

## **DIVISION 3. MINERAL EXTRACTION ORDINANCE**

### **Sec. 6-69. Title and purpose.**

- (a) *Title.* This division shall be known and may be cited as The City of Augusta, Mineral Extraction Ordinance, and will be referred to herein as "this division."
- (b) *Purpose.* The purpose of this division is to put into law minimum removal and reclamation standards, and municipal procedures intended to regulate the removal, processing and storage of topsoil, loam, rock, flat rock, sand, gravel, or other similar materials and associated uses within the City of Augusta. These standards and procedures are intended to protect the public health, safety, and general welfare, and to minimize the adverse impact of extraction to citizens of the city, abutting property owners, and wildlife and natural resources by, among other things:
  - (1) Preserving and protecting surface and groundwater quality and quantity for current and future use of the city.
  - (2) Preserving the city's natural resources and property and their future ability to be assets to the city.
  - (3) Controlling the amount of pollution which can be discharged into the city's environment.

(Ord. No. 196, 11-21-05; Ord. No. 106, 07-15-10)

### **Sec. 6-70. Activities exempt from this division.**

- (a) If an applicant has complied with the notice of intent to apply for license requirements set forth in section 6-73, and the application shows active extraction areas exceeding the ten-acre limit referred to herein, a limited exemption is available to the owners of these pits.
  - (1) They may submit a written request for an exemption from making reclamation for the acreage that exceeded the ten-acre limit at the time this division went into effect.
  - (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 (See section 6-77).
  - (4) Any future expansion of the pit itself or expansion of permitted existing uses would require Planning Board approval and will require reclamation in the existing pit equal in size to the proposed expansion area.

- (5) An applicant may also submit a written request for an exemption from any of the performance standards they are unable to meet without undue financial hardship. These performance standards may include, but are not necessarily limited to: proximity of the active extraction area to a boundary line or to a public right-of-way; pit road location and/or buffer zone requirements of the road.
  - (6) An exemption will not be granted from Section 6-76(b)(4) Buffers, bufferyards, and setbacks.
  - (7) These requests will be reviewed and determined on a case-by-case basis by the Planning Board.
  - (8) 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.
- (b) This division shall not apply to the following:\*
- (1) Mineral extraction activities that are located three hundred (300) feet or more from an existing residential property line, but only if the activities affect less than two (2) acres of total active extraction area per parcel;
  - (2) Storage or stockpiles of winter abrasives (sand or sand/salt mixes) used for the maintenance of private or public roads and driveways and parking lots. This applies to the stockpile or storage area itself and not to any activity or area;
  - (3) Removal or filling of material incidental to construction, alteration or repair of a structure, or in the landscaping incidental thereto.
  - (4) Construction of farm and fire ponds and normal agricultural operations;
  - (5) Removal of stone or rock walls or foundation walls; and
  - (6) Stripping of topsoil (loam) which is not part of a mineral extraction operation to a depth no greater than one (1) foot provided the area so stripped is reseeded in the same growing season as removal.

(Ord. No. 196, 11-21-05; Ord. No. 166, 12-01-11)

**\*Note--** Mineral extraction activities which are exempt from this division shall still require a conditional use permit under provisions of the Land Use Ordinance of the City of Augusta, and must comply with other rules and regulations of the city.

## **Sec. 6-71 Definitions and references.**

- (a) *Relationship to other city ordinances.* Where there is a conflict between the language contained in this division and any other city ordinances, the stricter language shall apply for purposes of this division.
- (b) *References to the city.* All references in this division to "city," "the City of Augusta," and to any board, official or officer, unless clearly defined otherwise, shall be construed to be references to The City of Augusta, Maine, an incorporated municipality in the County of Kennebec, State of Maine and its municipal boards, officials and officers.
- (c) *References to other documents.* All references in this division to any document, chapter, handbook, or other external reference, shall be construed to be references to said documents and their successor documents, as they may be amended or replaced from time to time.
- (d) *Definitions.*

*Abandonment.* Failure to make application for license renewal within one (1) year of license revocation or expiration.

*Accessory uses.* Uses clearly incidental and subordinate to a principal use and located on the same lot as the principal use. Such uses must be clearly spelled out in the application and license. Accessory uses may include, but are not limited to, snow dumps, screening of materials, and crushing of materials.

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

*Aquifer.* An underground bed or stratum of earth, gravel or porous stone that contains water.

*Average daily traffic (ADT).* The average number of vehicles per day that enter and exit a premises or travel over a specific section of road.

*Blasting.* The use of explosives to break up or otherwise aid in the extraction or removal of rock or other consolidated natural formation.

*Blasting plan.* A required written outline of all procedures and policies regarding blasting where such activity is proposed to be used. Performance standards for such plan are set forth in section 6-73(8) of this division.

*Body of water.* Shall include the following:

*Pond or lake.* Any inland impoundment, natural or man-made, which collects and stores surface water.

*Stream or river.* A free flowing drainage outlet, with a defined channel lacking terrestrial vegetation, and flowing water for more than three (3) months during the year.

*Borrow pit.* A development undertaken for the primary purpose of excavating sand, gravel or fill. This does not include any excavation for rock or clay.

*Buffer.* A natural, undisturbed area or belt of land that contains vegetation. A buffer area may be larger than specified in this division. Includes, but is not limited to earthen berms planted with vegetation.

*Bufferyard.* An area that contains a belt of natural vertical vegetation tall enough and thick enough to visually screen the proposed activities from the adjacent area. Required bufferyard planting types and densities are identified in Section 5.1.1, et seq. in the Land Use Ordinance.

*CEO.* Code enforcement officer.

*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.

*Compliance inspection.* An examination by the code enforcement officer done on a recurring basis that shall check for compliance of the operations with the conditions and requirements of the license.

*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.

*Disposal.* The placing or storing of materials that are not going to be used in any process or production in conjunction with the extraction activity.

*Environmentally sensitive areas.* Wetlands, swamps, wildlife habitat areas delineated by the Department of Inland Fisheries and Wildlife (IF&W), prime agricultural areas, areas with steep slopes, areas with poorly drained soils, and flood plain areas (subject to a 100-year flood). Also to include protected natural resources. Environmentally sensitive areas shall specifically include all areas within the resource protection district, as defined in the City of Augusta Land Use Ordinance.

*Expansion of operation.* Excavation operations that exceed the approved footprint of operation.

*Flat rock mining.* Extraction with the primary purpose of the removal of solid rock strata using low velocity blasting or mechanical means.

*Footprint of operation.* The uppermost, and outermost continuous edge, or rim, or outline (drawn on a plan and physically staked on the ground), around the approved "active extraction area(s)", "unreclaimed area(s)" and "stockpile(s)", and all land upon which stumps, spoil, or other solid waste will be or has been deposited; and any storage area that will be or has been used in connection with the development, except a natural buffer strip. The footprint of operation shall be the footprint so identified on a site plan approved by the Planning Board.

*Guarantee.* An irrevocable letter of credit issued by a financial institution or a performance bond.

*Groundwater.* The water beneath the surface of the ground, consisting largely of surface water that has seeped down; the source of water in springs and wells.

*Edge of footprint.* The outermost boundary of the "footprint of operation".

*Handling.* Any aggregate crushing, washing, screening, mixing or stockpiling of sand, gravel, stone, rock, clay, or topsoil; to include any mining of material.

