

**SAN FRANCISCO TOWNSHIP  
CARVER COUNTY, MINNESOTA**

**MINERAL EXTRACTION  
ORDINANCE  
Ordinance No. 8**

Originally Adopted  
June 20, 2011

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December 15, 2014

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July 20, 2020

**TOWNSHIP OF SAN FRANCISCO  
ORDINANCE NO. 8**

**MINERAL EXTRACTION ORDINANCE**

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**TOWNSHIP OF SAN FRANCISCO  
ORDINANCE NO. 8**

**MINERAL EXTRACTION ORDINANCE**

The board of supervisors of the town of San Francisco ordains:

**Chapter 1: Title and Authority**

This ordinance shall be known and cited as the Township of San Francisco Mineral Extraction Ordinance, except as referred to herein as “this Ordinance.”

This Ordinance is adopted pursuant to the Town Board’s authority under Minnesota Statutes, section 462.351 to 462.364 and such other law as may apply. This Ordinance does not rely on the authority provided in Minnesota Statutes, sections 366.10 to 366.181 and the procedures and requirements of those sections do not apply to this Ordinance.

**Chapter 2: Purpose and Application of this Ordinance**

**Section 1 -- PURPOSE**

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

- A. Identify areas in the community where mineral extraction is most appropriate and minimizes conflicts with other land uses.
- B. Establish permitting requirements, environmental review procedures and performance standards to regulate mineral extraction.
- C. Establish standards that prevent or minimize environmental and aesthetic impacts on extracted properties, adjacent properties and the community as a whole.
- D. Establish standards and financial guaranties that restore extracted land to a condition compatible with adjacent properties and suitable for future uses that are compatible with the San Francisco Township Comprehensive Plan.

## **Section 2 – APPLICATION OF THIS ORDINANCE**

This Ordinance shall be applied consistently with the following:

- A. In the interpretation and application of this Ordinance, the provisions contained herein shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare.
- B. Where the conditions imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, statute, rule, ordinance, resolution, or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail.
- C. All applications submitted to the Township seeking any permit, permission or other action provided for in this Ordinance shall be on a Township approved form. Any application not on the Township's form shall be rejected and shall not be considered.
- D. This Ordinance shall apply to all areas in San Francisco Township, Carver County, Minnesota, except areas within the incorporated limits of any city, however organized, or as may otherwise be provided by law.
- E. Carver County has adopted zoning regulations that are applicable within the Township, including regulations on mineral extraction. Properties within the Township are subject to the County's regulations as well as the regulations contained in this Ordinance. The granting of a permit from one governmental entity does not constitute approval for any other governmental entity and it shall be the applicant's responsibility to identify and comply with such other federal, state, and local laws, rules, regulations, and ordinances as may apply and to obtain such other permits and permission as may be required.

### **Chapter 3: Definitions**

The terms used in this Ordinance shall have the meaning given them in this Chapter. Any term not defined in this Chapter, or that refers to the Carver County Code of Ordinances, shall have the meaning given it in Section 152.010 of the County Ordinance.

#### **Accessory Uses**

Uses of a mineral extraction facility that are incidental to mining and are not included as an authorized principal use.

### Active Mining Area

The portion of the total mining area containing the extraction area, operations area, and restoration area. This area may not exceed 35 acres.

### Adjacent Property

Property that is touching at a minimum at a single point, or separated by a public road, railroad, trail, of similar right-of-way.

### Agricultural

As defined by the Carver County Code of Ordinances.

### Board of Appeals and Adjustments

The San Francisco Township Board of Appeals and Adjustments.

### Comprehensive Plan

The San Francisco Township Comprehensive Plan.

### Conditional Use Permit

A permit authorizing a use not otherwise allowed on a particular site. If approval is granted, such use may be subject to certain conditions on the property owner.

### County Ordinance

The most current version of Carver County Zoning Code (Chapter 152) or successor ordinance, as it may be amended from time to time.

### Dewatering

The pumping, extraction or removal of subsurface water.

### Dust

Airborne mineral particulate matter.

### Excavation

The movement or removal of soil and minerals.

## Extraction Area

The portion of the active mining area that may be actively excavated for mineral extraction. This area may not exceed 10 acres.

## Floodplain

The beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by a regional flood.

## Haul Routes

Roads used for transport to and from a mineral extraction facility.

## Interim Use Permit

A permit authorizing a temporary use of a property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it. Conditions may be placed on an interim use permit that, if violated, may result in the revocation of the permit.

## Mineral

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

## Mineral Extraction

The removal of sand, gravel, rock, clay and similar higher density nonmetallic natural minerals from the ground.

## Mineral Extraction Facility

Any area that is being used for removal of minerals, including removal in conjunction with stockpiling, storage or processing of such minerals.

## Mineral Extraction Permit

The Interim Use Permit required for mineral extraction activities.

## Minnesota River Bluff and Ravine Area of San Francisco Township

The Minnesota River Bluff is defined as one mile from the 100-year flood level of the Minnesota River. The Ravine area is defined as one mile from the Bevens Creek or the Silver Creek area, as defined in the "June, 2000 Carver County Planning Study of Ravine and Bluff Areas Along the Minnesota River".

## Normal Water Table

The 10-year average of the intersection between the zone where the soil is completely saturated with water, and the zone where the soil is not completely saturated with water.

## Operations Agreement

A written contract between the Operator, the property owner and San Francisco Township, which outlines all the terms of the permit for a mining extraction facility, including any additional terms outside this Ordinance that are imposed by the Town Board.

