

**ORDINANCE NO. 2017-001
CITY OF VERGAS
COUNTY OF OTTERTAIL
STATE OF MINNESOTA**

151.70 EXCAVATION, MINING AND GRAVEL PITS

151.70 PURPOSE AND INTENT

It is the purpose of this section to regulate the existing and future Mining Operations in the city. Mining Operations are inherently accompanied by noise and dust, often create hazardous conditions, and may result in lasting disfigurement of the land where they are conducted on, and therefore tend to interfere with the use of nearby property or the quality of life for the residents adjacent or in proximity to Mining Operations. It is also the city's intent to ensure that the disturbed areas are restored upon completion of Mining Operations, and overall, to protect public health, life and general welfare.

151.701 DEFINITIONS.

For the purposes of this section, the definitions listed below shall be construed as follows:

Abandonment. The inactivity of a worksite for one year or more without the act of extracting any minerals.

Active Gravel Pit. The terms "active gravel pit" and "active excavation" also mean any area where the topsoil or overburden has been removed for the purpose of mining earthly deposits or minerals, yet the area has remained idle since the topsoil removal. The terms "processing area" also mean any area that is being used for stockpiling, storage, or processing or recycling of sand, gravel, soils, or other materials or products derived from gravel mining, even if such materials did not originate or were not produced on the premises. Such operations may include, but are not limited to, concrete mixing, concrete block production, asphalt production, the grinding and/or crushing of concrete or asphalt, and the processing of petroleum-contaminated soil being managed pursuant to state pollution control agency approval, so long as the processing or recycling does not violate any federal or state law or any of the requirements of any regulatory agencies having jurisdiction over the operations.

Berm. A mound of earth designated to provide screening of areas and to reduce noise.

Dust. Airborne mineral particulate matter.

Engine Retard Breaking. Dynamic Brake, Jake Brake, Jacobs Brake, C Brake, Paccar Brake, transmission brake or other similar engine retarding brake system which alters the normal compression of the engine and subsequently releases that compression.

Excavation. The movement or removal of soil and minerals.

Interim Use Permit. A permit for temporary use of a property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.

Manufacturing. Any activity that includes Portable or Permanent or Temporary Asphalt Plants, Concrete Ready-Mix Plants, Processing and Recycling Plants.

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

Mineral Extraction. The removal of sand, gravel, rock, clay and other minerals from the ground.

Mineral Extraction Facility. Any area that is being used for removal, stockpiling and storage, of sand, gravel, topsoil, clay, and other minerals.

Operator. Any person or persons, partnership, corporations or other entities or a combination or assignees thereof, including public or governmental agencies, engaging in mineral extraction and any processing, recycling, and manufacturing activities derivatives.

Operation. "Operation" includes the driving of all hauling trucks or equipment into or out of a gravel pit, loading, roadwork or engine start-up of any kind.

Owner. Any person or persons, partnership, corporation or other entities owning fee title to the Subject Property.

Processing Area. Any area that is being used for stockpiling, storage, or processing or recycling of sand, gravel, soils, or other materials or products derived from gravel mining, even if such materials did not originate or were not produced on the premises.

Processing Plant. Machinery used to crush, wash, compounding, mixing, or treat dirt, sand, gravel, rocks, or similar mineral products into consumable products such as construction grade sand, gravel, and other similar products. This does not include Asphalt Plants and Concrete Ready-Mix Plants.

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.

Rough Grade. The stage at which the grade approximately conforms to the approved plan.

Slope. An inclined ground surface the inclination of which is expressed as a rate of horizontal distance to vertical distance.

Soil. Is naturally occurring superficial deposits overlaying bedrock.

Stockpiling. Move or handle a reserve supply of goods or raw material accumulated for future use.

Subject Property. The real property on which Mineral Extraction Facilities, Processing Plant, Asphalt Plant and/or Ready-Mix Plant is sought to be permitted.

Topsoil. Is the upper most layer of naturally occurring soil.

151.71 PERMIT REQUIRED.

Mineral Extraction.

- A. Permit Required. Irrespective of the zoning classification of a subject property a permit, as provided herein, is required for Mineral Extraction or Manufacturing unless specifically excepted from such permit.
- B. An Interim Use Permit (I.U.P.) is required for any Mineral Extraction or Manufacturing Facility.
- C. Interim Permits are valid for one year and shall be applied for on or before March 1 of each year.

