

**TOWNSHIP OF RAY
MACOMB COUNTY, MICHIGAN**

**ORDINANCE NO. 77
FILL/REMOVAL
ORDINANCE**

(See also: Application and Checklist for Fill Permit)

SECTION 1. PURPOSE AND SCOPE

A. The purpose of this Ordinance is:

1. To regulate filling, removal [mining] and stockpiling activities to avoid and/or mitigate the negative impacts or changes to existing natural features, environmentally sensitive areas and/or drainage patterns.
2. To monitor the amount and type of material brought into or removed from the Township or transferred between sites within the Township.
3. To prevent the creation of hazardous conditions or nuisances from filling, removal or stockpiling activities.
4. To prevent or mitigate these activities in and provide setbacks from waterways, natural features and environmentally sensitive areas

B. This Ordinance is not intended to apply to such businesses such as landscaping, nurseries, excavating or others that regularly stockpile fill material as defined herein, on the same property as the business.

C. The Ordinance is not intended to apply to activities regulated by P.A. 641 of 1978 as amended, the Solid Waste Management Act.

D. Except for agricultural purposes, it shall be unlawful for any person to change the drainage pattern of any land by excavating, grading, or filling without first obtaining Site Plan approval when required by the Ray Township Zoning Ordinance and /or permits from the Township.

SECTION 2. AUTHORITY

The Ray Township Board pursuant to Act 359 of the Public Acts of 1947 as amended and Chapter 16 of the Revised State Statutes of 1846 as amended, hereby authorizes the Ray Township Planning Commission and Ray Township Building Department to carry out the provisions of this Ordinance as set forth herein.

SECTION 3. DEFINITIONS

For purposes of this Ordinance, the following definitions shall apply:

A. Earth Materials- Soil, topsoil, clay, sand, gravel, rock, stone, or other similar

material.

- B. Fill Material- Acceptable earth material as defined herein which is free from cinders, ashes, refuse, soft or plastic clays, vegetable or other similar organic matter such as food waste, trees, branches, or stumps. Fill material shall be capable of being compacted. Up to ten (10) percent of fill material may be bricks, concrete or asphalt pieces not more than three (3) inches in size in any direction. Concrete slabs, asphalt chunks, any material containing re-rod or similar binding or similar material are prohibited as fill material.

SECTION 4. PERMIT REQUIRED AND EXCEPTIONS

- A. A permit shall be required for any activity that involves fill/removal of materials as defined herein being brought into a property from an off-site location or removed from a property to an off-site location. This requirement shall also apply to all properties where filling, removal or stockpiling is occurring as of the date of adoption of this Ordinance except for businesses such as landscaping, nurseries, excavating or others which stockpile clean fill material, as inventory for retail, on the same property as the business. The owners of such properties shall apply for a permit under this Ordinance within thirty (30) days of the effective date of this Ordinance or such fill activities shall be deemed a violation of this Ordinance.

- 1. A permit shall be required for any activity that involves the removal of materials from a site as the result of excavations for lakes, ponds and the like.
- 2. Activities permitted under this Ordinance may also be subject to a Soil Erosion Control Permit which is under the jurisdiction of the Macomb County Public Works Office.

- B. A separate permit is not required for the following fill/removal activities:

- 1. When the total amount of material to be brought onto or removed from a property is less than five hundred (500) cubic yards or changing the grade by 12 inches or less.
- 2. When material is brought onto or removed from a property that has been authorized under a Special Use Permit by the Ray Township Planning Commission.
- 3. When the material is to be brought onto or removed from a site for a public improvement project which has been duly authorized by the appropriate public agency or agencies. For the purposes of this Ordinance, a public improvement project shall be defined as a project funded with federal, state, and/or local monies such as roads, utilities, drain cleanouts, stream stabilization, parks, public buildings, or similar projects.

4. The construction of dwelling unit, accessory building or any other permanent structure for which a permit has been issued and is being regulated as part of that project.
5. The construction of any use which is subject to site plan review in accordance with the requirements of the Ray Township Zoning Ordinance.
6. Ground restoration activities for public utility construction.

SECTION 5. APPLICATION AND REVIEW PROCEDURES.

- A. Application for a Fill/Removal Permit shall be filed by the property owner with the Ray Township Building Department, who shall provide the application form. The application shall include a fee as determined by resolution of the Ray Township Board from time to time.
- B. The Building Department shall review all applications for fill/removal activities involving more than five hundred (500) cubic yards of material.
- C. The Planning Commission shall review all applications for fill/removal activities involving over two thousand **(2,000)** cubic yards of material.

