

ORDINANCE NUMBER 2015-02

AN ORDINANCE ESTABLISHING SECTION 155 OF THE CITY CODE REGARDING MINERAL EXTRACTION UNDER THE CITY ZONING CODE

The City Council of the City of Harris City hereby ordains as follows:

That Title XV, Section 155 of the City Code is hereby established to read in its entirety as follows:

§ 155 MINERAL EXTRACTION

(A) *Purpose.*

The purpose of this section is to protect the public health, safety and welfare through the following:

1. Identify areas in the community where mineral extraction is most appropriate and minimizes conflicts with other land uses.
2. Establish permitting requirements, environmental review procedures and performance standards to regulate mineral extraction.
3. Establish standards which prevent or minimize environmental and aesthetic impacts on extracted properties, adjacent properties and the community as a whole.
4. Establish standards and financial guarantees that restore extracted land to a condition compatible with adjacent properties and suitable for future uses which are compatible with the City of Harris Comprehensive Plan.

(B) *Definitions.*

For the purposes of this section, the following terms shall have the meaning associated with them:

Accessory Uses. Accessory uses of a mineral extraction facility include the manufacture, storage and sale of products made from minerals.

City Council. The City Council of the City of Harris, MN.

Commission. The Planning Commission of the City of Harris, MN

Comprehensive Plan. The City of Harris Comprehensive Plan.

County. The County of Chisago, MN.

Dust: Airborne mineral particulate matter.

Excavation. The movement of minerals on site.

Mineral. Sand, gravel, rock, soil, clay and similar higher density non-metallic natural minerals.

Mineral Extraction. The removal of minerals from the ground and off the site.

Mineral Extraction Facility. Any area used for mineral extraction and processing minerals.

Mineral Extraction Permit. The permit required for mineral extraction facilities.

Operator. Any person or persons, partnerships or corporations or assignees, including public or governmental agencies, engaging in mineral extraction.

Principal Use. The principle use of a mineral extraction facility is the extraction, crushing, screen, mixing, storage and sale of minerals from the facility.

Processing. Any activity which may include the crushing, screening, mixing, and stockpiling of sand, gravel, rocks, or similar mineral products into consumable products such as fill, construction grade sand, gravel, roadway mixes, and other similar granular products.

Rehabilitation. To renew land to self-sustaining long-term use which is compatible with contiguous land uses, present and future, in accordance with the standards set forth in this ordinance.

Soil. A natural three-dimensional body of the earth's surface.

Subject Property. The land on which mineral extraction is permitted.

Topsoil. The upper portion of the soils present that is the most favorable material for plant growth.

Zoning Ordinance. The City of Harris Zoning ordinance.

(C) *Mineral Extraction Permit Required.*

A Mineral Extraction Permit is required for all mineral excavation facilities. A Mineral Extraction Permit is an Interim Use and shall be processed in accordance with Section 154.29 of this Zoning ordinance and the additional procedures and requirements of this section. Legal non-conforming mineral extraction facilities expanding on new parcel after adoption of this ordinance shall be required to obtain a Mineral Extraction Permit consistent with the provisions of this ordinance. If operations are discontinued for a period of twelve months, or if the property is sold, a new Permit must be applied for.

(D) *Exceptions from Permit Requirements.*

A Mineral Extraction Permit shall not be required for the following:

1. Excavation for a structure if a building permit has been issued.
2. Excavation in a right-of-way or utility corridor by state, county or city authorities in connection with construction or maintenance of public improvements.
3. Excavation for agricultural purposes.
4. Excavations for public utility purposes.

(E) *Permit Application Requirements.*

1. Application form.
An application for a Mineral Extraction Permit shall be submitted to the City on a form supplied by the City. Information shall include, but not be limited to the following:

- a. The following maps of the entire site and to include areas within five hundred feet (500') of the site. All maps shall be drawn at a scale of one inch (1") to two hundred feet (200') unless otherwise stated below:

Map A: Existing conditions to include:

- i. Property boundaries.
- ii. Contour lines at ten (10) foot intervals.
- iii. Existing vegetation.
- iv. Existing drainage and permanent water areas.
- v. Existing structures.
- vi. Existing wells and private sewer systems of record.
- vii. Existing pipelines, power lines and other utilities.
- viii. Easements.