## Operations Area

The portion of the active mining area being used to support the extraction area including, but not limited to, the storage of equipment and the processing and stockpiling of materials. This area may not exceed 15 acres.

## Operator

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

## Parcel

Legal or ownership parcel, not tax parcel.

## Planning Commission

The San Francisco Township Planning Commission.

## Principal Use, Mineral Extraction Facility

The principal use of a mineral extraction facility is the extraction, screening, storage and sale of minerals from the facility. The principal use does not include crushing, mixing, washing, a concrete block plant, a ready-mix concrete plant, an asphalt production plant, a concrete recycling plant or an asphalt recycling plant.

## Processing

Activity which includes removal, on-site screening, and stockpiling.

## Reclamation

To renew land to self-sustaining long-term use that is compatible with contiguous land uses, present and future, in accordance with the standards set forth in the San Francisco Township Comprehensive Plan.



## Recycling

The process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use.

## Recyclable Materials

Materials that are separated from mixed municipal solid waste for the purpose of recycling, including concrete rubble, concrete and asphalt taken from road demolition or road repair projects, and other recyclable asphalt and recyclable concrete.

## Residence

A permanent building or structure which includes living quarters.

## Restoration Area

The portion of the active mining area being restored through reclamation. This area may not exceed 10 acres.

## Setback

The area of property surrounding a mineral extraction facility intended as a buffer zone. Setbacks are calculated at the top of the mine. Setbacks from the bottom of mine will be determined by adding top setback plus 5 times the depth of the mine at the point in question.

## Shoreland

Land located within the following distances from public waters: one thousand (1000) feet from the ordinary high water level of any lake, pond or flowage, and three hundred (300) feet from rivers and streams as designated on the Carver County Zoning Map, or the landward extent of a floodplain ordinance on a river or stream, whichever is greater.

## Soil

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

## Staging

Preparation for daily hauling activities, including weigh-in, warm up, and lining up of trucks.

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.

Total Mining Area

The total area on the parcel covered by the mineral extraction permit. This area may not exceed 120 acres.

Town Board

The Board of Supervisors of San Francisco Township.

Township

The Township of San Francisco, Carver County, Minnesota.

Wetlands

A surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971) or its equivalent or otherwise classified as a wetland under the Carver County's Code of Ordinances.

**Chapter 4: Permit Required**

**Section 1 - PERMIT REQUIRED**

Except as provided in any CUP issued, or amended by Carver County prior to **June 1st, 2006**, it is unlawful for any person, firm, company or corporation to extract or process minerals in the Township without first obtaining an interim use permit from the Township as required in this Ordinance. Penalties for operating without a permit shall be as provided in this Ordinance.

**Section 2 - CRITERIA FOR GRANTING PERMITS**

In reviewing an application for an interim use permit, the Town Board shall consider the effect of the proposed use upon the health, safety and general welfare of occupants and owners of surrounding lands. In order to issue a permit, the Town Board must find that the following criteria have been met:

- A. The use must not create an excessive burden or cause adverse impacts on existing parks, schools, streets and other public facilities and utilities that serve or are proposed to serve the area.
- B. The use must be sufficiently compatible or separated by distance or screening from adjacent property so that existing uses will not be adversely impacted and there will be no deterrence to use, development or enjoyment by the property owner.
- C. The structure and site must have an appearance that will not unreasonably create an adverse effect upon adjacent residentially zoned or used properties.
- D. The use must not adversely impact the unique and scenic area of the Minnesota River Bluff and Ravine Areas of San Francisco Township.
- E. The use must be in conformance with the San Francisco Township Comprehensive Plan.
- F. The use must not cause a traffic hazard, congestion or require infrastructure modifications. The existing infrastructure must be deemed adequate.
- G. The use must not cause adverse impact to surface or ground water resources.

### **Section 3 - INTERIM USE PERMITS**

Interim Use Permits for mineral extraction may be issued under the following conditions. The Town Board may impose additional conditions on the mineral extraction permits it issues as well as conditions imposing stricter standards than those contained in this Ordinance.

- A. The date or event that will terminate the use can be identified with certainty.
- B. The proposed mineral extraction satisfies the general provisions contained in Section 152.081 of the County Ordinance and the minimum criteria for issuance and minimum conditions contained in Section 152.082 of the County Ordinance.
- C. No Mineral Extraction Interim Use Permit may permit a total mining area larger than 120 acres. An applicant must specifically identify the portion of the parcel (not to exceed 120 acres) that shall constitute the total mining area.
- D. Use of the total mining area shall be limited as follows:
  - 1. No more than 35 acres of the total mining area may be used as the active mining area. An applicant must specifically identify the proposed active mining area when applying for a mineral extraction permit. Once permitted, the active mining area shall not be altered except in accordance with the

terms and conditions of the mineral extraction permit and the Operations Agreement.

