

City of Augusta, Maine

DEPARTMENT OF CITY SERVICES

BUREAUS:

Code Enforcement (207) 626-2368
Facilities & Buildings (207) 626-2365

(207) 626-2365

BUREAUS:

Engineering (207) 626-2367
Planning (207) 626-2366



Memo

To: City Council
Bill Bridgeo, City Manager
Steve Langsdorf, Corporate Council
Mike Duguay, Director of Development Services
Richard Dolby, Director of Code Enforcement Bureau

From: Matt Nazar, Deputy Director of Development Services

Date: January 11, 2007

Re: Mineral Extraction Ordinance modifications

The following attachment includes all proposed changes to the Mineral Extraction Ordinance as agreed to by the Mineral Extraction Subcommittee of the City Council at their meeting on December 19, 2006. Items 1 through 7 are essentially housekeeping issues with little or no substantive change to the ordinance. Items 8 through 14 contain substantive changes, with some more substantive than others. A more thorough explanation of each item, or of items that particularly interest the Council, can be made by staff or members of the subcommittee at the January 16th Council meeting.

Agenda #013

The following amendments shall be made to the City of Augusta Mineral Extraction Ordinance:

1. Section 6-70(8) be amended as follows:

(8) ~~The limited exemption shall expire April 30, 2006 and this paragraph shall automatically be removed from this division.~~ This exemption shall only apply to applicants that filed a NOTICE OF INTENT TO APPLY FOR A LICENSE by April 30, 2006, as outlined in Section 6-73.

2. Section 6-70(a)(6) be amended as follows:

(6) An exemption will not be granted ~~for proper screening of the active extraction area~~ from Section 6-76(b)(4) Buffers, bufferyards, and setbacks.

3. Section 6-76(a)(6) be amended as follows:

(6) In all cases, the applicant, and the licensee ~~one~~ once approved, shall have the burden of proof that all requirements, standards, and conditions of this division and subsequent approval will be or are being met.

4. A new Section 6-73(c)(1)(a) be created, and the current Section 6-73(c)(1)(a) through (h) be re-lettered to (b) through (g):

(a) Section (a), General Requirements – All Operations – All subsections, except subsection 4 and 5.

5. Section 6-76(b)(2)(a)(v)(a) be renumbered and properly relocated in the ordinance as a new Section 6-76(a)(8) to ensure that it is clear it applies to all mineral extraction operations.

6. Amend Section 6-73(c)(1)(b) to read as follows, eliminating a conflict with Section 6-70(a)(2):

(b) Section (b)(2), Reclamation/Reclamation Plan – ~~All subsections, ONLY if the unreclaimed footprint exceeds ten (10) acres.~~ Limited exemptions as per Section 6-70(a).

7. Amend Section 6-73(c)(2) as follows:

(2) All mineral extraction operations must come into compliance with said standards April 30, 2006, except the reclamation standard in section (b)(2), the externally drained projects standard in section (b)(1)(c)(ii) and (iii), the buffers, bufferyards and setbacks in section (b)(4) and the road design, circulation and traffic standards in section (b)(5) which must be complied with by ~~November 6, 2006~~ June 1, 2007, or said license shall be revoked by the Planning Board, unless for good cause the

Planning Board decides that a one time extension of no more than six (6) months shall be necessary to comply with any performance standards.

8. Amend Section 6-75(j)(2) as follows:

(2) *Variances.*

(a) The Planning Board may grant a variance from any portion of Section 6-76 Minimum design and performance standards, the performance standards, other than except as limited by section 6-70(a)(6). No variance may be granted without meeting all of the following criteria:

(1) Written request by the applicant demonstrating that the standard(s) from which a variance is requested would create a financial and/or operational hardship. No variance request for the expansion of the active excavation area size shall be granted unless the applicant demonstrates that reclamation or partial reclamation poses a financial and/or operational hardship;

a. A financial hardship is defined as the inability of the property owner to make a reasonable profit or rate of return considering all relevant factors. The applicant will be required to provide financial records supporting the request. The hardship shall not be the result of action taken by the applicant or prior owner.

b. An operational hardship is defined as an inability to comply with the standard(s) from which a variance is requested because of specific geographical or geological features of the site, including the location of different types of materials to be extracted. The hardship shall not be the result of action taken by the applicant or prior owner; and

(2) Written request by the applicant demonstrating that the requested variance does not unreasonably adversely affect off site uses. The Planning Board may review any potential adverse impacts on off-site uses, including but not limited to the impact of noise, dust, air and ground vibration, traffic, and hours of operation; and

(3) Written request by the applicant demonstrating that the requested variance does not unreasonably adversely affect the health, safety, and general welfare of the public and abutting property owners.

