation operations as provided by the reclamation plan;
 - (b) Commencement and completion of erosion and drainage control measures to be instituted under the reclamation plan; and
 - (c) Commencement and completion of final grading, topsoil replacement, and replanting or landscaping as provided by the reclamation plan.
- L. Mining operational and reclamation plans shall be prepared to clearly depict and describe the sequence of mining operations including existing conditions, mining underway, mining completed, reclamation underway, reclamation completed, mining proposed, reclamation proposed, stockpiles, roadways, any lakes or ponds, and similar land use elements.
- M. All mining, operational and reclamation plans shall be reviewed by the Planning Commission and shall be subject to its approval, approval with conditions, or disapproval, renewal or nonrenewal and/or granting or refusing to grant a license.

ARTICLE 8. FEES

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

ARTICLE 9. ISSUANCE OF A LICENSE; EFFECT

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

ARTICLE 10. CONDITIONS IN A LICENSE; PERFORMANCE GUARANTEES

- A. Upon the issuance or renewal of a license, the Planning Commission may impose as conditions of the license any reasonable restrictions or requirements related to the location, design, or operation of a mining site or other relevant factors, as is required to secure the public health, safety, and general welfare of the community or to ensure that the mining operations will not create a nuisance or unreasonably interfere with the enjoyment of life or property. Such license conditions may be in addition to the express requirements of this Ordinance.
- B. The Planning Commission may require the applicant or landowner to post or file with the Township a cash deposit, bond, or irrevocable letter of credit (in amounts, with language, and from a financial institution that are all approved by the Township) to ensure full compliance with this Ordinance, any license issued hereunder, all reclamation requirements, and the payment of all escrow and other fees.
- C. In addition to other conditions, the Planning Commission may set a reasonable time limit for when all mining and related operations must be fully completed on a property and when reclamation must be commenced and completed.

ARTICLE 11. FENCING AND SCREENING

All excavated and mined areas shall be entirely fenced with a minimum four (4) foot high fence and shall be posted with appropriate signs so as to indicate the danger of trespassing in the mining area. Such signs shall be spaced a maximum of one hundred (100) feet apart. The minimum specifications for said fencing shall be as follows; 12 gauge top wire; #12 gauge bottom wire with spacing of 6 inches by 12 inches. All stays shall be of 14 gauge wire with spacing of support posts to be no greater than 16 feet apart. Gates shall be kept closed and locked when work is not occurring on site.

ARTICLE 12. HOURS OF OPERATION

The hours of operation of any mining operation shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday, and 8:00 a.m. to 1:00 p.m. on Saturday. No hours of operation shall be permitted on Sundays and legal holidays. However, no mining operations shall occur at night after dusk. In emergency situations, this time period may be modified by the prior written consent of the Township Zoning Administrator, provided that such emergency order shall not be effective for more than 72 hours. Except as otherwise provided in this ordinance, no mining uses or mining or processing-related activity of any kind shall occur outside of the permitted hours of operation.

ARTICLE 13. ROAD ACCESS

All sites licensed under the provisions of this Ordinance shall have direct access to an improved county road having a minimum right-of-way width of 66 feet and improved to the specifications of the Ottawa County Road Commission. When the operation of a licensed mining site results in mined material, overburden and/or similar material being deposited or spilled upon the public roadway, it shall be the responsibility of the licensed operator to remove such material immediately. The licensed operator shall also be responsible for reimbursing the Ottawa County Road Commission, the Township and state of Michigan for any damage which the mining operation or its haul trucks do to public roads.

ARTICLE 14. ROAD MAINTENANCE

Access roads within a licensed site shall be maintained by the operator of the site so as to minimize the dust arising from the use of said roads. Such maintenance shall be accomplished through the application of chloride, water and/or similar dust retardant material. Application of oil shall be prohibited. Entrances, exits and any access points shall be securely locked at all times during hours of inoperation.

ARTICLE 15. OPERATION

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

ARTICLE 16. NOISE

Mining sites shall be operated in such a fashion that the noises of operation or equipment vibration cannot reasonably be considered disturbing to neighboring uses or users of land. Noises that are irritating or distracting due to intermittence, beat, frequency, or shrillness shall be muffled, reduced or eliminated so as not to become a nuisance to the owners or occupants of adjoining properties.

ARTICLE 17. TRANSPORTATION VEHICLE STANDARDS

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

ARTICLE 18. LIGHTING

All lighting used to illuminate the mining area, access roads, stockpile area, and similar use areas shall be directed away from all surrounding properties. Shielding of lighting may be required by the Planning Commission where such lighting would otherwise shine directly toward a residential use and/or a county road.