2. No more than 10 acres of the active mining area may be used as the extraction area at one time. Restoration must be completed before additional acres may be mined.
  3. No more than 15 acres of the active mining area may be used as the operations area at one time.
  4. No more than 10 acres of the active mining area may be used as the restoration area at on time.
- E. No additional Conditional Use Permits, or Interim Use Permits, except a “Permitted Accessory Uses and Structures Conditional Use Permit”, will be allowed on the same area covered by a Mineral Extraction Interim Use Permit.
- F. No more than one Mineral Extraction Interim Use Permit may be issued per parcel. If a Mineral Extraction Conditional Use, or Mineral Extraction Interim Use Permit exists for a parcel, an Interim Use Permit may not be issued for that parcel unless the existing Mineral Extraction Conditional Use, or Mineral Extraction Interim Use Permit is first extinguished or revoked. A parcel divided from a larger parcel (on or after January 1, 2006) on which a Mineral Extraction Operation existed prior to the division, shall not be treated as a separate parcel for the purposes of this Ordinance and shall not be eligible for the issuance of a Mineral Extraction Interim Use Permit, unless all permits existing on the larger parcel for the Mineral Extraction Operation have been extinguished or revoked, the Mineral Extraction Operation has ended, and the parcel has been fully reclaimed. Adjacent parcels under the same ownership shall be considered a single parcel for the purposes of this Ordinance so that only one Mineral Extraction Operation may exist on the parcels as a whole.
- G. A mandatory 1000-foot setback is required from any residence, except the residence of the mine owner or permittee. The setback applies to all areas of the operation including the area to be mined, all internal haul routes, and the entrance/exit onto the roadway.
- H. A mandatory 200-foot setback is required from the property line, and berm or screening will be required beyond the 200-foot setback, if visible from surrounding residences, public roadway, or public view.
- I. Berm heights will be negotiated with surrounding property owners, and the Town Board, or designee. The Town Board, or designee will be the final decision maker of berm heights.

- J. A mandatory one thousand (1000) foot setback is required from the ordinary high water level of any lake, pond, or flowage.
- K. A mandatory three hundred (300) foot setback is required from rivers and streams as designated on the Carver County Zoning Map, or the landward extent of the designated floodplain area of a river or stream, whichever is greater.
- L. No mining will be allowed within 10 feet of the normal water table.
- M. Given the nature of Mineral Extraction Facilities, the Town Board determines they may have the potential for significant environmental effects and, therefore, the establishment of such a facility shall require the preparation of an Environmental Assessment Worksheet (EAW). The applicant will pay for the EAW, but the Township will hire the firm that prepares the EAW. The Township will be the Responsible Governmental Unit (RGU).
- N. Unless the Town Board determines, based on the information developed and comments submitted as part of the EAW process, that the proposed project does not have the potential for significant environmental effects, a proposal to establish a Mineral Extraction Facility within the Minnesota River Bluff and Ravine Areas shall require the preparation of an environmental impact statement (EIS). The applicant shall be required to pay for the EIS, but the Township will hire the firm to prepare the EIS.
- O. All new mines must be registered with MSHA ([www.msha.gov](http://www.msha.gov)).
- P. The number of haul trucks will not exceed 30 trucks per hour one way.

#### **Section 4 - ZONING**

Applications for mineral extraction Interim Use Permits will only be accepted for agriculture-zoned districts, as identified in the San Francisco Comprehensive Plan. A Mineral Extraction Permit shall not be issued to any property located outside of the identified agriculture-zoned districts.

#### **Section 5 – EXCEPTIONS**

A mineral extraction permit will not be required for any of the following:

- A. Excavation for a foundation, cellar or basement of a structure or for residential landscaping if a building permit has been issued.
- B. Excavation conducted directly by state, county, city, or township authorities in connection with construction or maintenance of roads, highways, or utilities, conducted solely within easement areas or rights-of-way.

- C. Excavation or grading for agricultural purposes.
- D. Excavation or grading where all materials stay on site.
- E. Excavation of less than 400 cubic yards and the excavated material is not sold or offered for sale.

## **Chapter 5: Mineral Extraction Permit Application Requirements**

### **Section 1 - APPLICATION**

An application for a mineral extraction permit shall include but not be limited to the following information:

- A. Name, address, phone number, contact person for the proposed operator and signature of an authorized representative.
- B. Name, address, phone number and signature of the landowner(s).
- C. Acreage and complete legal description of the property on which the mineral extraction will be located, including all contiguous property owned by the landowner.
- D. Acreage and complete legal description of the property on which the mineral extraction permit will apply.
- E. Type and estimated quantity of material to be extracted.
- F. The estimated time required to complete the proposed operation and reclamation, including starting and completion dates.
- G. A description of all vehicles and equipment proposed to be used by the proposed operator in the operation of the facility.
- H. A description of the estimated average daily and peak daily number of haul trucks accessing the facility, including a breakdown of operator owned and non-operator owned vehicles. The number of haul trucks will not exceed 30 trucks per hour one way.
- I. The total estimated amount of all other daily vehicle traffic from workers, customers, and service vehicles.
- J. A description of the haul routes within the Township to be used in the operation of the facility.

- K. A scoping EAW will be required and used to set the requirements for an EIS. An EIS will be mandatory if the proposed mineral extraction is within the Minnesota River Bluff or Ravine areas of San Francisco Township, unless the Town Board determines, based on the information developed and comments submitted as part of the EAW process, that the proposed project does not have the potential for significant environmental effects. The applicant will pay for the EAW and EIS, but the township will hire the firm that prepares the EAW and EIS. The township will be the Responsible Governmental Unit. A traffic study will be required as part of the EIS.
- L. New Permits require an operational plan and site plan with soil borings, and a phased restoration plan.
- M. A bond in the amount of at least \$3,500 per acre of the active mining area (up to 35 acres). Bond amounts are subject to adjustment for inflation as determined by the Town Board. The Town will notify the operator if it is required to provide a larger bond.
- N. GIS/GPS coordinates of mined area will be specified.
- O. End use of property must be defined.