SECTION 6. REVIEW BY RAY TOWNSHIP BUILDING DEPARTMENT

- A. An application for a fill/removal permit shall contain the following information:
 1. The address and signature of the property owner and the business address of the person who will conduct the filling/removal operation;
 2. Permanent parcel number of the property where the fill/removal activity will take place;
 3. The nature of the proposed project, the type of material to be brought onto or removed from the site, an estimate of the number of cubic yards of materials involved, and the depth and composition of proposed fill/removal project;
 4. A statement of the manner in which the project work is to be completed, the kind of equipment proposed to be used, and estimated frequency of vehicle

- trips;
5. The proposed route which the applicant proposes to use over the public streets and over private property in transporting fill/removal materials;
 6. The time within which the project is to be commenced after the granting of the permit and the time when it is to be completed;
 7. 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;
 8. A description of any traffic control devices, public facilities, or public services which will be required for the proposed operation and a statement indicating how these will be provided;
 9. Any measures which the applicant proposes to take to insure public safety especially the prevention of trespass by children or recreational vehicles on land where filling, removal or stockpiling activities may create hazardous situations.
 10. An engineered site plan prepared by a registered engineer or surveyor of the property which shall contain the following information as deemed necessary by the Ray Township Building Department and/or Planning Commission:
 - (a) North arrow,
 - (b) The dimensions of the lot and acreage,
 - (c) Dimensions of area to be filled and proposed phasing and method of stabilization of each phase,
 - (d) The location of all roads bordering or on the property,
 - (e) The location of any power or gas lines on the property,
 - (f) The location of any easements on the property,
 - (g) Existing drainage patterns on the site, grades before and after alteration of the site,
 - (h) Natural features, such as significant vegetation, bodies of water, wetlands, and streams on the site as well as within 500 feet of the site. The presence of these water related items may also require an Inland Lake and Stream Permit from the Michigan Department of Natural Resources. No activity will be permitted within twenty (20) feet of a body of water, river, stream or drainage course and within a

regulated wetland and/or woodland,

- (i) The location, size and use of buildings, structures, or other improvements on the land to which the Permit is to apply, as well as any buildings, structures, or other improvements within one hundred (100) feet of the property to which the Permit is to apply,
- (j) Ingress and egress to the property.

11. Soil Erosion Permit from the Macomb County Public Works Office.

B. The Building Department shall review the information required for the application and other applicable information in accordance with the Standards for Permit Approval contained herein.

1. If the proposed operation is in compliance with the requirements of this Ordinance, a Fill/Removal Permit shall be issued to the applicant.
2. If the proposed operation does not meet the requirements of this Ordinance, the Ray Township Building Department shall so notify the applicant in writing stating the reasons for denial of the permit.
3. The Ray Township Building Department shall render a decision within five (5) working days of the date of receipt of the completed application.
 - a. The Applicant, property owner or adjacent property owner adversely affected by a decision of the Ray Township Building Department under this Ordinance may appeal such decision to the full Planning Commission. Such appeal shall be filed with the Township Planning and Zoning Clerk within ten (10) days of the date of a final decision on the permit by the Ray Township Building Department. The Clerk shall schedule the appeal for the next regular meeting of the Planning Commission. The Planning Commission shall affirm, reverse, or modify the decision of the Ray Township Building Department and shall state its findings in writing to the applicant.
 - b. Further appeal shall be to the Township Board within ten (10) days of a decision by the Planning Commission in the same manner as described above. The Board shall affirm, reverse, or modify the action of the Planning Commission and shall state its findings in writing to the applicant.

SECTION 7. REVIEW BY THE PLANNING COMMISSION

- A. An application for a Fill/Removal Permit which is initially to be reviewed by the Planning Commission shall be processed in the following manner:
 1. The application shall be filed with the Ray Township Building Department who shall review the application for compliance with the submission requirements of this Section. The Applicant shall provide ten (10) copies of the site plan prepared

by a registered engineer as required herein.

2. If the application contains sufficient information, the Ray Township Building Department shall place the application on the next appropriate Planning Commission agenda for a public hearing. The Ray Township Building Department shall follow the public hearing notification procedures for Special Use Permits as contained within the Ray Township Zoning Ordinance.
3. The Ray Township Building Department shall forward all information submitted with the application to the Planning Commission.
4. The Planning Commission shall hold a public hearing on the application and shall render a decision on the application based on the information presented to it.
5. The Commission may approve, deny, modify, or approve with conditions, the application.
6. If the proposed operation is in compliance with the requirements of this Ordinance, the Commission shall approve the application and instruct the Ray Township Building Department to issue a Fill/Removal Permit.