Map B: Proposed operations to include:

- i. Property boundaries.
- ii. Structures to be erected.
- iii. Location of sites to be mined showing depth of proposed excavation.
- iv. Location of tailings deposits showing maximum height deposits.
- v. Location of processing areas and machinery to be used in the mining operation.
- vi. Location of storage of mined materials, showing height of storage deposits.
- vii. Location of vehicle parking.
- viii. Location of storage of explosives.
- ix. Erosion and sediment control structures.
- x. Haul routes.

Map C: End use plan to include:

- i. Property boundaries.
- ii. Final grade of proposed site showing elevations and contour lines at five (5) foot intervals.
- iii. Location and species of vegetation to be replanted.
- iv. Location and nature of any structure to be erected in relation to the end use plan.
- v. Turf Rehabilitation Plan.

- b. Name, address, phone number, contact person for the operator.
- c. Name, address, phone number of the landowner.
- d. Names of the adjacent landowners including all those within a one-quarter (1/4) mile radius of the boundary line of the subject property.
- e. Acreage and complete legal description of the subject property on which the facility will be located, including all contiguous property owned by the landowners.
- f. A narrative outlining the type of material to be excavated, mode of operation, estimated quantity of material to be extracted, plans for blasting, and other pertinent information to explain the request in detail.

- g. Phasing plan and estimated timeframe to operate the facility.
 - h. A description of all vehicles and equipment estimated to be used in the operation of the facility, including a description of the estimated average daily and peak daily number of vehicles accessing the facility.
 - i. Any other information or documentation required for issuance of the Mineral Extraction permit.
2. Supporting Documentation.
- Every application for a Mineral Extraction Permit shall include submission of supporting documentation, which shall include, but is not limited to the following:
- a. A description of existing land uses on the subject property and all properties within one-quarter (1/4) mile.
 - b. A description of land use designations in the Comprehensive Plan and zoning classifications of the subject property and all properties within one-quarter (1/4) mile.
 - c. A description of the soil, vegetation, mineral content and topography of the subject property. A minimum of three (3) soil boring logs representative of the site and a description of the subsurface materials on the subject property must be submitted.
 - d. A general description of surface waters, existing drainage patterns and groundwater conditions within one-quarter (1/4) mile of the subject property.
 - e. A general description of the depth, quantity, quality and intended uses of the mineral deposits on the subject property.
 - f. Copies of the MPCA application documents and operating permits.
 - g. A description of the site hydrology and drainage characteristics during extraction for each phase of mineral extraction. Identify any locations where drainage of any disturbed areas will not be controlled on the subject property and plans to control erosion, sedimentation and water quality of the runoff.
 - h. A description of the potential impacts to adjacent properties resulting from mineral extraction and off-site transportation, including but not limited to noise, dust, surface water runoff, groundwater contamination, traffic and aesthetics.
 - i. A description of the plan to mitigate potential impacts resulting from mineral extraction.
 - j. A description of site screening, landscaping and security fencing.
 - k. Site rehabilitation plans for each phase of operation and upon completion of mineral extraction of the subject property.
 - l. A description of the method in which complaints about any aspect of the mineral extraction facility operation or off-site transportation are to be received and the method by which complaints are to be resolved.

- m. A plan for groundwater quality protection. A minimum of three (3) cross-showing the extent of overburden, extent of sand and gravel deposits, the water table, and any evidence of the water table in the past. The Planning Commission reserves the right to require additional borings if necessary.

(F) *Permitting Procedure.*

1. Application.

A request for a Mineral Extraction Permit, as provided within this ordinance, shall be filed with the City Clerk on an official application form, the required application fee shall be paid, and a deposit made to reimburse the City for its out-of-pocket costs in processing the application. The application shall also be accompanied by ten (10) copies of detailed written and graphic materials fully explaining the proposed change, development, or use as specified under this ordinance. The City Clerk shall refer the application, along with all related information to the Planning Commission for consideration.

