

# LAPEER TOWNSHIP

## COMMERCIAL COMPOST AND YARD WASTE

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### Ordinance No. 9

As approved  
11/12/2018



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LAPEER TOWNSHIP  
COMMERCIAL COMPOST & YARD WASTE  
ORDINANCE NO. 9

An ordinance to regulate and restrict commercial composting and yard waste operations by requiring a permit for such activities; establishing a fee for the issuance of such permit, establishing regulations for commercial composting and yard waste operations, requiring the reclamation of lands concurrent with or after cessation of such commercial composting and yard waste operations, requiring that financial guarantees be given the Township to assure reclamation of such lands, establishing a procedure for administration and enforcement of such ordinance, *and* prescribing a penalty for violation(s) thereof.

**THE TOWNSHIP BOARD OF THE TOWNSHIP OF LAPEER, LAPEER COUNTY, MICHIGAN, ORDAINS:**

**Section 1. SHORT TITLE**

This Ordinance shall be known and cited as the Lapeer Township Commercial Compost and Yard Waste Ordinance.

**Section 2. PURPOSE**

The purpose of this Ordinance is to preserve and protect the public health, safety and welfare of persons and property residing and located in Lapeer Township against public nuisances and/or hazardous conditions resulting from composting and/or yard waste operations.

**Section 3. ENABLING AUTHORITY**

This Ordinance is adopted pursuant to and in accordance with Act 246, Public Acts of 1945, as amended.

**Section 4. PERMIT and APPLICATION**

- A. Permit** - It shall be unlawful, unless stated otherwise by this ordinance, for any person or persons to actively operate and/or maintain a commercial composting operations or a yard waste land use on land situated in Lapeer Township without first having secured a permit from the Township. Such permit will be in effect for twelve (12) months and must be renewed annually, as outlined in this ordinance.
  
- B. Exclusions** - Agricultural operations which are determined to be bona fide farming operations, regulated by the Michigan Department of Agriculture and which follow the Generally Accepted Agricultural management Practices adopted by the State and which have also obtained an approved plan from the State for ~~an~~ farm composting operations shall be exempt from the applicable provisions of this Ordinance.
  
- C. Submittal Requirements** - The uses or sites which accept yard waste and other organic matter for the purpose of conducting yard waste commercial composting facilities (those that manage the biological decomposition of organic matter under controlled, aerobic conditions), may be permitted in *Residential-Agricultural and Industrial districts only*,

subject to the issuance of a Special Land Use Permit by the Planning Commission and compliance with the following conditions and standards:

1. Written application for a Permit shall be made by the owner(s) of an interest in land to the Township Clerk, accompanied by the necessary fees, financial guarantees and documents as provided herein and shall include:
  - a) Names and addresses of all owners or parties of interest in the proposed site, together with a description of their legal or the equitable interest in the property.
  - b) Name and address of the applicant.
  - c) Name and address of person, firm or corporation that will be conducting the actual operation together with the name, address and telephone number of the specific person designated by the applicant for the purpose of receiving all notice, correspondence and communications.
  - d) The application shall contain or be accompanied by a written statement of the extent, development, improvement and general purpose of the proposed operation and the anticipated duration thereof.
  - e) The application, all plans, and supplemental data in support thereof shall be filed with the Clerk, together with a fee established by resolution of the Township Board in a sum which shall be sufficient to cover all expenses incurred by the Township in processing and examining the application. Any portion of the aforesaid fee not utilized by the Township shall be refunded to the applicant. In the event the Township incurs additional expenses, the applicant shall be required to deposit such additional sum with the Township prior to issuance of the permit. In addition, financial guarantees shall be provided as required herein.
  - f) Confirmation that plans have been submitted to jurisdictional road authority(ies) (if applicable) and a written response from said authority(ies) has been received.
  - g) The application shall be accompanied by a site plan as required by Lapeer Township Zoning Ordinance No. 1, as amended. Said plan shall also contain the information required herein.
  - h) All applicable performance standards specified in Special Land Use of this Ordinance shall be met.
  - i) Copies of all applicable application and/or permits as required by the Michigan Department of Natural Resources, MDEQ, NPDES, AND County Departments shall be provided to the Planning Commission as part of the application package.
2. Only yard wastes (defined as: leaves, grass clippings, vegetable or other garden debris, shrubbery, or brush trimmings, and wood products less than four (4) feet in length and