ARTICLE 19. PROCESSING

- A. No crushing shall occur on site unless approved by the Planning Commission.
- B. To reduce the effects of airborne dusts, dirt, and noise, all equipment for sorting, crushing, loading, weighing, and other processing operations structures shall not be built, used, or kept closer than two hundred fifty (250) feet from any property line, public road right-of-way, or private street easement.
- C. No materials such as whole or crushed concrete or asphalt, peat, sand, stone, clay, or similar materials for mixing, storage, or processing shall be brought onto or kept on site unless approved by the Planning Commission.
- D. If the Planning Commission approves processing on site, the Planning Commission may attach reasonable conditions to any such approval regarding processing, which conditions

can include, but are not limited to, the following:

1. Additional limitations on the time or times of the year that processing can occur, as well as limits on the total number of days during a calendar year that processing can occur.
2. Additional limitations on hours and days of the week regarding when processing can occur.
3. The specific location or locations on site where processing can occur.
4. The type and amounts of materials that can be used in such processing.

E. The following shall apply to any processing and transport:

Type of Operation/Activity	Not Allowed	Allowed	Allowed with Restrictions	Restrictions
1. Transit- Bringing materials on-site from other locations and which materials are not to be mixed with materials mined from the site. This does not include materials brought from off-site for proper reclamation purposes (i.e., topsoil and clean fill)	X			Not Applicable
2. Crushing of Materials- This involves the crushing of materials originating on-site.			X	<p>A. Time Limits. Crushing can only occur during a two week time period between January 1 and June 1 of each year and also during a two week time period between September 1 and December 30 of the same year.</p> <p>B. Time Limits. Crushing operations are limited to the time periods between 8:00 a.m. and 5:00 p.m. Monday-Friday, 8:30 a.m. to 12:00 noon on Saturdays and no crushing or processing shall occur on Sundays or holidays.</p> <p>C. Location. The location of crushing equipment and operations on site is site specific and must be approved by the Planning Commission. Such equipment must be located on site where the crushing operation and equipment will cause the least amount of disturbance to the neighborhood or adjoining properties regarding dust, noise, trucking and storm water runoff.</p>

<p>3. Importing and Crushing/ Processing. This involves the importing (bringing onto the site from off-site) materials (whether natural or artificial) to be mixed on site with materials mined from the site. The imported materials can either be pre-crushed, not need to be crushed or crushed on site. If crushing and processing on site is to occur, there must also be compliance with the restrictions regarding Item No. 2 above.</p>			<p>X</p>	<p>A. Where crushing is involved, the restrictions contained in Item No. 2, above, shall also apply.</p> <p>B. At no time shall there be on site more than 15,000 cubic yards of material brought in from off site to be crushed or processed. The Planning Commission may restrict that to smaller amounts for a particular site based on the size of the mining site, the proximity of the mining site to neighboring or nearby residential dwellings and similar factors.</p> <p>C. The Planning Commission shall determine the exact location on site where the imported materials shall be stored prior to crushing/importing.</p>
---	--	--	----------	---

ARTICLE 20. DRAINAGE

Proper drainage shall be provided at all times to prevent the collection and stagnation of water, and surface water shall at all times be directed in such a manner so as not to interfere with the use of adjoining properties; provided, however, that the maintenance of the natural flow of surface water shall not be deemed to be an interference. There shall be no interference with the water table or wells in the area. Any water areas, retention ponds, settling ponds, or similar water areas shall be fenced in accordance with Article 11 of this Ordinance. Erosion control measures shall be instituted to comply with Act No. 347 of the Public Acts of 1972, as amended.

ARTICLE 21. TOPSOIL

Sufficient topsoil shall be stockpiled on the site so that the entire site, when stripping and mining operations are completed, may be re-covered with a minimum of four (4) inches of topsoil and the replacement of such topsoil shall be made immediately following the termination of the stripping operations. In the event, however, should such stripping operations continue over a period of time greater than thirty (30) days, the operator shall replace the stored topsoil over the stripped areas as he/she progresses. All reclaimed areas shall have at least four (4) inches of topsoil on top at all places.