If the proposed operation fails to meet the requirements of this Ordinance, the Commission Chair shall notify the applicant in writing of the reasons for denial.

7. The Applicant, property owner or adjacent property owner adversely affected by a decision of the Planning Commission may appeal such decision to the Zoning Board of Appeals. Such appeal shall be filed with the Planning and Zoning Clerk within ten (10) days of the date of the Planning Commission's decision. The Clerk shall schedule the appeal for the next regular meeting of the Zoning Board of Appeals. The Zoning Board of Appeals shall affirm, reverse, or modify the decision of the Planning Commission and shall state its findings in writing to the applicant.
 8. The Applicant, property owner or adjacent property owner adversely affected by the decision of the Zoning Board of Appeals may appeal such decision to The Township Board. Such appeal shall be filed with the Township Clerk within ten (10) days of the date of the Zoning Board of Appeals decision. The Township Clerk shall place the appeal on the agenda of the next regular scheduled Board meeting. The Township Board shall affirm, reverse or modify the decision of the Zoning Board of Appeals and state its findings in writing to the applicant.
- B. An application for a Fill/Removal Permit under this Section shall contain the following information:
1. As required by Section 6.A (1) - (11),

2. A drawing of the property at a scale not to exceed one inch equals two hundred feet, which must illustrate the following:
 - (a) Existing and proposed contours at one (1) feet intervals (minimum) on the site and extending one hundred (100) feet beyond the boundaries of the site. Such contours shall be certified by a registered engineer or surveyor,
 - (b) Ingress and egress to the site, and any driveways or roads within 100 feet of the driveway to the site.

SECTION 8. STANDARDS FOR APPROVAL

The following standards shall serve as the basis for decisions involving Fill/Removal permits. The Ray Township Building Department or Planning Commission, as the case may be, shall find:

- A. That the proposed fill/removal activity shall not interfere with existing drainage patterns as to cause a negative impact on adjacent properties.
- B. That the proposed operation shall not result in dust leaving the boundaries of the site or dirt being deposited on the roadway
- C. That the proposed operation has a driveway sufficient in width and dimensions to facilitate truck turning radius.
- D. That the proposed operation will be carried out in a manner that will not be detrimental to nearby persons or property by reason of excessive production of traffic, noise, dust, fumes or odor.
- E. That the fill/removal material is not hazardous, toxic or otherwise a threat to the public health, safety, and general welfare, and complies with the intent permitted by this Ordinance.
- F. That the restored elevation of the land will be compatible with the elevations on adjacent properties.

SECTION 9. RESTRICTIONS GOVERNING PERMIT HOLDER

Every person to whom any permit is granted under these regulations shall comply with the following:

- A. The topsoil for the area to be filled shall first be removed before any fill is brought onto the site. If stockpiled on site, the topsoil shall be no higher than twenty (20) feet and comply with Item G herein.
- B. All piles of fill/removal material shall be graded out and top soil redistributed and seeded with acceptable general purpose mixed grass seed before the permit.

- C. All vehicles transporting fill materials from, or to a project over public street in the Township shall follow the truck route approved with the application.
- D. 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 Ray Township Zoning Ordinance.
- E. If, at the time the permit is granted, the Ray Township Building Department shall determine that any project will present a dangerous condition if left open and unfenced, then such project shall be enclosed by chain link, wire mesh, or snow fence completely surrounding the portion of the land where the project extends; said fence to be not less than four (4) feet in height and to be complete with gates, such gates to be kept locked when operations are not being carried on. Barbed wire shall not be used as part of any such fence.
- F. Any materials that may be spilled on any public street or public place from any vehicle transporting materials from the project site shall be immediately removed without damage to the public street or public place at the expense of the permit holder.
- G. Any on-site roads used for the purpose of ingress and egress to the site must be treated to reduce airborne dust by hand topping with concrete, asphalt, chemical treatment, or such other means as may be proposed by the applicant and approved by the Ray Township Ray Township Building Department.
- H. The slopes of the banks of the excavation or materials dumped, stockpiled, or used as fill shall not exceed two (2) feet of run to one (1) foot of rise and shall be compatible with adjoining grades and land uses.
- I. Filling/removal activities shall not interfere with existing drainage facilities, ditches, or drains, or change existing surface water drainage to be detrimental to nearby properties.
- J. As phases of the fill/removal operation are completed, they shall be stabilized by ground cover by the applicant to prevent erosion by wind and water. The Ray Township Building Department shall approve the stabilization plan so that continuing fill/removal activities will avoid newly stabilized areas.
- K. Conditions imposed by the Planning Commission shall remain unchanged unless the permit is amended after review by and approval of the Planning Commission. The project may be inspected by the Ray Township Building Department as deemed necessary.