## **Section 2 - SUPPORTING DOCUMENTATION**

Every application for a mineral extraction permit shall include submission of supporting documentation provided by a registered engineer licensed within the State of Minnesota which shall include, but may not be limited to, the following:

- A. A description of existing land uses on the subject property and all properties within one-half (1/2) mile of the boundaries of the parcel on which the subject property exists.
- B. A description of land use designations in the Comprehensive Plan and zoning classifications of the subject property and all properties within one-half (1/2) mile of the boundaries of the parcel on which the subject property exists.
- C. A description of the soil, vegetation, and mineral content of the subject property. A minimum of three (3) soil boring logs representative of the site and an analysis of the subsurface materials on the subject property must be submitted.
- D. A general description of surface waters, existing drainage patterns, groundwater conditions and depth of water tables on and within one-half (1/2) mile of the boundaries of the parcel on which the subject property exists.

- E. A general description of any wells or private sewer systems of record, pipelines, power lines and other utilities or appurtenances on the subject property and adjacent properties.
- F. A general description of the depth, quantity, quality and intended uses of the mineral deposits on the subject property.
- G. A map of current topography of the subject property, illustrated by contours not exceeding ten-foot intervals.
- H. A plan showing proposed topography of the subject property after mineral extraction has been completed, illustrated by contours not exceeding two (2)-foot intervals.
- I. A phasing plan which illustrates the sequencing of mineral extraction, the locations of processing equipment, mineral stockpiles, staging areas, accessory uses and access routes.
- J. Copies of Minnesota Pollution Control Agency (MPCA) application documents, EAW documents, EIS documents, and operating permits.
- K. A description of the hydrology and drainage characteristics during extraction for each phase. Identification of any locations where drainage of any disturbed areas will not be controlled within the boundaries of the subject property and plans to control erosion, sedimentation and water quality of the runoff. This includes holding ponds, with standards to be determined by the Carver County Water Management Organization.
- L. 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.
- M. A description of the plan to mitigate potential impacts resulting from mineral extraction.
- N. A description of site screening, landscaping and security fencing.
- O. An End Use Plan.
- P. A description of site reclamation in each phase of operation and upon completion of mineral extraction on the subject property.
- Q. Recommendations from Carver County Soil and Water Conservation Service and the appropriate watershed management organization as required in Section 153 of the Carver County Code of Ordinances.



- R. A description of the method by which complaints about any aspect of the facility operation or off-site transportation are to be received and the method by which complaints are to be resolved.
- S. A general description of any lakes, wetlands, shore land or flood plain areas located within one thousand (1000) feet of the proposed mining site. For project sites that include any of these water features within the proposed mining area, a delineated boundary describing size and location will be required.

## **Chapter 6: Permitting Procedure**

### **Section 1 - INTERIM USE PERMIT**

- A. Mineral extraction permits shall be considered and processed by the Town Board as interim use permits. The Town Board may attach conditions to the interim use permit in addition to those set forth in the Ordinance. The conditions imposed by the Town Board on an interim use permit shall be reasonable and may impose requirements, restrictions, and standards that are stricter than those established in this Ordinance or the County Ordinance.
- B. Before making a formal application, applicants shall appear before the Town Board at a regularly scheduled meeting to make a preliminary presentation on the conceptual nature of the proposed extraction activity. The Town Board will provide the applicant with a copy of this Ordinance, outlining the application process and permit requirements.
- C. The application and required supporting information shall be filed with the Town Board at its regularly scheduled meeting. If the application is incomplete, the Town Board, in writing within fifteen (15) business days, will identify and notify the applicant of additional information to be submitted.
- D. The independent engineering firm will submit the results of its findings, along with any recommendations for actions, to the Town Board or designee.
- E. The Town Board will process the mineral extraction permit. The Board may require that the applicant submit additional information to address or clarify any issues raised in the environmental review (EAW/EIS). The formal review process will commence after completion of the environmental review or upon receipt of additional information required.
- F. After receipt of all required information and upon completion of the environmental review process, the Town Planning Commission shall hold a public hearing for the mineral extraction permit. The hearing will satisfy the hearing requirements of the Interim Use Permit.

- G. The Town Board shall approve the permit application, deny the permit application or approve the permit application with conditions.
- H. When a permit is approved, the Town Board or its designee shall complete an Operations Agreement, signed by representatives of the Town Board, the landowner and the Operator (if different from landowner). The operational agreement and site plan will become part of the permit.
- I. When a permit is approved, it must state the date or event that shall be used for permit termination.
- J. A mineral extraction permit application denied by the Town Board may not be reapplied for, whether the same or modified application, for a period of twelve (12) months from the date of denial.
- K. An applicant's acceptance of a permit from the Township shall constitute agreement to its terms and conditions on behalf of the owner, operator, and all successors and assigns. An applicant that refuses to agree to the terms and conditions of a permit must reject the permit in writing before any work begins on the property, but in no case later than five days from the date of issuance. Such a rejection shall immediately render the permit null and void and no excavation or other work may occur on the property on the basis of the rejected permit.

**Section 2 - REVIEW OF PERMIT**

The permit shall be subject to administrative review, or complaint review, as set forth by the permit.

Prior to review, the Operator will provide the following information to the Board and the Operator must pay the review fees referenced in Chapter 10:

- A. Amount of material removed.
- B. Amount of material remaining to be removed;
- C. Evidence that bonding and insurance are still in force and effect;
- D. Status of permit holder's responses to complaints or violations during the previous year;
- E. History of permit holder's compliance with this mineral extraction ordinance and other governmental regulations relating to mining.
- F. Status of phasing plan;
- G. Status of reclamation plan;

- H. Forecast of next years production and reclamation;
- I. Up to date list of all vehicles and equipment on site; estimated number of vehicles accessing the facility;
- J. Report on condition of haul roads that serve or abut the facility;
- K. Status of erosion control measures;
- L. Any change in ownership and/or operator, and/or leases;
- M. Other items of information requested by the Town Board.
- N. Dust/air quality monitoring reports;
- O. GIS/GPS coordinates of mined area reviewed against mining plan.