two (2) inches in diameter that can be converted to compost humus) shall be composted at such facilities. Material shall only be accepted in ~~the~~ biodegradable clear bags; tan, cornstarch-based compost bags; or unbagged (no organic material). The operator shall establish a procedure and mechanism for proper disposal of non-yard wastes at an approved sanitary landfill. Further, all non-organic material such as debris and litter shall be contained on site so as to not scatter or blow off the premises.

3. Because of the level of truck traffic typically associated with a yard waste commercial composting facility, direct access to a paved public roadway designated as a major thoroughfare in the Township's adapted Master Plan and capable of carrying Class A loadings on a year-round basis is required.
4. A composting facility shall not be allowed within a one hundred (100) year or five hundred (500) year floodplain, unless the Michigan Department of Environmental Quality has approved the area for such operation.
5. A composting facility shall not be allowed in any protected or regulated wetland. A wetland assessment and determination accepted by the State shall be conducted and submitted prior to site plan and special land use approval. All regulated wetlands shall be flagged and permanently marked in the field.
6. The site shall be level and well-drained. If the site abuts property utilized as or shown as residential on the Township Zoning Map or Master Plan, a buffer zone shall be maintained where no composting, storage, transfer or loading activities will take place equal to five hundred (500) feet from existing residences (as measured from the closest area of active composting to the building wall or the residence) and two hundred (200) feet from adjoining property lines. All buffer areas shall be maintained as vegetative strips to facilitate the filtration of pollutants.
7. If any river, creek, stream, swale, drain, regulated wetland, or similar natural feature is present on site, it shall be buffered by a two hundred (200) foot wide setback. The two hundred (200) feet shall be measured from the outer edge of the defined floodplain or the established high water mark, the top of the bank, or the edge of regulated wetland whichever is greater.
8. All site access roads or drives and all areas for employee parking shall be paved with asphalt or concrete. All other roads or maneuvering lanes internal to the site shall be kept dust free. Such roads and maneuvering lanes, if not paved, shall be crushed concrete or limestone. The thickness of such road and maneuvering lanes shall be acceptable to the Township Engineer to ensure emergency access. A plan for how such areas will be kept dust free shall also be submitted. A minimum of five (5) parking spaces or an amount equal to the number of employees on the largest shift shall be provided on site.
9. The area being actively utilized for composting shall be provided with a clay lining to a depth as determined by the design engineer and acceptable to the Township Engineer

to ensure that contamination or leaching into the ground and ground water is eliminated or minimized to the greatest extent possible.