151.72 PERMIT APPLICATION REQUIREMENTS.

An application for a permit required by this article shall contain the following:

- A. The legal description of the lands from which it is proposed to excavate, remove, process, store or handle minerals.
- B. The name and address of the applicant and the name and address of the owner of the land.
- C. Names and addresses of all adjacent landowners within one-half mile radius.
- D. Copies of any agreements pertaining to the operation including the duration of any lease, if applicable.
- E. The purpose of the removal.
- F. The estimated time required to complete the removal.
- G. The highways, streets or other public ways within the city upon and along which the material removed shall be transported.
- H. The plan of operation, including, but not limited to:

1. Soil processing (any operation other than direct mining and removal),
 2. Nature of the processing and equipment,
 3. The area to be included in the operation,
 4. Depth of topsoil and soil type,
 5. The depth and grade of excavation,
 6. The estimated quantity of material to be added to or removed from the premises,
 7. Location of the plant,
 8. Location of stockpiles,
 9. Source of water, disposal of water and reuse of water. In the event that water is used in the operation of a pit, approval from the state department of natural resources and other appropriate state or federal agencies shall be obtained as to the type, location and depth of such well and contained with such application.
 10. The number and location of trees prior to excavation,
 11. Adjacent and on-site buildings and land uses,
 12. Map or plat of the proposed pit or excavation showing the confines or limits thereof, together with the proposed finished elevations based on sea level readings.
 13. Elevations and percent slope within 100 feet beyond the perimeter of the excavation and other such information necessary to analyze the site shall be provided by the applicant. United States Geological Survey datum shall be used for all topographic mapping where feasible.
 - 14. Phasing plan which provides no more than ten (10) acres of the site to be open to mining at any one time. Before any additional land may be mined, the applicant must reclaim the site to the condition that is indicated on the approved reclamation plan. Proposed change: Phasing plan which provides no more than ten (10) acres of the site rough grade**
- I. The operation plan must also identify actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion and rising dust out of any sand or gravel pit.
 - J. A reclamation plan including, but not limited to:
 1. Final grade of the property;
 2. Depth of topsoil reclaimed;

3. Type of vegetation replanted;
4. Number of trees to be replanted, replacing the trees removed during excavation.

151.73 BOND.

- A. The city council shall require the applicant for a special use permit under this article, owner or user of the property on which the pit or excavation is located, to post a cost bond with surety acceptable to the city or cash escrow in such form and sum as the city council shall determine, with sufficient surety running to the city, conditioned to pay the city the extraordinary cost and expense of managing or repairing, from time to time, any highways, streets or other public ways where such repair work is made necessary by the special burden resulting from hauling and travel, in removing material from any pit or excavation, the amount of such cost and expense to be determined by the city engineer; and conditioned further to comply with all the requirements of this chapter, and the particular permit, and to pay any expense the city may incur by reason of doing anything required to be done by any applicant to whom a permit is issued.

The city council, for failure of any person to comply with any requirements made of him in writing, under the provisions of this chapter, as promptly as the same can reasonably be done, may proceed to such requirement to be complied with and the cost of such work to be taxed against the property, whereon the pit or excavation is located or the city council may at its option proceed to collect such costs by an action against the entity to whom such permit has been issued and its sureties.

- B. In addition to the bond required in subsection (a), the applicant for the permit shall post a performance bond of at least \$100,000.00. The amount may be greater based on the city engineer's recommendation. The performance bond shall be executed by a corporate surety company authorized to do business in the state. The performance bond shall be used for the active areas for which a permit is granted and conditioned upon full performance of the terms and conditions of this chapter by the applicant and/or owner of the premises described in the permit application. The bond shall remain in effect for at

least one year after the expiration of the permit. The bond shall guarantee the required restoration of the entire site.

151.74 AGREEMENT TO HOLD CITY HARMLESS

No person shall open, operate or maintain mineral extraction facility or engage in mineral extraction on a subject property without an agreement with the city, saving the city free and harmless from any and all suits or claims for damage resulting from negligent excavation, removal or storage of minerals or operation of any mineral extraction facility within the city.

151.75 FEES AND APPLICATIONS.

151.75.01. **Annual fee required.** An annual fee will be required for the Interim Use Permit. Such fee shall be established by council resolution as adopted from time to time.