2. Notice.

The City Clerk shall notice a public hearing to be held by the Planning Commission. Notice of such hearing shall be published in the official newspaper of the City at least ten (10) days prior to the date of the hearing. Written notice shall be sent to all property owners of record within five hundred (500) feet of the affected property in incorporated areas and to property owners within one-quarter (1/4) mile of the affected property or the nearest ten (10) properties in unincorporated areas, whichever would provide notice to the greatest number of owners. A copy of the notice and a list of the property owners and addresses to which the notice was sent shall be attested to by the City Clerk and made a part of official record. The failure to give mailed notice to individual property owners, or defects in the notice, shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

3. Additional information.

The Planning Commission and the City Clerk shall have the authority to request additional information from the applicant or to retain expert testimony with the consent and at the expense of the applicant if said information is declared to be necessary by the City to review the request or to establish performance conditions in relation to this ordinance.

4. Referrals.

The Planning Commission and the City Clerk may refer the application for review and comment to other agencies, including but not limited to the Soil and Water Conservation District and the Minnesota Pollution Control Agency.

5. Recommendation.

The Planning Commission shall make a finding of fact and recommend such actions or conditions relating to the request to the City Council. The City may impose such additional restrictions or conditions as deemed necessary to protect the public interest. These conditions may include, but are not limited to the following:

- a. Matters relating to the appearance.
- b. Hours of operation.
- c. Increasing setbacks.

- d. Limiting the height, size, or location of buildings.
 - e. Controlling the location and number of vehicle access points.
 - f. Increasing street width and improving access conditions.
 - g. Requiring diking, berming, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.
 - h. Limiting the area to be mined.
 - i. Requiring phased rehabilitation.
 - j. Requiring financial security to guarantee compliance with the conditions of approval.
 - k. Water quality monitoring.
6. City Council Action and Findings.
The City Council shall approve, modify or deny the request and state the findings of its actions. Approval of a Mineral Extraction Permit shall require passage by majority vote of the City Council. The City Clerk shall notify the applicant of the City Council's action.
7. Reapplication/Lapse of Mineral Extraction Permit.
The City Council shall not accept reapplication for the same or substantially same Mineral Extraction Permit within six (6) months of denial. Any Mineral Extraction Permit approved but not used within twelve (12) months of the date of approval shall be null and void.
8. Amended Mineral Extraction Permit.
Any change to the approved Mineral Extraction Permit shall require an amended Mineral Extraction Permit. Any expansion beyond the original boundaries shall not be considered an amended permit and shall require a new Mineral Extraction Permit.

(G) *Security.*

The City shall require the applicant or owner of the property on which the mineral extraction is occurring, to post a bond, letter of credit or cash escrow in such form and sum as determined by the City Council as part of the permit. The security shall be sufficient to reimburse the following costs:

- 1. Costs of bringing the operation into compliance with the Mineral Extraction Permit requirements, including site monitoring and enforcement costs.
- 2. Extraordinary costs of repairing roads due to the special burden resulting from the hauling of materials and traffic associated with the operation. The amount of such cost shall be determined by the City Engineer.
- 3. Site restoration.
- 4. Costs the City may incur in enforcing the terms of the Mineral Extraction Permit, including attorney's fees.

(H) *Annual Certification.*

Annual certification of all Mineral Extraction Permits is required. The purpose of the annual certification is to maintain an updated listing of active permits in the City, to decertify any permits where the activity has ceased, and to monitor compliance with the conditions of approval. Permit holders must complete and return certification forms provided by the City. Failure to maintain certification shall be cause for revocation of the permit.

(I) *Use Restrictions.*

The following uses are prohibited unless specifically authorized in the Mineral Extraction Permit:

1. The washing of the extracted material.
2. The production or manufacturing of veneer stone, sills, lintels, cut flagstone, hearthstones, paving stone and similar architectural or structural stone, and the storing or stockpiling of such products on the site.
3. The manufacture of concrete building blocks or other similar blocks, the production or manufacture of lime products, the production of ready-mixed concrete, asphalt and any similar production or manufacturing processes.