*Inactive.* Mineral extraction that has ceased for twelve (12) consecutive months prior to the passage of this division, in any areas where mining extraction activity had previously occurred.

*Immediate family.* The husband, wife or children of a specific individual.

*Maximum seasonal high groundwater level.* The upper level at which the groundwater table normally is located during the season of the year when such levels are at their highest. In order to determine such level, a test pit reviewed by a soil analyst or groundwater data for a minimum of one year must be gathered and analyzed. Adjustments may be made by the Planning Board for extreme seasonal variations.

*Measurable blasting dust.* Dust from a quarry blast that is capable of being measured, but does not require an actual measurement.

*Mineral extraction activity.* Any operation where soil, topsoil, loam, sand, gravel, clay, rock, peat, or other mined material is removed from its natural location or where it is handled.

*Mineral extraction operation.* The site or parcel of land where a mineral extraction activity is being, or proposed to be, undertaken.

*Mineral extraction site or area.* All of the land area disturbed or otherwise developed for the extraction, removal, handling, processing, or storage of sand, gravel, clay, minerals, stone, rock, or topsoil; including any access roads and cleared areas adjacent to a pit or excavated area, structures, office building,

parking lots and stockpiles.

*Phasing of operations.* A plan of completion of the operations in separate and distinct sequences that have a complete beginning and ending for predetermined areas. In the context of this division, all phases must be structured so that they stand on their own, shall be inspected for completeness at the end of each phase and have reclamation of area completed at the end of each phase.

*Pit.* See active extraction area.

*Preblast survey.* Documentation prior to the initiation of blasting of the condition of buildings, structures, wells or other infrastructures and of protected natural resources, historic sites and unusual natural areas.

*Processing.* Any washing, crushing, or similar processing of on-site material that does not inherently change the nature of the product.

*Production blasting.* A blasting operation carried out on a regular basis for the purpose of production of material.

*Projections of groundwater quality.* An analysis of the potential changes to existing groundwater quality by examining the processes, chemical byproducts and outflow of a proposed operation.

*Protected natural resource.* Wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, bog, marsh, rivers, streams or brooks, as the terms are defined in applicable city or state law.

*Quarry.* A place where rock or large stone is excavated, and/or extracted.

*Quarrying.* The excavation and/or extraction of rock or large stone from a quarry.

*Reclaimed area.* Land within the footprint of operation that has already been reclaimed.

*Reclamation area.* Land within the footprint of the mineral extraction area that was previously excavated or mined, and is now being prepared, or available, for reclamation.

*Reclamation.* The restoration of the footprint of operation to conditions similar to what existed prior to the operation or that will be compatible with what existed prior to the operation or which is prepared for future development for a use permitted in the zoning district in which it is located on the area of land affected by mineral extraction or mining under a reclamation plan. This may include but is not limited to, grading and shaping of the land, the planting of forests, the seeding of grasses, legumes, or crops for harvest, or the enhancement of wildlife and aquatic resources.

*Reclamation plan.* A plan which depicts how the project area will be reclaimed after excavation is complete. Such a plan shall include final grading and re-vegetation plans and conceptual redevelopment plans, if any, of any given phase.

*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.

*Setback.* The horizontal distance, in feet, from a lot line or referred location to the nearest part of a structure or activity.

*Setback from water.* The horizontal distance, in feet, from the normal high water mark to the nearest part of a structure or activity.

*Stockpile(s).* Area(s) where either man-made or natural materials are being piled up temporarily, either undercover or exposed to the elements, for future processing. These piles are only for materials that are necessary for mineral extraction activities and associated uses which have been approved by the Planning Board.

*Stop work order.* An order from the City of Augusta to cease a specified activity.

*Substantial deviation.* Changes made to a specified plan that are materially at variance with the original instructions of operation so as to constitute a different plan for most intents and purposes.

*Topsoil.* The top layer of soil that is predominantly fertile and ordinarily moved in tillage or the equivalent of such a layer in uncultivated soils.

*Unreclaimed area.* Land within the footprint of operations of the gravel pit that has been excavated or mined and has not been reclaimed.

*Water table.* The upper surface of groundwater, or that level below which the soil is seasonally saturated with water.

(Ord. No. 196, 11-21-05; Ord. No. 106, 07-15-10; Ord. No. 10-166, 12-01-11)

### **Sec. 6-72. Authority, applicability and administration.**

- (a) *Authority.* This division is enacted pursuant to the city's Home Rule Powers as provided for in Article VIII-A of the Constitution of the State of Maine and under the authority granted to the City of Augusta by the statutes of the State of Maine, Title 30-A M.R.S.A., Section 3001, and pursuant to other applicable laws of the State of Maine.
- (b) *Administration.* The provisions of this division shall be administered by the City of Augusta Planning Board and enforced by the City of Augusta's Bureau of

Code Enforcement.

- (c) *Effective Date.* This division became effective on March 5, 2007, after adoption by majority vote of the city council. Upon adoption, this division, and any amendments thereto, shall supersede and replace, in its entirety, the existing Mineral Extraction Regulations as set forth in Section 5.1.12 of the City of Augusta's Land Use Ordinance.
- (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".

- (e) *Types of mineral extraction activities prohibited.* Any proposed mineral extraction activity not specifically allowed in this division shall be prohibited.
- (f) *Uses require prior approval.* It is the intent of this division that a license granted hereunder does not imply permission to undertake any uses unless expressly and specifically approved in writing by the Augusta Planning Board. If such uses, that are not being conducted on site as of June 1, 2010, would otherwise trigger Major Development Review or Minor Development Review as outlined in the Land Use Ordinance for any reason, including but not limited to, disturbed area, impervious area, traffic generation, parking generation, or new floor area, the use shall be approved as a Major or Minor Development, in addition to all other requirements of this ordinance. Bituminous Mix plants and Ready Mix Concrete plants that are associated uses for licensed mineral extraction sites shall require Major Development review in all cases. The fees, processes, and standards for Major Development Review or Minor Development Review shall apply. Activities conceptually approved by the Planning Board per this ordinance, with no specific details about the size, location, or impacts of the associated activity, shall require further, detailed planning board review and approval, as outlined above.
- (g) *Severability.* In the event that any section, subsection or any portion of this title shall be declared by any court of competent jurisdiction to be invalid for any reason, such decision shall not be deemed to affect the validity of any other section, subsection or other portion of this title; to this end, the provisions of this title are declared to be severable.
- (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.

(Ord. No. 196, 11-21-05; Ord. No. 106, 07-15-10)

**Sec. 6-73. Licensing of existing mineral extraction operation activities.**

(a) *Timeframe.*

- (1) All existing mineral extraction operations that wish to be licensed, must submit a NOTICE OF INTENT TO APPLY FOR LICENSE form to the City of Augusta Bureau of Planning no later than April 30, 2006. Operations with an active mineral extraction area larger than two (2) acres that fail to submit a NOTICE OF INTENT TO APPLY FOR LICENSE form will be deemed to intend not to continue legal operation as a mineral extraction activity in Augusta.
- (2) Failure of an existing mineral extraction operation to apply for and receive an EXISTING MINERAL EXTRACTION LICENSE, will no longer be an allowed mineral extraction operation and will be in non-compliance with this division. Such operations will not be allowed to continue to operate until and unless they meet the requirements for a NEW MINERAL EXTRACTION LICENSE.