10. Poned water shall not be permitted to collect on a yard waste composting site. A plan for collection, retention, and drainage of storm water shall be provided for review and approval. The planning Commission shall require that the plan provide a settling basin/detention pond with clay or synthetic liner or other acceptable best management practice as approved by the Township Engineer and vegetation filtration of runoff prior to discharge from the site. Vegetation filtration shall be accomplished by use of a fifty (50) foot wide perimeter strip of grass, or a similar measure.
11. The operator shall provide a site plan showing all equipment maintenance and storage areas. Plans shall show the location of all fuel storage facilities and shall detail primary and secondary containment for all hazardous materials, including product-tight containers for primary containment. The area for truck stacking and staging shall be shown on the plan. The staging of trucks on the exterior of the site shall be prohibited. The area designated for truck staging shall be located in such a manner as to not impact adjacent residences. Based on the location of the operation and the proximity to residential land use, the Planning Commission may place restrictions on the hours of operation for the staging and filling trucks.
12. The volume of yard wastes handled by the facility shall not exceed five thousand (5,000) cubic yards of incoming yard wastes per acre or active composting area onsite, exclusive of access roads, service areas, parking areas, required buffer zones, and similar areas.
13. Windrows, or long rows of compost material, shall be turned in conjunction with the most favorable wind conditions. The maximum height of all windrows or any other material being stored on site shall not exceed a total height of ten (10) feet. As a part of the site plan and special land use approval, prevailing wind conditions shall be reviewed. These wind conditions shall be considered during the layout and management of the site as to windrow placement, orientation, height, necessary wind breaks, etc.
14. The operator shall provide sufficient equipment on site to properly manage the composting process. At a minimum, this shall include a front-end loader or similar machinery for loading, unloading material, a windrow machine for turning and aeration operation; a shredder for reducing new material to a smaller particle size for faster decomposition; a source of water with irrigation or watering trucks; and a screen to improve the quality and marketability of the final product.
15. Access to the site shall be controlled to prevent unauthorized dumping during non-business hours. The entire site being actively used for the storage or processing of compost shall be fenced with "No Trespassing" signs placed at 250 foot intervals or as determined by the Planning Commission. The fence may be wire-woven "farm-style", or other such fence approved by the Township. Such fence shall be placed behind the landscape berm required by this Ordinance. Further, access point(s) to the site shall be

controlled by the gates to prevent unauthorized entrance. The use of barbed, razor or electrified fencing shall be prohibited.

16. The entire site utilized for composting operations shall be screened and buffered by means of a six (6) foot high berm with a four (4) foot wide flat crown. Further, such berm shall be planted with a double row of evergreens six to eight (6-8) feet in height at planting. Each row of trees shall not exceed a spacing of fifteen (15) feet on center. These rows shall be offset by eight (8) feet. In no case, shall the trees be planted lower than three (3) feet on the height of the berm. The Planning Commission may review the existing vegetation and terrain to determine if it provides adequate screening in lieu of the required berm and evergreen trees.

17. The owner/operator shall submit a "Composting Facilitation Operations Plan" (CFOP) for the facility that demonstrates compliance with this chapter and other applicable regulations. The CFOP shall describe or provide information pertaining to the following:

- Site design considerations, including material flow and other procedures.
- The location of different activity areas (e.g., receiving, windrows, curing, disposing of waste material found in income materials; volume limits and where the operator will send material if site limitations are achieved.
- Typical carbon to nitrogen ratios for expected materials and how the materials will be mixed to maintain reasonable ratios for successful composting.
- Planned processing activities from receipt at the gate through the end user of the finished compost.
- The frequency with which the yard clippings will be rotated.
- The steps that will be taken to ensure that the decomposition process will be properly managed and maintained in an aerobic condition.
- The monitoring, record keeping and reporting program that will be maintained.
- The length of time for which yard waste will remain on the site.
- Product quality standards and testing for pathogens.
- The owner/operator's staffing plan and how many people will be working on-site throughout the year.
- The operating staff's qualifications and what training is planned for both operations and safety.



- The plan for the removal and/or disposal of inferior product that is not sold.
- A plan for how the owner/operator will troubleshoot typical composting difficulties, such as litter control, odor, inappropriate temperature, dust, noise, flies and pests, and neighborhood complaints.

The CFOP must be amended to reflect changes in operation and be available to the Township upon request.