151.75.02. **Inspection and review permit fee.** The inspection and review permit fee shall be established by council resolution adopted from time to time.

151.75.03. **Denial of Permit.** In the event an application for the issuance of a permit is denied, the city council shall retain such amount of said fees as shall be necessary to defray costs of engineering and legal services incurred by the council in connection with such application and the balance, if any, shall be returned to the applicant.

151.75.04. **Reimbursement of city for engineering and legal services.** In the event of the cost of engineering and legal services exceeds the permit fee, then and in that event the applicant shall, upon notice from the city, reimburse the city for the same within 30 days.

151.75.05. **Form of application.** The application shall be in such form and shall furnish such information as shall be required by the city council.

151.76 INSPECTIONS.

The city engineer shall inspect operating gravel mining pits twice a year, May 1 and November 1, to confirm compliance with this Ordinance. Written reports shall be submitted to

the city administrator within 30 days following each of these inspections. The Engineer shall inspect and certify as compliant or, if deficient, note the deficiency and corrective action to be taken pursuant to a checklist to be developed by the engineer and the City to ensure compliance with this ordinance. **Proposed Change:** Typically no change between November 1 and May 1. I would suggest one inspection on April 1.

151.77. CONDITIONS OF PERMIT.

151.77.01. **Hours of Operation.** Operation shall be conducted only between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless specifically authorized by the City. No mineral extraction or manufacturing shall take place on holidays. In cases of public emergencies, the City Clerk may extend hours of operation. It is the specific intent of this section that no crushing, loading, hauling, or engine startup activity of any kind shall take place on or upon any area or subject property other than during those hours specified above.

151.77.02. **Fencing or Berm:** Where deemed necessary by the City, a fence or berm may be required prior to the commencement or as a condition of the continuous operation of any Mineral Extraction or Manufacturing operation enclosing the area authorized by the applicable permit. If required, the fencing must have a minimum of two (2) single strand wires with posts a maximum of twelve (12) feet apart and at least four (4) feet in height. The berm must be a minimum of thirty (30) inches high and six (6) feet in width at the base.

151.77.03. **Screening.** The applicant or owner shall plant suitable and fast-growing screening trees which shall be a minimum of six feet high placed in two rows, staggered with trees not more than ten feet apart in each row, reducing unsightly view of the operations and reducing noise and dust.

151.77.04. **Access Roads.** All access roads will be of a sufficient length from a public road so that any turns onto the public road can be completed with a margin of safety. All access roads shall be maintained so as to minimize noise and dust from vehicles using such access road.

151.77.05. **Dust Control.** The Operator shall utilize all practical means to reduce the amount of dust cause by the operation. In no case shall the amount of dust or other particulate matter exceed the standards established by the MPCA pollution control agency and the United States EPA.

151.77.06. **Noise.** Maximum noise levels at the perimeter of the Operation will be consistent with the standards established by the Minnesota Pollution Control Agency and the United States Environmental Protection Agency.

151.77.07. **Air Quality.** All activities on the Subject Property will be conducted in a manner consistent with the Minnesota Pollution Control Agency's standards.

151.77.08. **Maximum slopes.** During the entire period of operations, all excavations other than the working face shall be sloped on all sides at a maximum ratio of one foot horizontal to one foot vertical, unless a steeper slope shall be approved by the city. Where excavations are adjacent to a public roadway or other right-of-way, or the property adjacent to the excavation, the excavation shall have a maximum four to one slope. Slopes adjacent to or contiguous to bodies of water shall be sloped at a maximum of six to one.

151.77.09. **Setbacks.** The following setbacks shall apply:

- a. No mining shall take place within one hundred (100) feet of any property lines, road right-of-way or easement;
- b. No part of the operation shall be within five hundred (500) feet of any occupied structure not owned by the Operator or Owner and existing at the time of the original permitting.

151.77.10. **Limits of Excavation.** No more than ten (10) acres shall be open to active mining. For each additional five (5) acre area to be mined, five (5) acres of previously mined area must be reclaimed. The processing area shall be no more than ten (10) acres. **Proposed Change:** No more than ten (10) acres shall be open to active mining, except for previously opened areas. For each additional five (5) acre area to be mined, five (5) acres of previously mined area must be reclaimed. The processing area shall be no more than ten (10) acres.