(b) *Notice submissions requirements.* The application required for existing mineral extraction operations in section 6-73(a) above shall consist of at least the following submissions:

- (1) Name, address, telephone number of the owner and operator or both, if different;
- (2) A copy of a deed, lease, option or other evidence of title, right or interest to the subject property and the City of Augusta's Tax Map and Lot Number;
- (3) A copy of all existing city and state permits;
- (4) A sketch plan of the property boundaries, including all land contiguous to the mineral extraction site owned, leased or controlled by the owner or operator of the operation, the footprint of operations as of the effective date of this division, including the active extraction area, all stockpiles and areas, all handling areas with crushers, screens, washers, all areas with overburden removed, all reclaimed and unreclaimed areas, all structures, all associated activities and all wells, roads, water bodies and wetlands within or abutting said boundaries; all structures, residences, wells and roads and footprint of operations of other mineral extraction activities on the properties abutting the land of the owner operator.

This sketch must be to scale and be prepared and certified by a licensed Maine Land Surveyor and must satisfy at least the standards for a property sketch or Class C Survey. It may, but is not required to be a standard boundary survey. It shall be to a scale of no less than one (1) inch to fifty (50) feet.

- (5) Additional documentation that may be submitted, includes, but is not limited to, aerial photographs, ground photographs, and volume of extraction

reports.

- (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.

(c) *Performance standards for existing mineral extraction activities.*

- (1) All existing mineral extraction operations, must comply with all of the following requirements of section 6-76--Minimum Design and Performance Standards except:

- a. Section (a), General Requirements – All Operations – subsection 4 and 5; and
- b. Section (b)(4), Buffers, Bufferyards, and Setbacks – subsection a, b, e(i), and e(vi); and
- c. Section (b)(5), Pit haul road, design, and circulation; and
- d. Section (b)(6), Groundwater Impacts – subsections b, and h(i); and
- e. Section (b)(12), Stockpiles.

- ~~a. Section (a), General Requirements – All Operations – All subsections, except subsection 4 and 5.~~
- ~~b. Section (b)(1), Erosion, Sedimentation Control & Stormwater Management – All subsections except (c)(ii)~~
- ~~c. Section (b)(2), Reclamation/Reclamation Plan – Limited exemptions as per Section 6-70(a).~~
- ~~d. Section (b)(3), Petroleum using all subsections.~~
- ~~e. Section (b)(4), Buffers, Bufferyards and Setbacks – Subsection e, Subsection d (to the greatest extent feasible), Subsection e(ii), e(iii) and e(iv).~~
- ~~f. Section (b)(6) Groundwater Impacts – Subsection a, Subsection c and Subsection d.~~
- ~~g. Section (b)(7) – Noise – All subsections.~~
- ~~h. Section (b)(8) – Blasting – All subsections.~~
- ~~i. Section (b)(9) – Hours and Duration of Operations – All subsections.~~

- (2) All mineral extraction operations must come into compliance with said standards by September 30, 2014, 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 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. This compliance deadline does not modify the existing relicensing schedule.~~

- (d) Mineral extraction licenses expiring five (5) years from the date of issuance shall be issued to all existing mineral extraction applicants who fully comply with the notice requirements.
- (e) A mineral extraction license issued to an existing mineral extraction operator will include the one (1) time right to expand the active mineral extraction area by up to three (3) acres. The expansion area must be clearly shown on the application. As a condition to expanding up to three (3) acres, the licensee shall be required to meet all reclamation requirements for a portion of the active extraction area equal in size to the proposed expansion. This expansion area may be done in phases. All reclamation must be completed within one (1) year of beginning each phase of the expansion of the mineral extraction area. This one time expansion must meet all buffering and setback requirements except for the setback in sections 6-76(4)(b).

(Ord. No. 196, 11-21-05)

**Sec. 6-74. Licensing of new or expanding mineral extraction operation activities.**

The creation of a new mineral extraction activity or expansion of any existing licensed mineral extraction activity within the City of Augusta shall require a new or amended mineral extraction license by the city, as applicable. An applicant shall apply for new (or) amended mineral extraction license to the City of Augusta Planning Board.

- (a) *Preapplication meeting.* The City of Augusta Planning Bureau shall hold a pre-application meeting with all applicants proposing to expand an existing operation or proposing to create a new operation. At that meeting, the size, scale, nature of the operation, and other administrative details shall be specified.
- (b) *Application.* Prior to the establishment of a new mineral extraction activity or an expansion of an existing mineral extraction activity, an applicant shall apply to the City of Augusta for an approved new or amended mineral extraction license as required in section 6-75 General requirements for mineral extraction license applications, determinations, expirations, and appeals, below.

(Ord. No. 196, 11-21-05; Ord. No. 106, 07-15-10)

**Note:** Applications that propose to expand an existing mineral extraction footprint, which must be licensed under the requirements of this division, must show the "existing conditions" of all items that are required in 6-72(c). (Site Plan); and identify all "proposed conditions" where applicable on said plan.

**Sec. 6-75. General requirements for mineral extraction license applications, determinations, expirations, transfers, and appeals.**

- (a) *Application procedure.*
  - (1) Applications for an existing, amended, renewal, or new mineral extraction license shall be made to the City of Augusta Planning Board, and shall include all the information required below, as applicable.
  - (2) The application shall be accompanied by a fee of:
    - a. Five hundred dollars (\$500.00) for mineral extraction activity two (2) to five (5) acres; or
    - b. Seven hundred and fifty dollars (\$750.00) for mineral extraction activity larger than five (5) acres.
  - (3) All checks, shall be made payable to the City of Augusta, Maine.
  - (4) Additional fees may be required by the City of Augusta Planning Board to cover the cost of hiring technical expertise to review any portion of an applicant's application submittal.
  - (5) All applications shall be signed by the person proposing to operate the mineral extraction activity. A signature on an application shall constitute a

representation that the contents of an application are true and correct. Any material misrepresentation found to exist in the application shall be grounds for denying the application.

- (b) *Application requirements.* The application requirements for a new or expanded Mineral Extraction license shall be the same as set forth in Section 6-73, Notice of Intent to Apply for a license. The Planning Board may require such additional information as it deems necessary to consider the application.
- (c) *Public hearing.* The Planning Board shall hold a public hearing on the application in accordance with Section 6.3.2 of the Land Use Ordinance.
- (d) *Planning Board Decision on the mineral extraction license application.*
  - (1) The criteria for approving a new or expanded mineral extraction license shall include: criteria identified in Section 6.3.4 of the Land Use Ordinance; meeting or showing that the applicant can meet all the applicable performance standards identified in section 6-76 herein; and demonstration of an acceptable compliance inspection done within sixty (60) days of application submission.
  - (2) The Planning Board shall, within thirty (30) days of the completion of the public hearing process, or within such other time limit as may be mutually agreed to by said Planning Board and applicant, issue a decision denying or granting approval of the proposed mineral extraction activity or granting approval on such terms or conditions as it may deem advisable to satisfy the criteria contained in this division. In all instances, the burden of proof shall be upon the applicant. The Planning Board shall make a written finding regarding the applicant's financial and technical ability to satisfy the criteria contained in this division and conditions of any permit.
  - (3) Upon approval of the mineral extraction activity a majority of the Board shall sign all copies of the final site plan. One copy shall be retained by the applicant, one (1) copy shall be retained by the Planning Board, one (1) copy shall be filed with the Tax Assessor, and one (1) copy shall be filed with the Code Enforcement Officer. The Planning Board shall maintain a permanent record of their actions and decisions on the mineral extraction applications.
  - (4) Approval by the Planning Board of a mineral extraction activity plan shall not be deemed to constitute or be evidence of any legal acceptance by the City of Augusta, Maine of any road, easement, or other open space shown on such plan.
- (e) *Operation conditions and limitations.* Before any mineral extraction activity begins, and as a condition of the license, the applicant shall apply for and receive all applicable permits as may be required by the city, state or federal regulations, laws or divisions regulating such developments. Any violation of other permits necessary for operation and noted in the permit shall be considered a violation of this division.