(4) To the extent that the request is for a variance to the size of the active extraction area, the request shall be no larger than is necessary to accommodate the hardship identified in item 1 of this subsection. The Planning Board shall have the authority to limit, reduce, or modify the requested variance in order to ensure that a the minimum variance necessary is issued to the applicant, if all other criteria in this subsection are met. ~~if the owner or operator affirmatively demonstrates to the Planning Board that~~

~~the variance does not unreasonably adversely affect natural resources of existing uses and does not adversely affect the health, safety and general welfare of the public and abutting land owners.~~

9. Combine Section 6-78(a)(3)(c) and Section 6-78(a)(3)(d) then renumber and properly locate the combined Section in the ordinance as a new Section 6-78(c) as follows:

- (c) Revocation. The Planning Board, after any person has received a second letter of non-compliance or upon issuance of a stop work order by the CEO, and upon written request made by the license holder or the CEO, within thirty (30) days after receipt, shall provide an opportunity for public hearing in accordance with Section 6.3.2 of the Land Use Ordinance within thirty (30) days of receipt of the written request. The public hearing shall be used to determine whether the license holder is in compliance with a extraction license, and if not, the Planning Board shall permanently revoke the license; and therefore may request that the city Attorney take remedial action, as is permitted by city ordinance or state law. Revocation shall result in the loss of all prior exemptions and variances issued as a part of the licensing process and any new license for the site shall be applied for as though the site is a new mineral extraction operation.

The applicant can terminate the process above at any time prior to revocation by demonstrating compliance with his approved license at a subsequent compliance inspection, which he requests, and payment of inspection fees, followed by the issuance of a letter of compliance by the CEO.

10. Amend the definition Section 6-71(d) as follows:

Active extraction area. The pit itself, the actual hole in the ground, including side slopes and adjoining areas with overburden removed ~~or proposed to be removed,~~ excluding roads, structures, stockpiles, etc., which is being worked to produce minerals and/or that is yet to be reclaimed.

Common Scheme of Development. The process whereby contiguous parcels with existing or proposed mineral extraction operations where the applicant or property owner has at least a 30% share in ownership or where mineral extraction operations owned by a relative (as defined herein) are reviewed as a single license application.

Deemed Complete. Deemed Complete shall mean that the material extracted sufficiently meets the section and plan requirements outlined in the permit or license issued by the planning board, or that the use has been abandoned for a period of 24 months or more. For mineral extraction operations with an active extraction area of 10 acres or more, 200 cubic yards of material shall be processed or removed every two years, based on records maintained by the owner of the operation, in order to avoid being considered abandoned. For mineral extraction operations with an active extraction area of less than 10 acres, 100 cubic yards of material shall be processed or removed every two years, based on records

maintained by the owner of the operation, in order to avoid being considered abandoned.

Relative. Relative means a spouse, parent, grandparent, brother, sister, child, aunt, uncle, cousin, domestic co-habitant or grandchild related by blood, marriage or adoption, or other individuals where the intent is to circumvent the ordinance.

11. Amend Section 6-72, adding a new section (h):

(h) Conflicting Ordinances/Regulations. This ordinance shall not in any way impair or remove the necessity for compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this ordinance shall control. Where conflicts arise within this ordinance, the stricter provision or requirement shall prevail.

12. Amend Section 6-72(d) as follows:

(d) *Mineral extraction license required.* All parties proposing to continue a mineral extraction operation, expand an existing mineral extraction operation or propose the creation of a new mineral extraction operation, must receive a mineral extraction license as set forth in section 6-73, 6-74 and 6-79 of this division, as applicable.

License applications shall be filed under a “common scheme of development”.

13. Amend Sections 6-70(a)(2) and 6-70(a)(3) as follows:

(2) All reclamation requirements, excluding the reclamation plan and performance guarantee referenced in subsection (3) below, shall be deferred until the extraction site is deemed complete.

(3) A reclamation plan and a performance guarantee [as outlined by DEP under State of Maine Performance Standards, Intent to Comply, Section 14] shall be submitted to the City of Augusta ~~if the Planning Board requires it~~ (See section 6-77).

14. Amend Section 6-73(b) adding a new subsection (6) as follows:

(6) A sketch plan prepared and certified by a licensed Maine Land Surveyor showing either the reclaimed cross sections or topography of the site upon completion.

February 5, 2007 Amendment submitted by Councilor Koski:

15. Amend Section 6-78 (a) as follows:

(3) The Compliance Inspection shall be conducted by the Code Enforcement Officer at least prior to the 2nd and 5th 4th anniversary date of the Mineral Extraction License held by the party, and within 60 days of License Renewal.