151.77.11. **Noxious Weeds.** The Operator shall utilize all practical means to reduce and prevent the growth of noxious weeds.

151.77.12. **Spillage on Public Roadways.** Spillage of material on and damage to public streets used as haul roads shall be cleaned up and repaired to the satisfaction of the City Engineer in a timely manner.

151.77.13. **Water pollution.** Operators shall comply with all applicable state pollution control agency regulations and federal and Environmental Protection Agency regulations for the protection of water quality. No waste products or process residue, including untreated wash water, shall be deposited in any lake or natural drainage system, except that lakes or ponds wholly contained within the extraction site may be so utilized.

151.77.131. **Topsoil preservation.** All topsoil shall be retained at the site until complete rehabilitation of the site has taken place according to the rehabilitation plan.

151.78. RECLAMATION.

151.78.01 . All mining sites shall be reclaimed immediately after mining operations cease. Reclamation shall be complete within one (1) year. The following standards shall apply:

- 1) The peaks and depressions shall be graded and backfilled to a surface which will result in a gentle rolling topography in substantial conformity to the land area immediately surrounding. All interior slopes shall be graded to a maximum of 4:1.
- 2) The slope to adjacent properties shall be four foot horizontal to one-foot vertical (4/1) of mined areas;
- 3) Reclaimed areas shall be surfaced with six (6) inches of soil of a quality at least equal to the topsoil of the land areas immediately surrounding; and **Proposed Change:** Reclaimed areas shall be surfaced with an amount equal to the surrounding area of soil of a quality at least equal to the topsoil of the land areas immediately surrounding; and
- 4) The topsoil shall be seeded, sodded or planted with legumes and grasses. Trees and shrubs may also be planted, but not as a substitute to grasses and legumes. Erosion control measures must be implemented until ground cover is established.

151.78.0011. **Standards for filling and compaction.** Prior to reclamation, the operator shall provide to the city engineer the location, area, and depth of the land before and after the anticipated activity. Such activity and the materials used shall be subject to the following:

151.78.0012. Prior to such activity, the operator shall submit an engineering analysis of the proposed fill and compaction method to the city engineer. Side slopes of the excavation shall be graded to a maximum 1:1 slope prior to the placement of fill and achieve a maximum final slope of 4:1 after filling operations are complete.

151.78.0013. Unless otherwise approved by the city council, materials including, but not limited to, organic soils and debris (topsoil, peat, muskeg, muck, stumps, roots, logs, brush, etc.), demolition debris (broken concrete or bituminous fragments, brick, lumber, metal, etc.) and any other solid or hazardous wastes shall not be used as fill in reclamation.

151.78.0014. Imported materials used as fill in reclamation shall consist of mineral soils which typically demonstrate a minimum soil bearing capacity of 1,500 psf and are suitable for building foundations.

151.78.0015. The top ten feet of all fill areas shall be compacted by mechanical equipment as the fill is placed, unless otherwise approved by the council, to a minimum of 95 percent of maximum density for a particular soil as determined by the Standard Proctor method.

151.79.00 PERMIT RENEWAL

Operations in compliance with the Interim Use Permit may renew the permit on an annual basis. Renewal applications must be submitted to the City on or before March 1 of each year.

151.80.00 TERMINATION OF PERMIT.

151.80.01. **Violations.** The Council may terminate an Interim Use Permit for violation of this Ordinance, or a condition of this permit, or for violation of other applicable laws.

151.80.02. **Notice to Terminate.** To terminate a permit, the Council shall give notice of the violation or other cause for termination along with an order that the condition be remedied. If the condition has not been repaired within two (2) weeks, the Council shall hold a hearing to determine whether the permit should be terminated.

151.80.03. **Cease Operation Upon Termination.** No mining shall take place after the permit is terminated.

151.81.000 PENALTY

151.81.01. **Violation a misdemeanor.** Any person, firm or corporation who violates or who fail to comply with any of the provision of this ordinance or who make any false statement or omission in any document required to be submitted under the provisions shall be guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by state law.

151.81.02. **Each day an offense.** Each day that a violation continues shall constitute a separate offense.

151.80 ENFORCEMENT.

Shall be pursuant to Chapter 151.99, as amended.