- (f) *Building permit required.* All approved Mineral extraction Operations must receive a building permit from a Code Enforcement Officer prior to commencement of operation, in accordance with Section 6.1.4 of the Land Use Ordinance.
- (g) *Expiration of approval.* Mineral extraction licenses shall be null and void 2 years from the date of issuance unless the applicant has substantially commenced the mineral extraction activity.
- (h) *Expert witnesses and opinions.* In the event that the Planning Board requires expert opinions, advice or testimony during the course of reviewing the application, it will use due diligence to obtain and utilize free services from governmental or non-profit sources. Should the Planning Board be unable to obtain and utilize such services, it shall require the applicant to pay for such services, after giving notice to the applicant of the name of the expert, the area of qualification of the expert, and the purpose for which the expert is required, and the approximate cost of the expert. The applicant shall be provided with an opportunity to meet with the Planning Board to arrange a schedule for payment of the costs.

The applicant shall have the right to request a public hearing before the Appeals Board to determine if such experts required by the Planning Board are necessary to making a determination of any issue properly before the Planning Board, and if the approximate costs of the expert are reasonable. It will be the applicant's burden to prove that the requested expert is unnecessary, or that the cost is excessive. The applicant shall request the hearing within ten (10) days of the meeting, or such time as is agreed to by the Planning Board and the applicant.

- (i) *Change of mineral extraction operation ownership.*
  - (1) Within thirty (30) days of the date of the transfer, by sale or otherwise, of land upon which a mineral extraction operation is situated, the new owner or owners shall file with the City Planner notice of the transfer and a statement of agreement and capacity to comply with the city mineral extraction license.
    - a. Failure to comply with this requirement shall be a violation of this division and may subject the violator to any penalty, or combination of penalties, that may be imposed under the division, including voiding the license.
- (j) *Appeals and variances.*
  - (1) *Administrative appeals.* See Section 6 of the Augusta Land Use Ordinance.
  - (2) *Variances.*
    - a. The Planning Board may grant a variance from any portion of Section 6-76 Minimum design and performance standards, except as limited by section 6-70(a)(6). No variance may be granted without meeting all of the following criteria:

- (i) 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
- (ii) 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
- (iii) 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.

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.

(3) *Appeal to Superior Court.* See Section 6 of the Augusta Land Use Ordinance

(Ord. No. 196, 11-21-05; Ord. No. 106, 07-15-10; Ord. No. 10-166, 12-01-11)

## **Sec. 6-76. Minimum design and performance standards.**

(a) *General requirements--All operations.*

- (1) Mineral extraction activities, and specifically approved associated mineral extraction uses shall conform to all applicable state laws and local ordinances and regulations. Where the provisions of this section conflict with specific provisions of the Land Use Ordinance, the provisions of these standards shall prevail. It is anticipated that the application will be reviewed concurrently with this division and the requirements of the Land Use Ordinance.
- (2) This division details the specific application requirements for the submissions required in this division.
- (3) The license holder of a mineral extraction activity shall be responsible, both jointly and severally, for ensuring the maintenance of all infrastructure, structures and their sites.
- (4) The Planning Board shall consider the financial capacity, technical ability, and prior performance of the applicant to conduct all proposed and approved activities in accordance with these performance standards.
- (5) The Planning Board may approve the license application only if the applicant or agent is in compliance with all other City of Augusta and State of Maine permits for mineral extraction activity.
- (6) In all cases, the applicant, and the licensee 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.
- (7) A copy of the license must be displayed on site at all times.
- (8) At no point shall the footprint of the active extraction area exceed ten (10) acres and at no point shall the footprint of operation exceed a total of fifteen (15) acres.
- (9) Bituminous mix plants, also known as asphalt plants, shall not be sited within two thousand five hundred (2,500) feet of an existing residential property. Measurement shall be the shortest distance possible from the plant to the nearest point of the residential property line.

(Ord. No. 10-166, 12-01-11)

(b) *Performance standards.* All of the following standards, unless otherwise stated, pertain to those applicants applying for and receiving a new or amended mineral extraction license.

- (1) Erosion, sedimentation control & stormwater management.
  - a. *General.* Sediment may not leave the parcel or enter a protected natural resource.

- (i) Topsoil stockpile must be stabilized and inspected as specified in section 6-76(2)(a)(i), below.

b. *Internally drained projects.*

- (i) Land shall be restored and stabilized according to the reclamation plan.
- (ii) At all times, the extraction footprint shall be operated in a manner that it will safely hold a volume of precipitation at least equal to that which may be expected in the area from the 25-year, 24-hour storm event for the region based on the U.S.D.A. Natural Resources Conservation Service.

c. *Externally drained projects.*

- (i) If surface water flows out of and away from the proposed site during and after the site is excavated, the following should be provided to assure proper erosion control and prevent siltation of downstream waters. Temporary erosion control measures shall be included in the project design, such as hay bale barriers, silt fencing, and riprap. Plans shall show the location and installation details and include a description of the timing of installation, inspection and maintenance of erosion control measures.

- (ii) Plans.

- a. A plan and narrative detailing specific erosion control measures; and
- b. A site plan showing the pre-construction and post-construction contours, and if applicable, phased contours. The plan must show on and off site watershed boundaries and hydrologic surface water flow lines.

- (iii) Sedimentation pond location and design, if any, shall be designed to the 25-year storm event and based on the U.S.D.A. Natural Resources Conservation Service methodology. The location and construction details of the pond shall be shown on the site plans.

(2) *Reclamation/reclamation plan required.*

- a. The affected land must be restored to a physical state that is similar to that which existed prior to any development, or encourages the productive use of the land including development for uses permitted in the zoning district in which it is located. A reclamation plan is required to be submitted with all license applications discussing and depicting the following.

- (i) *Topsoil stockpiling.* Topsoil which is stripped or removed must be stockpiled in sufficient quantity for use in reclaiming disturbed land,

unless it is demonstrated to the Planning Board that it is not needed for reclamation purposes. Topsoil stockpiles must be seeded, mulched, or otherwise stabilized. At least four (4) inches of topsoil will be used for final cover.