18. Hours of operation shall be established prior to the issuance of a permit. The hours of operation shall be limited both as to equipment and vehicles, and operations. Site activity shall be allowed only between the hours of 7:00 a.m. and 7:00 p.m., and is prohibited entirely on Saturday, Sunday and legal holidays. The Township Board may establish more limited hours of operation upon the recommendation of the Planning Commission. In making such a recommendation, the Planning Commission shall consider the characteristics of the surrounding area, in particular the proximity of developed residences to the site.
19. The owner/operator shall limit offensive odors to escape the boundaries of the facility and/or interfere with the enjoyment of the adjacent properties. A set of "low-odor" operation protocols and an odor response management plan that shall be immediately employed in the event that the Township receives odor complaints during operation. The odor response management plan shall be included with the application and in the CFOP.
20. The owner/operator understands and agrees that failure to maintain and operate the site in a responsible manner that minimizes the potential for adverse impacts on neighboring properties shall constitute grounds for revocation of the permit by the Township.
21. In the event that the Township retains the services of an independent engineer to evaluate the site plan and operation/management plan, the proposed yard waste composting facility shall comply with the conditions of the Township Engineer's review. These conditions shall be contained as conditions of the approval.
22. The owner/operator shall submit a bond or other acceptable means or financial Assurance in a form and amount permitted by Section 1.17 of Article 1 of the Zoning Ordinance.
23. The applicant shall submit proof of insurance for the proposed operation as a part of site plan and special land use review and shall provide proof of ongoing insurance as a part of each yearly license renewal. Such proof shall be kept on file in the clerk's office or other designated area. The applicant shall provide binders for personal injury and property damage insurance for the project to be carried by an insurance company

licensed to do business in the State of Michigan during all times which (1) any operation is being conducted (2) during all times any machinery and/or equipment remains on the site, and (3) any structures, equipment or improvements to be removed remain on the site. Such insurance shall insure the applicant, it's employees and/or agents or representatives, and the Township for general comprehensive liability in and amount of at least one million (\$1,000,000) dollars per person and two million (\$2,000,000) dollars per occurrence. Further, applicant shall also provide an umbrella policy under the same terms, no less than two million (\$2,000,000) dollars above that previously described. These policies shall have no pollution liability exclusions.

24. An annual inspection/permit fee for all yard waste composting facilities shall be established by resolution of the Township Board. Further, the operator shall pay for all inspections necessary to verify compliance with this ordinance and any conditions attached to the annual permit.
25. As part of the conditions of the annual licensing and permit process the operator of a yard waste composting facility shall provide monthly reports to the Township. These reports shall contain information regarding the amount of material brought to the site, the amount of material sold or taken from the site, monitoring of the soil conditions and ground wells, as well as any other conditions placed on the permit by a regulatory agency or Township Board.
26. Tests wells shall be required to be drilled prior to the commencement of any composting activity. The number and placement of such wells shall be determined by the Township Engineer. An independent agency (as agreed upon by both the applicant and the Township) shall provide the initial testing prior to the commencement of operations as well as testing on a monthly basis. Such information shall be provided in the required monthly reports.
27. A semi-annual inspection for rodents shall be performed by a licensed pest control company approved by the Township. Copies of the report shall be transmitted to the township. If at any time rodents are detected, appropriate measures shall be taken to capture or exterminate the rodents in an environmentally safe manner.
28. A semi-annual test shall be performed to ensure that on-site soils and surface waters leaving the site are not contaminated by a concentration of nitrogen, phosphorus, phenols, pesticides and/or herbicides. Soil samples shall be taken from the windrow area and the settling basin/detention pond and surface water samples shall be taken at the outlet from the detention pond. Said test(s) shall be completed by Township authorized representatives or an agency/firm approved by the Township.
29. Township Officials and/or consultants engaged by the Township shall be permitted entry to a yard waste composting facility for inspection purposes during normal operating hours to determine compliance with this Ordinance and other applicable regulations. No person shall impede inspection of a composting facility by Township Officials and/or Consultants engaged by the Township.