ARTICLE 22. TERMINATION AND RECLAMATION

Upon termination of mining operations (or dormancy for 18 months), the owner of the premises shall be responsible at his/her/its cost to fully reclaim the site in accordance with the Township-approved reclamation plans and this Ordinance. Reclamation shall occur in full compliance with the reclamation plan approved by the Township. If the owner or operator fails to fully or timely reclaim the site, the Township, through the provisions of this Ordinance and by the administrative proceedings provided herein, or through the judiciary, may come upon the site and reclaim the land in accordance with the reclamation plan provided under this Ordinance and approved by the Planning Commission and may utilize the security proceeds provided pursuant to this Ordinance to defray the costs thereof. If the security posted by the applicant is not sufficient to cover all costs of reclamation, the applicant and the owner(s) of the property shall be jointly and severally responsible for reimbursing the Township for any shortfall.

ARTICLE 23. EXCAVATION/FILLING; DEWATERING

A. All excavation of mining areas shall be made either to a water-producing depth of at least 10 feet below the low water mark for at least 80 percent of the water area, or shall be graded or backfilled with noxious-free, nonflammable, nonradioactive, nonhazardous,

and noncombustible materials, to assure:

1. That the excavated area shall not collect, and permit to remain therein, stagnant water; and
 2. That the surface of any area which is not permanently submerged is graded or backfilled as necessary so as to reduce the peaks and depressions thereof, and so as to produce a gently rolling surface that will minimize erosion due to rainfall and which will be in substantial conformity to the adjoining land area.
- B. No area shall be dewatered or have the groundwater table lowered by pumping or artificial means unless approved by the Planning Commission.

ARTICLE 24. BANKS AND UNDERWATER SLOPES

- A. The banks of all excavations shall be sloped to the water line in a water-producing excavation, and to the pit floor in a dry operation at a slope to a degree not less than 4:1 four feet horizontal for every one foot vertical) and said banks shall be reclaimed with top soil and vegetation in a manner set forth hereunder. For all water producing excavations, the maximum 4:1 slope shall extend into the water at least up to a five (5) feet water depth.
- B. For all mineral mining operations that were lawfully in existence at the time of adoption of this Ordinance, the Planning Commission, after careful consideration of the safety, health, and welfare of the Township's residents and landowners, may allow for a steeper slope as a condition of a license issued or renewed under the Ordinance and may also require certain land improvements (*ie.*, higher fencing, berming, landscaping, or guardrails) that, at the discretion of the Planning Commission, will reasonably protect the public safety, health and welfare.

ARTICLE 25. SETBACKS

- A. No mining or mineral removal activities (including processing and stockpiling of materials) shall occur within fifty (50) feet of any property line.
- B. No mining or mineral removal activities (including processing and stockpiling of materials) shall occur within seventy-five (75) feet of any public road right-of-way or private street easement.
- C. No mining or mineral removal activities (including processing and stockpiling of materials) shall occur within two hundred (200) feet of any adjacent residence or dwelling.
- D. No vehicle parking or storage shall occur within fifty (50) feet of any property line.
- E. Processing plants and related equipment (whether temporary or permanent) shall not be kept, stored, or used within two hundred fifty (250) feet of any property line, public road right-of-way, or private street easement.

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

Where an existing lawful mining site or mining operation is occurring as of the effective date of this Ordinance and any portion of the above setbacks are not met (with the exception of subsection E involving processing plants and related equipment), mining operations may be completed within the area where the setbacks are not met but no further encroachment into the required setback areas shall occur except as is reasonably necessary to finish up mining operations already occurring within the required setback areas and to reasonably reclaim the same.

ARTICLE 26. VEGETATION

Vegetation shall be reclaimed by the use of sufficient soil and overburden and by appropriate seeding of grasses or planting of shrubs or trees in all parts of said reclaimed area where such area is not to be submerged under water or is not within 25 feet of the shoreline as hereinabove provided.

ARTICLE 27. FILL MATERIAL; MIXING MATERIALS; NO JUNK

- A. In the event filling of the mined area is necessary during reclamation, said fill material shall be inert material only as defined by the Michigan Solid Waste Management Act, Act No. 641 of the Public Acts of 1978, as amended. No junk, asphalt, garbage, trash, or similar materials shall be buried on site.
- B. No junk, trash, scrap metal, or junk vehicles shall be kept, buried, or stored on site.

ARTICLE 28. CESSATION OF MINING

Upon cessation of all mining operations, except stockpiles, and within a reasonable period of time not exceeding three (3) months thereafter, all tanks, buildings, stockpiles, and equipment shall be removed unless such building or structures can be lawfully used for other uses in the zoning district in which the same are located. Storage and stockpiling of mined products after cessation of mining activities may be permitted by the Planning Commission by annual license for that purpose only. In no event shall any additional materials be allowed to be added to these stockpiles and such a license shall not interfere with or excuse reclamation as provided by this Ordinance.