- (ii) *Regrading.* With the exception of where a section of excavated earth has exposed bedrock or ledge, upon completion of the excavation, the side slopes must be regraded to a slope no steeper than 2.5 horizontal to 1 vertical.
- (iii) *Vegetative cover.* Vegetative cover must be established on all land being reclaimed except for exposed bedrock and/or ledge face. Topsoil must be placed, seeded, and mulched within thirty (30) days of final grading if it is within a current growing season or within thirty (30) days of the start of the next growing season.
  - a. Vegetative material used in reclamation must consist of a mixture of grasses, legumes, herbaceous, and woody plants. Plant material must be planted during the first growing season following the reclamation phase. Selection and use of vegetative cover must take into account soil and site characteristics such as drainage, pH, nutrient availability, and climate to ensure permanent growth.
  - b. The vegetative cover is acceptable if within one (1) growing season of seeding.
    - i. the planting of trees and shrubs results in a permanent stand, or regeneration and succession rate, sufficient to assure a seventy-five (75) percent survival rate; and
    - ii. the planting results in ninety (90) percent ground coverage.
- (iv) *Structures and roads.* All structures and access, haul, or other support roads must be reclaimed once no longer used, unless reserved for future productive use of the land, as described in the reclamation plan.
- (v) *Phased reclamation.* The site must be reclaimed in phases so that:
  - a. For guidance in planning and implementation of reclamation, see the most recent edition of ;Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices (Cumberland Cty. SWCD; 3/1991) for Pit Reclamation.
- (vi) *Time line.*
  - a. A time line for reclamation shall be included with the reclamation plan. As set forth in 5 above, at no time shall the active extraction area exceed ten (10) acres at one time, unless otherwise permitted in the original owner's license or allowed via Section 6-

75(j)(2) Variances.

- b. All reclamation shall begin within six (6) months of completion of phasing, the completion of the project or abandonment. The site shall be inspected when the regrading and planting is completed and again at one (1) year to ensure compliance with the reclamation plan.
  - c. A certification of completion of reclamation shall be issued by the Code Enforcement Officer only after the final inspection is made and is passed as stated immediately above.
- 
- b. Standard reclamation shall commence in accordance with the timeline and phasing approved by the Planning Board. Standard performance guarantee requirements apply.
  - c. Concurrent reclamation is highly encouraged by the Planning Board. Reduced performance guarantee requirements are allowed. For concurrent reclamation, the following standards shall apply:
    - (i) The operator shall remove material in layers not exceeding thirty (30) feet in depth, starting from the limit of excavation.
    - (ii) The slope shall be constructed progressively; maximum open slope shall be thirty (30) feet high by four hundred (400) feet in length at limit of each work area. The slope shall be completed in each work area prior to removing additional layers.
    - (iii) Concurrent reclamation must be approved by the Planning Board in the applicant's reclamation plan.

(3) *Petroleum usage.*

- a. Spill prevention, control, and countermeasures plan shall be required for all projects.
- b. Petroleum products storage.
  - (i) If any petroleum products or other materials with potential to contaminate groundwater are to be stored on the site, a spill prevention control, and Countermeasures (SPCC) Plan shall be submitted. A SPCC Plan shall be developed in accordance with DEP regulations, Section 5A of Chapter 378 Performance Standards for the Storage of Petroleum Products (CMR 378), and shall be submitted with the application and kept with the permit in the city's records.
  - (ii) The use of underground tanks is strictly prohibited.
  - (iii) If onsite refueling is necessary for fixed equipment, such as crushers, concrete batch facilities, and hot mix asphalt facilities, a specific

refueling area must be designated, and located on impermeable material such as synthetic liners, clay or till.

- (iv) All other performance standards of CMR 378, Section 5A, shall apply.

c. *Machinery maintenance.*

- (i) Crankcase oil, hydraulic fluids, and similar products shall not be changed, stored or disposed of within the excavation area, unless specifically covered in the SPCC Plan.
- (ii) Routine maintenance operations, such as refueling or oil changes, may be allowed for fixed equipment such as screeners, crushers and wash facilities, if allowed in the district the operation will be located in, provided that a secondary containment system in accordance with the SPCC Plan, adequate to contain one hundred ten (110) percent of the full contents of said equipment is installed.
- (iii) All other equipment maintenance regulations of CMR 378, Section 5E, shall apply.

- d. Any discharge or leak of petroleum product over a gallon shall be immediately reported to the Code Enforcement Officer and a report kept with the permit in the city's records. All discharges or leaks of any size shall be cleaned up promptly according to the spill containment and cleanup provisions of CMR 378, Section 5H.
- e. A copy of the spill prevention control, and countermeasures plan shall be kept available on site at all times.
- f. The applicant shall demonstrate to the Planning Board's satisfaction the applicant's ability to implement the SPCC plan.

- (4) *Buffers, bufferyards, and setbacks.* Buffers, bufferyards, and setbacks shall be as follows and shown as such on the site plan:

a. *Property boundaries.*

- (i) To minimize impacts to abutting properties, a one hundred (100) foot setback shall be maintained from the edge of the footprint of the pit/active extraction area to all property boundaries. This setback may be reduced to twenty-five (25) feet with written permission of an abutting landowner provided that:
  - a. documentation of written permission or a line agreement between abutting properties is obtained, and
  - b. erosion and stormwater control standards on both properties are met.

- (ii) This setback may be eliminated between abutting properties provided that:
  - a. the abutting property is also a mineral extraction operation, and
  - b. documentation of written permission is obtained, and
  - c. documented proof that erosion & stormwater control standards on both properties are being/will be met.
- b. *Existing structures.* A three hundred (300) foot setback from the edge of the footprint of the working pit to the closest edge of a residence existing as of the date of the enactment of this division shall be maintained with all projects. This setback may be reduced with documented proof of written permission of the owner of the structure, but not be less than one hundred fifty (150) feet from the property line.
- c. *Protected natural resources.* The following shall apply:
  - (i) Unless authorized pursuant to the Natural Resources Protection Act, Title 38, M.R.S.A., Section 480-C no part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred (100) feet of the normal high-water line of a Great Pond classified GPA (as defined) or a river flowing to a great pond classified GPA, and within seventy-five (75) feet of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland.
  - (ii) Applicant must provide a sufficient benchmark on the property to indicate this setback.
- d. *Public roads.* A one hundred (100) foot setback, with natural vegetative buffer, shall be maintained from the closest edge of the shoulder of a public road to the edge of the footprint of the pit. A fifty (50) foot wide undisturbed natural vegetated buffer area, closest to any private road or right of way, shall be maintained, except for any access road entrance. Reduction of the fifty (50) foot buffer from a private road or right-of-way is allowed with proof of written permission of adjacent property owners, and approval by the Planning Board. Mineral extraction licensee granted a license under section 6-73, Licensing of Existing Mineral Extraction Operation Activities, shall comply with this subsection to the greatest extent possible.
- e. *Bufferyard requirements:*
  - (i) All buffers must be preserved in their natural vegetative state as existed 6 months prior to an application for a new gravel pit, or for an expansion to an existing gravel pit, in the natural vegetative state that existed at time of initial licensing by the city.