## Section 5: GRANTING AND ISSUANCE OF PERMIT AND PERMIT RENEWAL

- A. **Duration of Permit.** All yard waste composting operations shall be licensed yearly by the Township Board. After recommendation by the Planning Commission and approval of the application by the Township Board, the Township Clerk shall issue a permit upon the posting of required financial guarantees and the payment of all fees required herein or by resolution pursuant to this Ordinance. Said permit shall expire on December 31 following the date of issuance, unless renewed thereafter by the Township Board until the following December 31, in accordance with the provisions of this Ordinance.
- B. **Renewal of Permit.** Permits issued may be renewed annually by the filing of a progress report in support of the original application, a positive annual review by the Township Engineer, and payment of all fees required. Annual renewal of permits need not be predicated upon an updated site plan if the Township Board finds that no significant variation from the current site plan has occurred.
- A. In the event the Township Board determines, based upon the written recommendation of the Township Engineer, that an updated site plan is necessary, the annual renewal of permits shall be expressly conditioned upon the submission of such site plan.
- B. Applications for permit renewal, along with the review fee, must be submitted to the Township Clerk no later than Oct. 1st of every year. The clerk shall notify the supervisor when plans and application are received, and shall forward two (2) copies of plans, or written notification that the plan has not deviated from the current plan on file, and application to the Township Engineer for review. The Township will schedule an annual inspection of the site by the Township Engineer who shall issue a report of compliance with, or violation of the Ordinance and original permit. The operator shall correct any violation or deficiencies in the operation before a permit may be renewed. All operations shall cease by January 15 of the following year unless renewed by the Township Board.
- C. In the event that the Township Board finds significant variation with the current, approved application, the Township Board may require the Planning Commission to review the reports and information and make a recommendation on the permit renewal. The operator shall supply the Planning Commission with the necessary copies of the plans and application required for their review.

## Section 6: PROCEDURE FOR PERMIT NON-COMPLIANCE

Should the Township Engineer, or the Township's designee and/or agent, discover any items in noncompliance with terms and conditions of this Ordinance, with the permit issued hereunder, and/or with any other applicable law, ordinance or regulation, the Engineer shall prepare a notice of this fact detailing the violations and shall send copies of it to the owner/operator and to the Township Board. Within five (5) calendar days of notice, the owner/operator shall advise the Township, in writing, whether or not he/she concurs that a violation exists, and the owner/operator shall take steps to

remedy the violation. If the owner/operator does not agree with the Engineer's findings, he/she shall, within the same period of time, state the reasons for such lack of agreement.

The owner/operator shall correct any and all violations in a period of time not to exceed five (5) business days from the date of the violation notice, unless, due to circumstances beyond the owner/operator's control, completion of the corrective measures are not possible within such period. In this event, the owner/operator may have a reasonable additional time within which to make the correction, not to exceed thirty (30) calendar days.

In the event of a dispute with respect to the existence of a violation, the Township Board shall set a reasonable time for a hearing.

At a Township Board meeting, the matter of the disputed violation or the failure to timely cure a violation shall be considered. Such consideration shall include a hearing conducted at the meeting or meetings and shall include the opportunity of the owner/operator to appear in person or by a duly authorized representative to present arguments, witnesses, and other evidence on behalf and in the defense of the owner/operator; or, in addition to or in lieu thereof, to file a written presentation prior to the meeting. The owner/operator shall also be afforded the opportunity to examine individuals who have made statements or submitted other evidence supporting the existence of a violation or the failure to timely cure a violation, provided such examination shall be limited in scope to matters relating directly to the statements made and evidence submitted. The Township Board shall make an effort to determine whether the owner/operator made a reasonable effort to prevent the occurrence of the violation, or to correct the violation in a timely manner.

In the event the Township Board shall determine that a violation of this Ordinance exists, or that the owner/operator has failed to correct a violation in a timely manner, the Township Board is authorized to take the following action, taking into consideration whether the owner/operator made a reasonable effort to prevent the occurrence of a violation and/or correct the same in a timely manner:

- A. If the violation constitutes the first, uncorrected violation, and/or the first failure to correct a violation in a timely manner, and the same has not resulted in damage to person or property, the Board is authorized to suspend the permit for a period of up to two (2) weeks. If the violation is not corrected during the maximum suspension time, then it shall be considered an additional violation.
- B. If the violation constitutes the second uncorrected violation and/or the second failure to correct a violation in a timely manner, or a combination of these, and the same has not resulted in damage to person or property, the Township Board is authorized to suspend the permit for up to one (1) month. If the violation is not corrected during the maximum suspension time, then it shall be considered an additional violation.
- C. If the owner/operator has previously had two (2) uncorrected violations and/or two (2) failures to correct a violation in a timely manner, or a combination of these, and there is an additional uncorrected violation and/or failure to correct a violation in a timely manner, and/or if any violation of failure to correct a violation results in property damage or continual impact to

surrounding properties, the Township Board is authorized to suspend the permit for a period of up to one (1) year, or revoke the permit permanently.