ARTICLE 29. ZONING ADMINISTRATOR'S ENFORCEMENT ACTIONS

The Zoning Administrator may at his/her discretion notify the licensee of any violation of the license or of this Ordinance or the Zoning Ordinance and upon failure of the licensee to abate said violation within 5 days after the mailing of said notice, said mineral mining site may be summarily closed, and the license therefore, suspended or revoked, and the security may be utilized by the Township for restoration. Any licensee aggrieved by any notice sent pursuant to this section may file a written request for a hearing before the Planning Commission. The request should set forth why the mining site should not be summarily closed, the license suspended or revoked, or the security be utilized. If a request for a hearing is received by the Planning Commission, the Planning Commission shall provide to the licensee notice of the time and place of the hearing, an opportunity to be heard, and shall make an impartial determination of whether a violation of the license, this Ordinance, or the Zoning Ordinance has occurred and whether the health and safety of persons or property require the suspension or revocation of said license. Upon receipt of a request for a hearing, the Planning Commission may summarily close the site pending the hearing, if it is determined that the health and safety of persons or property require such action.

ARTICLE 30. INSPECTIONS

The Township Engineer (or such other expert as is designated by the Township Board) shall have the right to inspect any mining site at least once a year to ensure compliance with this Ordinance (including, but not limited to, checking slopes) and the license and such expert shall file a report with the Township regarding the same. Such annual inspection and report by the Township Engineer (or such other expert as is designated by the Township Board) shall be paid for by the holder of the license issued under this Ordinance and the license.

Additionally, the Township Zoning Administrator shall also have the right to inspect any mining site at any time to ensure compliance with this Ordinance and the license.

ARTICLE 31. SPECIAL USE APPROVAL

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

ARTICLE 32. STOP WORK ORDER

Upon written notice from the Zoning Administrator to the owner or operator of a mining operation or mining site that any use or activity is being conducted on the property contrary to the provisions of this Ordinance or any license, such use or operation shall be ceased immediately. The stop work order shall be both posted on the property and a copy of the stop work order shall also be mailed by certified, return receipt requested mail to the owner of the property involved at the owner's address as listed on the latest license application. Any person who shall continue to use or operate a mining operation (or any owner who does not cause an operator to cease such use or operation) after a stop work order has been issued shall be in violation of this Ordinance.

ARTICLE 33. SUSPENSION OR REVOCATION OF A LICENSE

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

ARTICLE 34. VIOLATIONS

Any violation of this Ordinance or of a license issued hereunder shall constitute a municipal civil infraction. Any person, firm, or corporation who violates any provision of this Ordinance or of a license issued hereunder is responsible for a municipal civil infraction, and shall be subject to payment of a civil fine, as well as any other action by the Township to abate the violation. The minimum fine for a municipal civil infraction under this Ordinance shall be fifty dollars (\$50.00), plus costs, attorney fees and other sanctions, for each violation. Increased civil fines shall be imposed for repeated offenses by the same person. As used in this section, the term "repeated offenses" means a second (or any subsequent) municipal civil infraction violation of the same requirement or provision of this Ordinance which is committed by a person, firm, or corporation within twelve (12) months of a prior municipal civil infraction for which the person, firm, or corporation 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.

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.

Any violation of a license shall be deemed a violation of this Ordinance.

ARTICLE 35. JOINT AND SEVERAL RESPONSIBILITY

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

ARTICLE 36. REMEDIES; CONFLICT

In addition to any other remedy available at law or equity, the Township may bring an action for an injunction or other process against a person, or an agency of a person, to restrain or prevent any violation of the provisions of this Ordinance.

Where any provision of this Ordinance conflicts with the Chester Township Zoning Ordinance or any other Township ordinance or this Ordinance proposes standards different than any other Township ordinance, the stricter ordinance provision shall govern.

ARTICLE 37. 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 38. REPEAL

Ordinance No. 2009-06-01 (adopted on July 30, 2009) and the amendments thereto occurring before November 1, 2011 are hereby repealed and replaced by this Ordinance, but this Ordinance shall be deemed an amendment to that prior Ordinance as it was amended (and a continuation of that prior Ordinance, as amended).

ARTICLE 39. EFFECTIVE DATE

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

The vote on this Ordinance was as follows:

YEAS: Berenbrock, Creager, Goodno, & Redding

NAYS: Kelly

ABSENT/ABSTAIN: None

ORDINANCE DECLARED ADOPTED.