- (ii) Planted bufferyards are required along the applicant's property lines for residences located within three (300) feet of the mineral extraction site if it is a residence existing as of the date of enactment of this division which will conform to the Bufferyard Requirement D. as set forth in the City of Augusta Land Use Ordinance at Section 5.1.1.
  - (iii) In the event that a buffer in its natural vegetative condition does not conform to the level of vegetative cover required in the bufferyard standards of the Land Use Ordinance, then the Planning Board will cause applicant to conform with said standard.
  - (iv) The Planning Board may require as a condition of approval the applicant to take specific actions to insure the effectiveness of any buffers or bufferyards required above, including, but not limited to, the planting of trees and/or shrubs, placement of solid fences or creation of berms when the natural existing vegetation does not provide a sufficient visual screen.
  - (v) The applicant may elect to increase the width of the natural buffer area in order to achieve an adequate visual screen.
  - (vi) The visual screening requirement for the buffers is not a complete visual barrier, except for (e)(ii) above. The screening to be adequate must provide a substantial visual barrier so that the active extraction area is not clearly, or unobstructively, visible from an abutting property or public road and by providing a continuous barrier which obstructs the view of the active extraction area by at least eighty (80) percent from all locations one hundred fifty (150) feet from the active extraction area boundary from abutting properties unless the abutting property also is the location of a mineral extraction activity.
- (5) *Pit haul road design, circulation and traffic.* On site circulation, parking, and traffic standards shall meet the City of Augusta Technical Standards. Pit haul roads shall meet the following requirements:
- a. Shall either be paved or graveled with effective dust control:
    - (i) Wherever the road is within two hundred fifty (250) feet of an existing residential property line.
    - (ii) For the first one hundred (100) feet of an intersection with a public right-of-way.
  - b. Shall be setback at least fifty (50) feet from any non-residential property line.
  - c. Shall be buffered with Bufferyard B plantings on the side(s) closest to residential dwellings wherever the road is within three hundred (300) feet of an existing residence unless the distance is reduced in writing by the

owner of the residence to no less than one hundred (100) feet.

- d. Shall only be permitted to intersect with collector or arterial roads in Augusta. Connection to residential streets shall be prohibited unless a collector road or arterial road is more than one thousand (1,000) feet away from the mineral extraction area and/or the owner does not have legal access. If a municipal access road to a municipal mineral extraction area is located within one thousand (1,000) feet of the property boundary, it must be used as access rather than a residential street.
- e. Shall have a maximum grade of three (3) percent for the first seventy-five (75) feet starting from the collector or arterial road.
- f. Shall meet sight distance requirements identified in the City of Augusta Technical Standards.
- g. Shall be required to have weekly applications of calcium chloride or acceptable equivalent for any unpaved portions if dust levels are determined by the CEO to be a nuisance.

(6) *Ground water impacts.* The following requirements apply:

a. *Groundwater buffer.*

- (i) To provide an adequate buffer for ground water and allow for filtration of impurities from surface water, extraction shall not be any closer than five (5) feet above the seasonal high water level.
- (ii) The applicant shall establish a sufficient benchmark on the property to verify the location of the seasonal high water level.
- (iii) At least one test pit or monitoring well must be established on each five (5) acres of unreclaimed land.

b. *Water supply setback.*

- (i) A two hundred (200) foot separation must be maintained between the edge of footprint of operation and any currently in use pre-existing private drinking water supply that is point driven or is a dug well. This setback requirement does not apply when the well belongs to the owner of the excavation site.
- (ii) A one hundred (100) foot separation must be maintained between any active excavation area and any private drinking water well that is drilled in to saturated bedrock prior to the mineral extraction activity.
- (iii) A one thousand (1,000) foot setback must be maintained between the edge of the active extraction area and any well or spring which qualifies as a public drinking water supply that was in use prior to the effective date of this division.

- (iv) The Planning Board shall require larger buffers from water supplies, if they find that a hazard is shown to exist due to the mineral extraction activity by a hydrogeologic study performed by a licensed hydrogeologist. The hydrogeologic study will be paid for by the licensee if required by the Planning Board.
- c. Excavation below the seasonal high water table of an area previously designated for potential use as a public drinking water source by a municipality or private water company is prohibited. If the yield of groundwater flow to protected waters or wetlands is not adversely affected, the DEP may grant a variance allowing excavation below the seasonal high water table of a mapped significant sand and gravel aquifer, or primary sand and gravel recharge area, or an unconsolidated deposit in other locations. A copy of the DEP variance approval must be on file with the city prior to the start of this excavation.
- d. In the event of excavation below the seasonal high water table, the operator of a mining activity that affects a public drinking water source or a private drinking water supply by excavation activities causing contamination, interruption or diminution must restore or replace the affected water supply with an alternate source of water, adequate in quantity and quality for the purpose served by the supply. This paragraph is not intended to replace any independent action that a person whose water supply is affected by a mining activity may have.
- e. In the event of excavation below the seasonal high water table, a three hundred (300) foot separation must be maintained between the limit of excavation and any predevelopment private drinking water supply, and a one thousand (1,000) foot separation must be maintained between the limit of excavation and any public drinking water source or area previously designated for potential use as a public drinking water source by a municipality or private water company. These separation distance requirements do not apply when the private water supply belongs to the owner of the excavation site.
- f. The DEP may grant a variance allowing excavation between two (2) and five (5) feet of the seasonal high water. A copy of the DEP variance approval must be on file with the city prior to the start of this excavation.
- g. An active mineral extraction operation existing on the effective date of this division and for which an application to be licensed has been submitted may not further excavate in areas where gravel has been extracted to a level less than five (5) feet above, at or below the seasonal high water table unless a variance has been granted by DEP and a copy of the variance is on file with the city.
  - (i) The owner or operator will not be required to elevate the pit floor to five (5) feet or more above the seasonal high water table as a condition of operation.

- (ii) The owner or operator may reclaim as a pond that area of the pit on which gravel has been extracted to a level at or below the seasonal high water table.

h. *Water use.*

- (i) A mineral extraction activity must not withdraw more than fifteen thousand (15,000) gallons of ground water per day, unless a hydrogeologic study is submitted by a hydrogeologist that determines this will not represent an environmental hazard or threaten drinking water supplies.
- (ii) Any water that is discharged from the site shall be monitored for sediment, pH and other contaminants to ensure the discharge shall not adversely affect surface water quality.

i. *Standards for acceptable ground water impacts.*

- (i) Projections of ground water quality shall be based on the assumption of drought conditions (assuming sixty (60) percent of annual average precipitation.)
- (ii) No mineral extraction activity shall increase any contaminant concentration in the ground water to more than the Maine Drinking Water Standards for private ground water wells.
- (iii) If pre-existing ground water contains contaminants in excess of the primary standards, and the mineral extraction activity is to be served by on-site ground water supplies, the applicant shall demonstrate how water quality will be improved or treated, if necessary.

(7) *Noise.* The requirements of Section 5.1.15.1 of the Augusta Land Use division shall be applicable.

(8) *Blasting requirements for all.* Normal blasting is limited to the hours between 11 a.m. and 3 p.m. Emergency blasting for misfires shall be allowed after the 3 p.m. cutoff time provided that the city and abutters are notified prior to detonation. For mineral extraction activities, the requirements and standards for blasting shall minimally be the same as those identified in the Blasting subsection of Maine Statute, Title 38, M.R.S.A. § 490-Z. All blasting shall also comply with the City of Augusta Blasting Ordinance, Sections 6-80 through 6-90 of the Augusta Code of Ordinances.

(9) *Hours and duration of operations.*

- a. With the exception of approved snow dumping operations, no extraction or associated activities shall be allowed on Sundays or the following holidays: New Year's, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Christmas.