SECTION 10. PROJECT COMPLETION

To ensure that the fill/removal activities authorized by this Ordinance are carried out to completion, the following procedures shall be followed:

- A. Upon completion of a project or expiration of a Permit, the applicant shall contact the Ray Township Building Department to arrange for an inspection of the site.

If the requirements have not been met, the Ray Township Building Department shall notify the applicant in writing of the permit deficiencies. The permit may be revoked and the permit holder will be subject to fines and penalties in accordance with Section 13 and 14 of this Ordinance.

- B. For those permits approved by the Planning Commission, the above procedure shall be followed. In addition to this, the applicant shall retain the services of a registered engineer or surveyor to submit an as built document that the final elevations of the fill activity comply with those illustrated on the approved site drawing.

SECTION 11. DEPOSIT OF BOND AND CERTIFICATE OF INSURANCE

The Planning Commission shall require as a condition to the granting of a permit that the applicant file or deposit with the Township Treasurer performance securities in the form of a performance bond, cash, a certified or cashier's check payable to the Township, or an irrevocable bank letter of credit, in form satisfactory to the Township Attorney.

The Planning Commission or Ray Township Building Department shall, in establishing the amount of the surety, consider the scale of the operations, the prevailing cost to rehabilitate the property upon default of the operator, court costs, and other reasonable expenses to guarantee that the applicant will fully and faithfully perform all applicable performance standards, conditions, restrictions, and requirements of these regulations. The Township Engineer may be consulted in determining the amount of the surety. The Planning Commission may also require, as a condition to the granting of any such permit, that the applicant deposit a certificate of an indemnity company licensed to do business in the State of Michigan, in an amount reasonably relevant to the proposed work to be done as specified by the Planning Commission, insuring the Township against any loss or damage to persons or property arising directly or indirectly from the operations of the applicant, or any person acting on his behalf, in carrying on any work connected directly or indirectly with the issuance of said permit.

SECTION 12. EXPIRATION OF PERMIT

A permit granted under this Ordinance shall be valid for one year, at which time it shall automatically expire. However, the Planning Commission or the Township Board may grant an annual extension.

The expired permit may be reviewed by the Planning Commission or the Township Board for reinstatement and/or continuance without payment of a permit filing fee, provided that the failure to complete the project within the permitted time is caused by access problems, weather conditions, lack of proper fill materials, or other conditions or

circumstances beyond the control of the applicant.

SECTION 13. REVOCATIONS AND SUSPENSION OF PERMIT.

Any permit granted under these regulations may be revoked and/or suspended for failure to comply with any of the performance standards, conditions, restrictions or requirements attached and imposed as part of the issuance of a permit. Revocation of such permit shall be accomplished through a hearing held before the Planning Commission after five (5) days written notice to the permit holder stating the grounds of complaint against the Permittee, stating the time and place where such hearing will be held.

SECTION 14. FINES: PENALTIES.

Any person, firm or corporation found in violation of the provisions of this ordinance, shall upon conviction thereof, be punished by a fine of not to exceed Five-Hundred Dollars (\$500.00) or by imprisonment not to exceed ninety (90) days or by both such fine and imprisonment at the discretion of the Court. Each day that a violation continues may constitute a separate offense.

SECTION 15. SEVERANCE CLAUSE.

This ordinance in each article, section, subsection, paragraph, subparagraph, or words shall be deemed severable, and if any portion or provision is adjudicated by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the remainder of this ordinance shall remain in full force and effect.

SECTION 16. PUBLICATION.

A true copy of this ordinance or a summary thereof shall be published in The Record, a newspaper of general circulation in the Township of Ray, within thirty (30) days after its adoption. A complete copy of the ordinance is available for inspection or purchase at the Township Clerk's office.

SECTION 17. EFFECTIVE DATE.

This ordinance shall take effect thirty (30) days from and after the publication of a true copy or summary thereof as provided in Section 16.