In its review, the Town Board shall examine the information provided by the Operator and the Town Board shall determine whether the mineral extraction facility is in compliance with this Ordinance, the conditions imposed by the permit and the Operations Agreement.

## **Chapter 7: Mineral Extraction Performance Standards**

### **Section 1 - PERFORMANCE STANDARDS**

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

- A. **Hours of Operation.** Mineral extraction facilities shall operate only between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. A mineral extraction facility may be opened one hour before hours of operation to allow for staging. No Saturday, Sunday or holiday operations will be allowed. The holidays are New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving and, Christmas. When New Year's Day, July 4<sup>th</sup>, Thanksgiving or Christmas fall on a Sunday, the following Monday shall be considered the holiday. When New Year's Day, July 4<sup>th</sup>, Thanksgiving or Christmas fall on a Saturday, the previous Friday shall be considered the holiday.
  - 1. Operators may be allowed extensions to the hours of operation beyond what is allowed by this Ordinance or the interim use permit to respond to emergencies. Operators must notify and obtain approval from a Town Supervisor in advance of the proposed exception.

2. Town Board approval is required for any temporary, non-emergency, exceptions to the hours of operation, such as Saturday operation, government agency contracts and other evening work, and may only be granted upon a showing of a sufficient need for extended hours that is not based solely on economic considerations.
- B. **Source of Materials.** Only minerals from the site shall be processed at the mineral extraction facility unless the permit issued to the facility expressly allows the processing of recyclable materials, which shall be limited to concrete and/or asphalt.
- C. **Fencing.** Fencing in good repair is required around the entire permitted area of operation. The Town Board or designee may require specific fencing requirements at its discretion in the interim use permit or as part of the Operations Agreement.
- D. **Access.** All mineral extraction facilities shall have direct access to a 9-ton, or greater capacity, hard surface, road. The Town Board, or designee, shall set minimum roadway maintenance obligations as a condition of the permit. The point of the mining site access shall be at least 300 feet from any intersection or residential driveway, or as determined by the Town Board under special circumstances. Circumstances will include, but not be limited to, topography, safety, traffic, and existing land use.
- E. **Haul Routes.** All trucks traveling to or from the mineral extraction facility shall utilize 9-ton or greater capacity, hard surface roads within the Township. Operators may be granted a special permit to utilize roadways temporarily posted under 9-tons, provided adequate surety is provided to cover the costs of repairing any damage to roadways. The Township reserves the right to require road maintenance paid by the Operator on any haul route within the Township or those bordering the Township.
- F. **Haul Trucks.** The following limits shall apply to haul trucks.
1. All haul trucks exiting onto public roadways must be tarped. No “Jake breaking” is allowed on public roadways or in the mining area.
  2. The number of haul trucks will not exceed 30 trucks per hour one way.
    - a. Operators may be allowed to exceed the limit on the number of haul trucks permitted by this Ordinance or the interim use permit to respond to emergencies. Operators must notify and obtain approval from a Town Supervisor in advance of the proposed exception.

- b. Town Board approval is required for any temporary, non-emergency exception to the number of haul trucks per hour, and may only be granted upon a showing of a sufficient need for higher truck trips per hour that is not based solely on economic considerations.
- G. **Roadway Dust Control.** Operators will be responsible for clean up and dust control on all roads utilized by trucks hauling to or from the permitted mineral extraction facility.
- H. **Mineral Extraction Facility Dust Control.** All internal haul routes from the mining area, to the public roadway must be tarred. The Township may require dust control in a facility when it is determined that airborne dust from extraction areas, processing activities, or stockpiles creates a public nuisance or otherwise adversely impacts surrounding lands. Remedies to dust control may include watering, berming, landscaping and enclosures processing equipment, and any other means deemed necessary by the Town Board or designee.
- I. **Noise.** Maximum noise levels at the facility will be consistent with the most current standards established by the Minnesota Pollution Control Agency (MPCA) and as deemed necessary by the Town Board, or designee. All off road equipment will use “white noise” back-up alarms.
- J. **Vibration.** Operators shall use all available means deemed necessary by the Town Board, or designee, to eliminate adverse impacts of vibration from equipment on adjacent properties.
- K. **Air Quality / Water Quality.** All activities on the subject property will be conducted in a manner consistent with operating permits issued by state and federal agencies. The Town Board, or designee, may require other standards it deems reasonably necessary. Operators shall comply with all applicable regulations of the Carver County Water Management Organization and obtain any additional permits that may be required.
- L. **Accessory Uses.** Accessory uses must be identified in the permit. Accessory uses not identified in the permit are not allowed. The accessory uses of a concrete block production plant or ready-mix concrete production plant or asphalt production plant, shall be strictly prohibited. A concrete recycling plant and an asphalt recycling plant are only permitted if expressly allowed in the permit issued for the particular facility. The storage, stockpiling, sale, and mixing of materials that have been excavated off-site are permitted only to the extent allowed in the permit. Accessory uses will terminate when the principal use terminates.