- b. With the exception of approved snow dumping operations, extraction operations shall only be conducted between the hours of 6 a.m. and 8 p.m. during Daylight Savings Time, and 6 a.m. and 7 p.m. during Eastern Standard Time. ~~Normal blasting is limited to the hours between 11 a.m. and 3 p.m. Emergency blasting for misfires shall be allowed after the 3 p.m. cutoff time provided that the city and abutters are notified prior to detonation.~~
- c. Emergencies. On occasion there may be need for emergency operations outside the approved hours. Sudden emergencies could be, but are not limited to, public road repairs, sanitary and/or water system repairs, flood repairs, etc. Emergency operations shall be approved by either the Director of Public Works, the City Engineer, or the City Manager.
- (10) *Dust*. Dust generated by mineral extraction activities, including dust associated with traffic to and from a mineral extraction activity must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Dust control methods may include calcium chloride as long as the manufacturer's labeling guidelines are followed.
- a. Blasting Dust. Dust generated by blasting shall be controlled on-site by using best management practices to control fugitive dust from entering a residential property. Any perceptible or measurable dust deposited off the property where the blast occurs, and onto a residential property, shall be considered a violation.
- (11) *Solid waste*. Solid waste, including stumps, wood waste and land-clearing debris generated on the affected land must be disposed of in accordance with applicable local and state laws. Stump grinding for mulch or other use is an acceptable form of disposal.
- (12) *Stockpiles*. Stockpiles of materials, as defined, may be no taller than thirty (30) feet above the grade level surrounding the outer edge of the active extraction area and, if located outside of the area of extraction, must be screened from all public ways within two hundred (200) feet of the stockpiles and existing residences within three hundred (300) feet of the stockpiles.
- (13) *Clear cutting*. In setback and buffer areas no natural vegetation, including trees, shall be removed.
- (14) *Existing nonconforming buffers and setbacks*. The owners and/or operators of an existing mineral extraction operation on the effective date of this division who has filed the Notice of Intent to Apply for License under section 6-70 and receives an existing mineral extraction license under section 6-73 shall not be required to reestablish and recreate buffers, bufferyards, extraction limits and setbacks to meet the requirements of section 6-76(b)(4)--(6), (12) and (14) in those areas of the site where the footprint of operations documented in the sketch plan shows that the site is not in conformance with the distance and size requirements of section 6-76. The Planning Board shall require buffers in conformance with this division unless

the licensee demonstrates that it cannot comply without a substantial hardship to extraction operations. In which case the Planning Board may reduce or eliminate buffer requirements as appropriate on a site-specific basis. The owner and/or operator shall not increase the nonconformity.

(Ord. No. 196, 11-21-05; Ord. No. 106, 07-15-10)

**Sec. 6-77. Performance guarantees.**

(a) *Types of guarantees.* With submittal of an application for a mineral extraction license where the existing or proposed footprint of operations exceed ten (10) acres, the following performance guarantees for an amount adequate to cover the total costs of all required reclamation, taking into account the time-span of the phasing, or reclamation schedule and the inflation rate for costs will be required:

- (1) Either a certified check payable to the city or a savings account or certificate of deposit naming the city as owner, for the establishment of an escrow account; or
- (2) A performance bond payable to the city issued by a surety company, approved by the City Manager or his/her designee.
- (3) An irrevocable letter of credit from a financial institution establishing funding for the construction or reclamation of the mineral extraction activity, from which the city may draw if reclamation is inadequate, approved by the City Manager or his/her designee.

The conditions and amount of the performance guarantee shall be determined by the Planning Board based on the reclamation likely to be necessary, the reclamation schedule, and reclamation cost estimates, and with the advice of one or more of the following: City Engineer, a certified Civil Engineer, and/or City Attorney, expenses paid for by the applicant.

- (4) The Planning Board may waive the bond requirement if it determines that adequate security has been provided to the satisfaction of the Maine Department of Environmental Protection.
- (b) *Contents of guarantee.* The performance guarantee shall contain a reclamation schedule, cost estimates for each major phase of reclamation taking into account inflation, provisions for inspections of each phase of reclamation, provisions for the release of part or all of the performance guarantee to the permit holder, and a date after which the permit holder will be in default and the city shall have access to the funds to finish reclamation.
- (c) *Escrow account.* A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the municipality, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the permit holder, the municipality shall be named as owner or co-owner, and the consent of the city shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the developer unless the municipality has found it necessary to draw on the account, in which case the

interest earned shall be proportionately divided between the amount returned to the developer and the amount withdrawn to complete the required improvements.

- (d) *Performance bond.* A performance bond shall detail the conditions of the bond, the method for release of the entire bond or portions of the bond to the city, and the procedures for collection by the city. The bond documents shall specifically reference the mineral extraction activity for which approval is sought. The city will accept as equivalent a performance bond that is held by the State if it meets the requirements of the city.
- (e) *Letter of credit.* An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the reclamation of the mineral extraction activity and may not be used for any other project or loan.
- (f) *Phasing of development.* The Planning Board may approve phased performance guarantees, when a mineral extraction reclamation activity is approved in separate and distinct phases.
- (g) *Performance guarantee review.* Any performance bond or proof of financial capacity shall be reviewed no later than 30 days before the expiration of the guarantee, and adjusted if necessary. The applicant may also request adjustments in the guarantee.
- (h) *Reduction of performance guarantee with concurrent reclamation.* The Planning Board may reduce the amount of the required performance guarantee if the applicant/operator can document for the Board its plans and timeframes to reclaim land as an ongoing part of its operation. Should the applicant fail to abide by such a plan approved by the Board, the Planning Board shall require the CEO to issue a STOP WORK ORDER to the operator until such time as the operator provides a satisfactory performance guarantee to the Planning Board to cover the full amount of reclamation.
- (i) *Release of guarantee.* Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, that the reclamation meets or exceeds the design requirements for the portion of the reclamation for which the release is requested. The Planning Board's determination shall in part be based upon a certification of compliance, provided by the permit holder, issued by a licensed Civil Engineer and/or adequate assurances that compliance has been achieved from whatever governmental agencies and departments other than the city that may be involved.
- (j) *Default.* If upon inspection, the CEO or other inspecting official finds that any of the required reclamation has not been performed in accordance with the approved plans and specifications, he shall so report in writing to the Planning Board, the permit holder and guarantor. The permit holder shall have thirty (30) days unless otherwise specified by the CEO, to remedy any insufficiency noted. Thereafter, the CEO shall take any steps necessary to enforce the guarantee and remedy the insufficiencies.

- (k) *Improvement guarantees.* Performance guarantees may be required for all off site improvements required by this division, when the Planning Board finds that the scale of the improvements warrants.  
(Ord. No. 196, 11-21-05)

**Sec. 6-78. Inspection, enforcement and revocation.**

(a) *Compliance inspection.*

- (1) The compliance inspection fee, payable to the **City of Augusta**, shall be:
  - a. One hundred and fifty dollars (\$150.00) for mineral extraction activities less than five (5) acres;
  - b. Two hundred dollars (\$200.00) for mineral extraction activities between five (5) and thirty (30) acres;
  - c. Three hundred and fifty dollars (\$350.00) for mineral extraction activities larger than thirty (30) acres.
- (2) The compliance inspection fee is due no later than the day of the compliance inspection. Failure to pay the fee shall result in an automatic finding of non-compliance.
- (3) The compliance inspection shall be conducted by the CEO at least prior to the 2nd and 4th anniversary date of the mineral extraction license held by the party, and within sixty (60) days of license renewal.
  - a. The CEO shall issue a letter of compliance, provided he determines that the license holder has not violated the ordinance nor deviated from an approved plan under their mineral extraction license. If the CEO determines that the license holder has violated the ordinance or substantially deviated from the approved site plan under their mineral extraction license, the CEO shall issue a letter of non-compliance. Both the letter of compliance and/or letter of non-compliance will be provided to the Planning Board, the City Planner, and license holder. The CEO shall consistent with section 6-78(e)(2) of this division, issue an immediate stop work order for a specific violation, except for remedial action, until such time as compliance is achieved.
  - b. The CEO shall thereafter re-inspect the site to determine if compliance has been achieved. If he determines compliance has been achieved, he shall issue a letter of compliance, as above. If he determines that compliance has not been achieved, he shall issue a second letter of non-compliance. The license holder shall again pay the fees, as required by this subsection for this second compliance inspection.