(J) *Mineral Extraction Performance Standards.*

The following performance standards apply to all mineral extraction facilities in the City:

1. **Minimum Lot Size.**
The minimum lot size for which Mineral Extraction Permits may be issued is twenty (20) acres. The City Clerk may issue an administrative permit for a temporary extraction activity on less than twenty (20) acres associated with local construction projects. The permit shall be limited to one calendar year in duration and shall be subject to all performance standards of the ordinance, unless certain standards are specifically waived by the City Clerk. The City Clerk may also require additional conditions, such as specifying haul routes and guaranteeing haul route maintenance and repair.
2. **Hours of Operation.**
Mineral extraction facilities shall operate only between the hours of 6:00 am and 8:00 pm, Monday through Saturday.
 - a. Operators are allowed a maximum of five (5) one-day extensions to the hours of operation for evening work in a calendar year. Operators must notify the City in advance of the proposed extension.
 - b. Other exceptions to the hours of operation must be approved by the City. Approval may only be granted in conjunction with the furnishing of material for a public improvement project that is underway during hours that the mineral extraction facility is not otherwise allowed to operate. Approval will be limited to those functions that cannot occur during normal hours of operation.
 - c. Other exceptions approved by the City Council.
3. **Fencing.**
Fencing, signs and barriers are required around ponding areas and steep sloped excavation areas unless, because of their location, they are not deemed to create a safety hazard.
4. **Access.**
The location of the intersection of mining access roads with any public roads shall be selected such that traffic on the access roads will have a sufficient distance of the public road in view so that any turns onto the public road can be completed with a margin of safety.

5. **Roadway Dust Control.**
Operators shall be responsible for providing dust control on all gravel roads used by trucks hauling to or from a mineral excavation facility. Unless waived by the City Council in lieu of other remedies, watering roadways will be required when conditions warrant it.
6. **Mineral Extraction Facility Dust Control.**
The City may require watering in a facility when it is determined that airborne dust from extraction areas, processing activities, stockpiles or internal roadways create a public nuisance. Other remedies to control dust may include berming, landscaping, and enclosures for processing equipment. All equipment used for mining operations shall be constructed, maintained and operated in such a manner as to minimize dust conditions, as far as practical. All access roads from mining operations to public highways, roads or streets, or to adjoining property shall be paved or surfaced with gravel to minimize dust conditions.
7. **Noise.**
Maximum noise levels at the facility will be consistent with the standards established by the Minnesota Pollution Control Agency.
8. **Vibration.**
Operators shall use all practical means to eliminate adverse impacts on adjacent properties from vibration of equipment.
9. **Air Quality/Water Quality.**
All activities on the subject property will be conducted in a manner consistent with the Minnesota Pollution Control Agency's operating permits.
10. **Water Resources.**
The mineral extraction operation shall not allow surface water to leave the site in a manner that causes flooding, erosion, or alteration of natural drainage patterns. The mineral extraction operation shall not adversely affect the quality of surface or subsurface water. Surface water originating outside and passing through the mineral extraction facility shall, at its point of departure from the mining site, be of equal quality to the water at the point where it enters the mining site. The operator shall perform any water treatment necessary to comply with this provision.
11. **Screening.**
To minimize problems of dust and noise and to shield mining operations from public view, a screening barrier may be required between the mining site and adjacent properties. The design of the screening barrier shall be adequate to provide screening that would minimize the visual interruption of the surrounding landscape. When practical, a screening barrier must be maintained between the mineral extraction operation and any public road.
12. **Unauthorized Storage.**
Vehicles, equipment or materials not associated with the mineral extraction facility or not in operable condition may not be kept or stored at the facility, except as specifically authorized in the Mineral Extraction Permit.