- M. **Unauthorized Storage.** Any 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.
- N. **Setbacks.** No extraction activity may occur within one thousand (1000) feet of any dwelling and within two hundred (200) feet of any adjacent property line, road right-of-way or public utility. Screeners, and other processing equipment may not be located closer than one thousand (1000) feet from a dwelling nor closer than two hundred (200) feet from any adjacent property line, or road right-of-way. Setbacks from an existing dwelling shall take precedence over setbacks for road right-of-way, adjacent property line and public utility. Grading plans affecting pipelines or power line corridors will be evaluated on a case-by-case basis. The Town Board may waive setback requirements when the common boundary area of an adjoining property is a legal mining operation, the common boundary is not within one thousand (1000) feet of a residence, and both property owners of adjacent mining operations have agreed to a common reclamation plan and have a written agreement with the Township establishing responsibility for reclamation. Restoration activities may occur within setback areas if allowed in the Operations Agreement.
- O. **Phasing.** Phasing plans must be prepared for all mineral extraction facilities. The Operator and owner must follow the phasing plan approved by the Town Board. No more than ten (10) acres of land may be used as the extraction area at any one time. A maximum of fifteen (15) acres may be utilized at any one time as the operations area for processing, staging and stockpiling. Areas where extraction has been completed shall be reclaimed according to the provisions of this Ordinance. The reclamation area shall not exceed 10 acres at one time. The total active mining area may not exceed thirty-five (35) acres at one time.
- P. **Berming.** Earthen berms shall be constructed along all road rights-of- way. In the instance where the setback from a residence applies under Chapter 7, Section 1(N), then, in addition, earthen berms shall be constructed along the adjoining property line. Berms height along the road right-of-way shall be a minimum of eight (8) feet in height, however this may be set higher in the permitting discussions. Berm heights between adjoining properties shall be negotiated with the adjoining landowner. All berms shall have a minimum slope of 3:1 and have a silt fence at the base on the side closest to adjacent property. The silt fence shall be maintained until vegetation is established, at which time it shall be removed.
- Q. **Heights.** The maximum height of any excavation, temporary stock piles located less than one thousand (1000) feet from the property line shall be a minimum of eight (8) feet below the average height of the adjacent berms within the mandatory setback.

- R. **Stock Piles.** Stockpiles in excess of 1,000 cubic yards shall not be located within the Floodplain Overlay District.
- S. **Weed Control.** The operators shall be required to control noxious weeds and mow or harvest other vegetation to maintain reasonable appearance of the site.
- T. **Explosives.** No explosives are allowed to be used for mineral extraction or to be stored on the property.
- U. **General Compliance.** The operator 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.
- V. **Additional Regulations.** The Township may impose additional regulations and requirements to the mineral extraction permit to protect the public health, safety, and welfare.
- W. **Reclamation Plan.** A reclamation plan must include the grading plans, on-site topsoil replacement, seeding, mulching, erosion control and sedimentation control specifications for each phase and the final site restoration. The Operator and owner must follow the reclamation plan approved by the Town Board, or designee. The following minimum standards and conditions apply:
1. The peaks and depressions of the area shall be reduced to a surface which will result in a gently rolling topography in substantial conformity to the land area immediately surrounding, and which will minimize erosion due to rainfall. No graded slope shall exceed a 5:1 ratio (twenty (20) percent). The final grade slope shall commence at the setback, unless provided otherwise in the Operations Agreement. Berms will be removed to the original elevation of the land, unless the Board has approved a different elevation as part of the End Use Plan.
  2. Excavated, graded or back-filled areas, shall meet the following requirements:
    - a. All materials used for back-filling in any area of the reclamation shall be tested to be free of all contaminants, and shall be non-noxious, non-flammable and non-combustible.
    - b. The graded or back-filled area shall not collect or permit stagnant water to remain therein.
    - c. Such graded or back-filled area shall be sodded or surfaced with soil of a quality at least equal to the topsoil of land areas

immediately surrounding, and to a depth of at least three (3) inches.

- d. Such topsoil as required by the preceding subsection shall be planted with trees, shrubs, legumes or grasses.
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 operational processing, storage and staging areas within each phase.
5. Soil erosion and sedimentation control measures shall be consistent with MPCA's publication entitled "Protecting Water Quality in Urban Areas" and the applicable section of the San Francisco Comprehensive Plan.
6. Unless otherwise amended or approved by the Township, all final grades and site restoration efforts shall be consistent with the reclamation plan.
7. When the end-use is some form of open space, the type of vegetative re-growth must provide appropriate habitat for wildlife consistent with the form of end-use.
8. The end-use plan shall consider the safe use of the property. The end-use plan shall be consistent with the San Francisco Township Comprehensive Plan.
9. Within nine (9) months after completion of mineral extraction or after termination of the permit, all equipment, vehicles, machinery, materials, stock piles of extracted mineral materials, and debris shall be removed from the subject property.
10. For each phase, within nine (9) months after completion of mineral extraction for that phase, reclamation must be completed. If the permit is terminated earlier, reclamation must be completed within nine (9) months after termination.



11. As a part of the original application for an interim use permit, the applicant shall submit grading plans, phased reclamation plans and water control plans to the Carver County Soil and Water Conservation District and to the Carver County Water Management Organization for review and recommendations. Said recommendations on the phased reclamation, grading, soil and water retention plans shall be reviewed annually by the Town Board and may be included as conditions of the interim use permit.
- X. **Depth of Excavation.** Excavation and extraction shall not occur beyond the depth set by the Town Board in the permit. In setting the depth of excavation, the Town Board shall consider the standards stated in Chapter 4, Section 2, and 3 as well as recommendations from the County, the Soil and Water Conservation District and the independent engineering firm selected by the Town Board.
- Y. **Dewatering.** Dewatering to obtain materials intersecting the groundwater shall not be allowed. No mining will be allowed within ten (10) feet of the normal water table.