- (b) *Reclamation certification.* Upon completion of reclamation or a reclamation phase, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Chairman of the Planning Board at the

expense of the applicant, certifying that the reclamation is in compliance with the approved plans.

- (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, 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. Mineral extraction may not be resumed until such time as compliance is achieved.

- (d) *Violations.*

- (1) No person, corporation or other legal entity may sell or offer to sell any materials in a mineral extraction activity site, unless the site has been approved by the Planning Board.
- (2) The Augusta Planning Board may after notice and public hearing, withhold approval or revoke any previous approvals, given to any applicant, owner or operator who is found in violation of this division.
- (3) Any operation that is in violation of other approvals including but not limited to MDEP or MDOT licenses or permits) covering the same operation shall be deemed in violation of approvals granted under this division, in that all other approvals are necessary for approvals under this division to be valid.

- (e) *Mineral extraction plan amendments after approval.* No changes, erasures, or modifications shall be made in a final plan after approval has been given by the Planning Board unless the plan is first resubmitted and the Planning Board approves any modifications. The applicant is not required to go through the complete review process of an amendment to an existing mineral extraction activity, unless, in the judgment of the Planning Board the amendment substantially alters the character of the original mineral extraction activity, or unless the change constitutes a new mineral extraction activity. If an amended final plan is recorded without complying with this requirement, it shall be null and void.

- (f) *Enforcement.*

- (1) Corporation Counsel shall enforce this division and is authorized to institute legal proceedings to enjoin violations of this division. The Code Enforcement Officer and the city Engineer shall have the right to enter upon the property of any applicant or licensee of a mineral extraction operation or associated use to conduct inspections and reviews of proposed or existing conditions. The CEO shall notify the Operator that he is on the premises, and an operator shall make himself available for on-site visits.
  - (2) If the Code Enforcement Officer finds violation of any provision of this division or failure to comply with any order, permit, approval, condition or other final decision or action of the Planning Board that constitutes a substantial and immediate danger to the health, safety or welfare of any person(s), or property or environment of the City of Augusta, Maine, the city may issue a Stop Work Order, a Compliance Schedule, or may initiate immediate injunction proceedings to abate or correct such violations. Violations are subject to inspection as per 6-78 of this division.
    - a. A stop work order shall only be issued for an entire mineral extraction activity when it is the entire operation that creates the alleged violation and threat to the public health and welfare.
    - b. If the alleged violation concerns only one or more activities of the operation and not the entire operation, then the stop work order issued by the CEO shall be specific to the activity and location of the activity or activities directly related to the alleged violation.
  - (3) In any action to enforce any provision of this division where the City of Augusta, Maine prevails, said city shall be awarded reasonable attorney fees, expert witness fees, and costs unless the court finds that special circumstances make the award of these fees and costs unjust.
- (g) *Penalties.* Any person, firm or corporation, being the owner or having control or use of any mineral extraction activity in violation of any of the provisions of this division or terms or conditions of any order, permit or approval or final decision of the Planning Board, shall be subject to a civil penalty as allowed by Title 30-A, M.R.S.A. § 4452.

(Ord. No. 196, 11-21-05; Ord No. 106, 07-15-10)

#### **Sec. 6-79. License renewal.**

- (a) *Term of license.* Mineral extraction licenses expire five (5) years after approval by the Planning Board, unless revoked or renewed by the Planning Board. If a renewal application is filed at least thirty (30) days before the required five (5) year review, extraction activities may continue under the existing license until the Planning Board review has been completed.
- (b) *Renewal procedure.*

- (1) A holder of a valid mineral extraction license shall have their operations inspected by the CEO for compliance within sixty (60) days of submitting an application for license renewal to the Planning Board.
- (2) Upon receiving a letter of compliance from the CEO, the applicant shall submit said letter to the Planning Board and request the issuance of a new license.
- (3) The Planning Board shall schedule a public hearing regarding the license renewal request. The applicant shall provide, at a minimum, an updated plan prepared and stamped by a licensed land surveyor identifying the original footprint of operation, the original active extraction area, the current active extraction area, any reclaimed areas, and any other changes to the site since the original approval. Additional data may be requested by the Planning Board as necessary to determine compliance with the standards of this ordinance.
- (4) As a courtesy the city shall send a notice to a licensee within one hundred twenty (120) days of license expiration. It is the responsibility of the licensee to keep track of the timeline for licensing inspection and re-licensing requirements, and in no case shall the lack of receipt of a courtesy notification nullify or change the timeline those requirements.
- (5) The Planning Board may, as a part of the renewal process, impose new conditions on the license or modify the license in any way necessary to assure compliance with the license being reviewed and the division as it is in effect at the time of renewal. If there has been a history of significant non-compliance, the Planning Board may deny the request for a license renewal. A mineral extraction activity cannot be expanded beyond its licensed area as part of the 5-year review process. Any expansion not allowed in the initial license must be processed as a separate application under the ordinance in effect at the time of the expansion application.

(Ord. No. 196, 11-21-05; Ord. No 106, 07-15-10)  
Secs. 6-80--6-100. Reserved.

ORDER # 14-149

TITLE: Amendment - MED Ordinance

BYRON Y N <input type="checkbox"/> <input checked="" type="checkbox"/>	O'BRIEN Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	BILODEAU Y N <input checked="" type="checkbox"/> <input type="checkbox"/>
GRANT Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MAYOR Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MUNSON Y N <input checked="" type="checkbox"/> <input type="checkbox"/>
PARADIS Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	ROLLINS Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MCCORMICK Y N <input checked="" type="checkbox"/> <input type="checkbox"/>

MOTION: for passage, as amended

MOVED BY: Rollins  
SEC'D BY: McCormick

TOTAL Y N  
6 1

BYRON Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	O'BRIEN Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	BILODEAU Y N <input checked="" type="checkbox"/> <input type="checkbox"/>
GRANT Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MAYOR Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MUNSON Y N <input checked="" type="checkbox"/> <input type="checkbox"/>
PARADIS Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	ROLLINS Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MCCORMICK Y N <input checked="" type="checkbox"/> <input type="checkbox"/>

MOTION: Amend

MOVED BY: Bilodeau  
SEC'D BY: Paradis

TOTAL Y N  
7 0

Change date 9-4-2014  
Sect 676 (B)(10)(A) et al. "M"  
add "and"

(measurable - can be measurable)  
and perceivable.

BYRON Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	O'BRIEN Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	BILODEAU Y N <input checked="" type="checkbox"/> <input type="checkbox"/>
GRANT Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MAYOR Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MUNSON Y N <input checked="" type="checkbox"/> <input type="checkbox"/>
PARADIS Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	ROLLINS Y N <input checked="" type="checkbox"/> <input type="checkbox"/>	MCCORMICK Y N <input type="checkbox"/> <input checked="" type="checkbox"/>

MOTION: Bilodeau to amend

MOVED BY: Bilodeau  
SEC'D BY: Paradis

TOTAL Y N  
6 1