13. **Setbacks.**
Mineral extraction shall occur no closer than fifty (50) feet from any property line or road easement. An exception to the property line setback requirement may be considered on a case-by-case basis where two mineral extraction facilities share a common lot line and the City Council determines it to be in the City's interest to waive all or portions of the contiguous setback areas between the facilities. The setbacks for all other equipment and activities shall be based upon performance standards for noise, dust control, visual screening and the like as determined in the application review process.
14. **Phasing.**
Phasing plans must be prepared for all mineral extraction facilities. The plans shall include the details and schedule for rehabilitation in the transition of one phase to another.
15. **Minimum Disturbance.**
Existing trees and ground cover outside of mineral extraction areas shall be preserved to the maximum extent possible.
16. **Weed Control.**
The operators shall be required to control noxious weeds and mow or harvest other vegetation to maintain reasonable appearance of the site.
17. **Waste Disposal.**
Any waste generated from the mining operation, including waste from vehicle or equipment maintenance, shall be disposed of in accordance with federal, state, county and city requirements.
18. **Recycled Concrete and Asphalt.**
The importation of recycled concrete and asphalt may be considered an accessory use, at the discretion of the City Council, provided also that it is processed and prepared for construction reuse or sale.
19. **General Compliance.**
The operators must comply with all other federal, state, regional, county and local laws and regulations applicable to the operation of the mineral extraction facility, including, but not limited to, Floodplain Management regulations, Shoreland Management regulations and Zoning Ordinance regulations.
20. **Additional Regulations.**
The City may impose additional regulations and requirements to the Mineral Extraction Permit to protect the public health, safety and welfare.

(K) *Land Rehabilitation.*

Land rehabilitation plans for Mineral Extraction Permits must include the grading plans, topsoil replacement, seeding, mulching, erosion control, and sedimentation control specifications for each phase and the final site restoration. The following minimum standards and conditions apply:

1. Final grades may not exceed a 3:1 ratio (33% slope), except for rehabilitated areas in existence at the time of adoption of this ordinance. In completing final grading in each phase, the top of the slope may begin twenty (20) feet from property lines.
2. A minimum of six (6) inches of topsoil shall be placed on all graded surfaces.

3. Seeding and mulching shall be consistent with Minnesota Department of Transportation specifications for rights-of-way. Exceptions to seeding and mulching include areas returned to agricultural production.
4. Soil restoration, seeding, and mulching must occur within each phase as soon as final grades, or interim grades identified in the phasing plans have been reached. Exceptions to seeding and mulching include the processing, storage and staging areas within each phase.
5. Soil erosion and sedimentation control measures shall be consistent with MPCA's "Protecting Water Quality in Urban Areas".
6. Unless otherwise amended or approved by the City, all final grades and site restoration efforts shall be consistent with the Rehabilitation Plan.
7. Within six (6) months after completion of mineral extraction or after termination of the permit, all equipment, vehicles, machinery, materials and debris shall be removed from the subject property.
8. Within twelve (12) months after completion of mineral extraction or after termination of the permit, site rehabilitation must be completed.
9. All water areas resulting from excavating shall be eliminated upon rehabilitation of the site. In unique instances where the City Council has reviewed proposals for water bodies at the time of approval of the overall plan and has determined that such would be appropriate as an open space or recreational amenity in subsequent reuse of the site, water bodies may be permitted.

(L) *Violations and Penalties.*

1. Any firm, person or corporation who violates any of the provisions of these regulations shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine and/or imprisonment as provided by law. Each day that a violation is permitted to exist shall constitute a separate offense.
2. In the event of a violation or threatened violation of any of the terms of this ordinance, the City may take appropriate action to enforce this ordinance, including application for injunctive relief, action to compel performance or other appropriate action to court if necessary to prevent, restrain, correct or abate such violations or threatened violations. Upon motion, the court may award costs, disbursements and reasonable attorney's fees and witness fees, which costs and fees can be assessed against the property.

Penalty, see §10.99

This ordinance shall take effect and be in force from and after its publication in the official newspaper of the City of Harris.

Diane Miller
Mayor

ATTEST:

Joanne Dargay
City Clerk

Published in the _____ this _____ day of
_____, 2015.