## **Chapter 8: Revocation, Violations And Penalties**

### **Section 1 –REVOICATION**

The mineral extraction permit may be revoked on the happening of any of the following events:

- A. Upon a violation of a condition under which the permit was issued, but only after the Town Board has first provided written notice to the Operator and land owner (if different from the Operator) describing the specific violation and steps necessary to be in compliance with the permit and after having been given a reasonable opportunity to remedy the violation, but in no case longer than five (5) working days unless the Town Board determines additional time is reasonably needed in order to correct the violation.
- B. Upon violation of hours of operation, dust control, noise, road maintenance, or truck safety issues, the Town Board will notify the Operator and land owner (if different from the Operator) in writing. They will be given twenty-four (24) hours to come into compliance.
- C. Each day that a violation continues beyond the allotted time to repair constitutes a new violation.

### **Section 2 - MISDEMEANOR PENALTY**

Any person who violates or fails to comply with any provision of this Ordinance shall be

guilty of a misdemeanor and upon conviction thereof shall be punished to the maximum extent authorized in Minnesota Statutes, as amended from time to time. Each day the violation continues shall constitute a separate offense. If the violations are not remedied to the satisfaction of the Town Board, the permit will be revoked.

### **Section 3 - IMMEDIATE CESSATION OF MINING UPON CONTAMINATION OF DRINKING WATER**

If at any time it is proven that the mining operation is contaminating drinking water as prescribed by the Minnesota Department of Health Safe Drinking Water Standards or any natural spring, the Town Board will notify the Operator and property owner (if different from the Operator) in writing and mining will cease immediately. If this cannot be resolved to the satisfaction of the Town Board, the permit will be revoked.

### **Section 4 – COMPLAINTS**

All complaints must be in writing, submitted to the Township Board, and available for public viewing provided that the identity of complainant is confidential.

### **Section 5 - VERIFICATION OF VIOLATIONS**

All violations must be verified by the Town Board before action is taken. The Town's efforts to verify a complaint or violation may include, but is not limited to, speaking with the owner or operator, inspecting the site, and taking such other actions as the Town determines are needed to reasonably verify the situation.

## **Chapter 9: Enforcement**

### **Section 1 - INSPECTION**

The Operator grants the Township's officers and representatives access to the facility during normal operation hours to inspect the mineral extraction facility and enforce the provisions of this Ordinance.

### **Section 2 - RESPONSIBILITY FOR REPAIR AND MAINTENANCE**

The Operator shall be responsible for the repair and maintenance of public and private property which is damaged by it, its agents or employees in conducting business or any other activity associated with the mineral extraction facility.

## **Chapter 10: Fees**

### **Section 1 - APPLICATION FEE**

Before an application will be processed, the applicant will pay a non-refundable application fee in an amount established by the Town Board and reviewed annually.

### **Section 2 – ESCROW**

The applicant must pay for all estimated expenses to be incurred by the Township before an application will be processed. The Town Board will determine estimated expenses within thirty (30) days of the filing of the application. The applicant will make such payments into an escrow account with the Township. The prepayment amounts shall be a credit toward the costs of the attorney, planners, engineers and other professional consultants that the Township uses to review the application to prepare documents, to inspect the facility, to make recommendations and to enforce this Ordinance; all such costs are the obligation of the applicant and the applicant must reimburse the Township for such costs. All such costs, if not already paid by the escrow, shall be paid by the applicant within thirty (30) days of final action on the matter by the Town Board. If such costs are less than the escrowed amount, such escrow will be returned to the applicant within sixty (60) days of final action on the matter by the Town Board.

### **Section 3 - REIMBURSEMENT OF COSTS**

The applicant shall reimburse the Township for all out of pocket expenses as incurred by the Township in the review of the initial and renewal applications, public hearing, preparation of documents, inspections and enforcement of this Ordinance, whether a permit is issued or not. The Operations Agreement may specify particular costs to be reimbursed, the timing for the payment of such costs, and require an escrow or other form of security to pay the Township's ongoing costs.

### **Section 4 – FEES**

The Town Board shall establish fees by ordinance for the issuance and review of mineral extraction permits. The review fee shall be based on the previous year's production in tons or yards times a dollar amount, with an established minimum amount, and set by ordinance. Fees and expenses must be paid at the time of issuance and thereafter on or before August 31st of each year for the permits that have not been terminated. Failure to pay review fees and expenses shall be a violation of this Ordinance.

### **Section 5 - FUTURE IMPOSITIONS**

If in the future the state law enables the Township to impose a host community fee, tax, mineral extraction charge or other governmental imposition to compensate the Town for the effects of a mineral extraction facility, then the Township reserves the right to impose such fees, taxes, charges or other governmental impositions on all mineral extraction

facilities, including, but not limited to, those that exist at the time the fees, taxes, charges or impositions are established.

## **Chapter 11: Financial Guaranty.**

The Operator must provide and maintain a performance bond, or cash escrow, in a form acceptable to the Township, to guarantee compliance with this Ordinance and the terms and conditions of the Operations Agreement. The Township shall have the right to use the financial guaranty to remove stockpiles and complete site reclamation and correct other deficiencies or problems caused by the Operator, in the event the Operator is in default of the permit obligations. The amount of financial guaranty shall be at least Three Thousand Five Hundred Dollars (\$3,500) for every acre in the active mining area (up to 35 acres). This amount may be increased by the Board with reference to the increase in the Consumer Price Index (CPI) beyond January 1, 2006, for the Minneapolis-St. Paul Area. The financial guaranty shall include acreage used for reclamation, stockpiling and processing as well as extraction area and shall remain in full force and effect for a minimum period of nine (9) months or after reclamation or cleanup of the site is complete, whichever is longer.