## Section 7: FINANCIAL GUARANTEES

Financial guarantees shall be furnished to the Township Board upon the recommendation of the Township Planning Commission or Engineering Standards Board of Appeals in a form and amount permitted by Section 1.17 of Article 1 of the Zoning Ordinance.

## Section 8: VARIANCES, ADMINISTRATION AND ENFORCEMENT

A. **Variations.** Variations from a literal application of the provisions of this Ordinance may be granted by the Engineering Board of Appeals upon written application demonstrating that certain aspect(s) of the applicant's proposed compost operation are unique and that a strict application of the provisions of this Ordinance would result impractical difficulties and/or undue hardship not suffered by other persons subject to the Ordinance provisions in question. Variations as to noise and/or hours of operation are separately addressed herein and this Section shall not be construed as substitution therefore. A variance shall be granted if the Engineering Board of Appeals finds in the affirmative to all of the following:

1. There are special circumstances, or conditions affecting the situation such that a strict application of the provisions of this Ordinance would deprive the applicant of reasonable use of his property.
2. That the variance is necessary for the preservation and enjoyment of the substantial property right of the applicant;
3. That the granting of the variance will not be unduly detrimental to the public welfare or injurious to other property in the Township;
4. That such variance will not have the effect of nullifying the interest and purpose of this Ordinance nor violate the provisions of other State or Federal regulations.
5. No variance shall be granted if the hardship is: 1) the inconvenience of having to abide by the ordinance requirements; 2) a desire to increase financial gain; or 3) the expense of financial compliance.

B. **Administration.** This Ordinance shall be administered and enforced by the Township Supervisor or any other persons authorized by the Township Board of Trustees from time to time.

## Section 9: VIOLATIONS/PENALTIES

Any person, firm or corporation who violates any of the provisions of this Ordinance shall be responsible for a violation of a civil infraction upon a finding of responsibility of violating said provision shall be subject to a penalty not less than FIVE THOUSAND (\$5,000.00) Dollars and costs not to exceed TEN THOUSAND (\$10,000.00) and be ordered to take all necessary actions to insure compliance with this ordinance.

Violations of this ordinance shall also constitute a nuisance per se subject to abatement by a court of competent jurisdiction.

### Section 10: REPEAL OF CONFLICTING PROVISIONS

All resolutions, ordinances or parts thereof in conflict with the provisions of this ordinance are to the extent of such conflict hereby repealed.

### Section 11: SEVERABILITY

If any section, paragraph, clause or provision of this Ordinance is for any reason held to be invalid or unconstitutional, the invalidity or unconstitutionality of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

### Section 12: EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days following the publication hereof, as provided by law.

At a regular meeting of the Board of Trustees for the Township of Lapeer held on November 12, 2018, Clerk Dawn Walker moved for adoption of the foregoing ordinance and Trustee Phil Thick seconded the motion. Notice was published in the LAView Newspaper on the 14th day of February, 2019. This ordinance shall become effective thirty (30) days after said date of publication.

Voting for: Clerk Dawn Walker, Trustee Phil Thick, Trustee William Marshall, Treasurer Lori Ann Taylor and Supervisor Scott Jarvis

Voting against: None

The Supervisor declared the ordinance adopted.



Scott A. Jarvis  
Lapeer Township Supervisor



Dawn M. Walker, CMC  
Lapeer Township Clerk

#### Certification

*The Clerk of the Township of Lapeer hereby certifies that this ordinance was duly adopted by the Lapeer Township Board at a meeting held on the 12th day of November, 2018 and was published in the LAView Newspaper on the 14<sup>th</sup> day of February, 2019.*



Dawn M. Walker, CMC  
Lapeer Township Clerk