## **Chapter 12: Liability Insurance**

### **Section 1 - LIABILITY INSURANCE**

The Operator shall procure and at all times maintain at the Operator's expense general public liability insurance, vehicle liability insurance and workers' compensation insurance. This insurance shall cover claims for bodily injuries, wrongful death, and property damage occurring as a result of the Operator's performance of its duties under the Operations Agreement and under this Ordinance. Such insurance shall afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to injuries or death to a single person, to a limit of not less than Five Million Dollars (\$5,000,000.00) in respect to any one accident or occurrence, and to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to property damage. The Township shall be a named additional insured on all such policies of insurance. The Operator shall file with the Township a certificate evidencing coverage before the commencement date of the term of the mineral extraction permit. The certificate shall provide that the Township must be given thirty (30) days written notice of the cancellation of insurance.

### **Section 2 – INDEMNIFICATION**

The Operator shall hold the Township harmless against all claims by third parties for damage or costs arising out of, resulting from or related to mineral extraction, processing and reclamation on the subject property or incurred in the development of the subject property. The Operator shall indemnify the Township for all costs, damages, or expenses incurred by the Township arising from such claims, including attorneys' fees.

## **Chapter 13: Variances**

### **Section 1 – VARIANCE REQUEST**

A request for a variance from the strict application of the requirements of this Ordinance shall comply with this chapter. Requests for variances shall be considered and acted on by the Board of Appeals and Adjustments.

### **Section 2 – PROCESS**

A request for a variance must be made on the Township's application form and must be submitted to the Town Clerk. If the application is complete and the applicable fees paid, the Town Clerk shall forward the application to the Board of Appeals and Adjustments. The Board of Appeals and Adjustments shall, after providing at least ten days' published notice and mailed notice to the contiguous property owners, hold a public hearing on the proposed variance and determine whether to issue a variance. The Board of Appeals and Adjustment shall not approve a variance unless it determines that the request, based on the unique circumstances of the property, satisfies the requirements of Minnesota Statutes, section 462.357, subdivision 6(2). The Board of Appeals and Adjustments may impose conditions on the variances it issues. A variance issued by the Board of Appeals and Adjustments shall be recorded in the office of the county recorder.

## **Chapter 14: Appeals**

### **Section 1 – APPEAL REQUEST**

An appeal alleging an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of this Ordinance may be brought to the Board of Appeals and Adjustments. Decisions of the Town Board on an application or permit, decisions of the Board of Appeals and Adjustments, and decisions or recommendations of the Planning Commission may not be appealed to the Board of Appeals and Adjustment.

### **Section 2 – PROCESS**

An appeal shall be in writing, clearly state the alleged error, the requested relief, and must be filed with the Town Clerk within 14 days of the decision being appealed together with the applicable fee. The Board of Appeals and Adjustments shall conduct a hearing, after at least ten days published notice, on an appeal if it is filed in a timely manner, is complete, and relates to a matter that is properly appealed under this Ordinance. At the hearing the appellant will be provided an opportunity to explain the basis for the appeal. The decision of the Board of Appeals and Adjustments on an appeal shall be final, except

that it may be appealed to the district court as provided in Minnesota Statutes, section 462.361.

## **Chapter 15: Amendments**

### **Section 1 – REQUEST FOR AN AMENDMENT**

An amendment to this Ordinance may be initiated by the Town Board, the Planning Commission or by application of an affected property owner. Any amendment not initiated by the Planning Commission shall be referred to the Planning Commission for review and may not be acted upon by the Town Board until it has received the Planning Commission's recommendations.

### **Section 2 – PROCESS**

An application brought by a property owner for an amendment shall be submitted to the Town Clerk together with the applicable fee. Complete applications shall be forwarded to the Planning Commission to conduct a hearing after at least ten days published notice. The Planning Commission shall also conduct a hearing on an amendment initiated by the Town Board and on an amendment proposed by the Planning Commission if authorized by the Town Board. The Planning Commission shall forward its recommendation regarding the proposed amendment after its hearing. The Town Board shall take action on the proposed amendment at a Town Board meeting and its decision shall be final. If the amendment was initiated by application of a property owner, the Township shall inform the property owner of the Town Board's decision. No application of a property owner for an amendment to the text of the Ordinance shall be considered by the Township within the one-year period following a denial of such request, except the Township may allow a new application if, in the opinion of the Town Board, there is new evidence or a change of circumstances that warrants additional consideration.

## **Chapter 16: Validity and Prior Ordinances**

### **Section 1 - VALIDITY; SEVERABILITY**

Should any provision of this Ordinance be declared by the courts to be invalid, such decision shall not affect the validity of this Ordinance as a whole or any other part thereof, unless so specified in the judgment. If the courts declare the application of any of the provisions of this Ordinance to any individual, use, property or structure to be invalid, such judgment shall not affect the validity of said application of any provision to any other individual, use, property or structure, unless so specified in the judgment.

**Section 2 – PRIOR ORDINANCES**

This Ordinance supersedes and replaces Township Ordinance No. 2, which is hereby repealed.

**Chapter 17: Effective Date**

This ordinance will become effective upon its adoption and the first day of publication.

Originally adopted by the Town Board on the 20<sup>th</sup> day of June, 2011.

Amended by the Town Board on the 15<sup>th</sup> day of December, 2014.

Amended by the Town Board on the 20<sup>th</sup> day of July, 2020.

\_\_\_\_\_  
Doug Weber, Chairperson

ATTEST:

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Heidi Schmidt, Clerk