

**TOWN OF EUREKA
DAKOTA COUNTY
STATE OF MINNESOTA**

ORDINANCE NO. 2023-03

ORDINANCE AMENDING CHAPTER 165 OF THE EUREKA TOWN CODE

The Town Board of the Town of Eureka, Dakota County, Minnesota hereby ordains:

SECTION 1 - That the Eureka Town Code, Revised, adopted November 9, 2022, Chapter 165, is hereby amended as follows:

Article I: General Provisions

§ 165-1 Title.

This chapter shall be known and cited as the "Township of Eureka Mineral Extraction Ordinance," except as referred to herein as "this chapter."

§ 165-2 Purpose.

The purpose of this chapter 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 distinguish between longer-term and shorter-term mineral extraction activities.
- D. Establish standards that prevent or minimize environmental and aesthetic impacts on extracted properties, adjacent properties and the community as a whole.
- E. Establish standards and financial guarantees that restore extracted land to a condition compatible with adjacent properties and suitable for future uses that are compatible with the Eureka Township Comprehensive Plan and Chapter 240, Zoning.

§ 165-3 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ACCESSORY USES

Uses of a mineral extraction facility that are incidental to mining and are not included as an authorized principal use. Accessory uses might include, and are expressly limited to, the manufacture, storage and sale of products made from minerals on the premises, and storage and sale of minerals mixed or to be mixed with minerals from the premises, and storage of topsoil and common Borrow (the use of which is consistent and approved for Reclamation Plan) to be used in reclamation on site whether or not extracted on the premises. No other materials are permitted to be imported nor stored. The term does not include the placement or use of ready-mix concrete plants.

ACTIVE MINING FACILITY

Mine Extraction location from which at least 5,000 cubic yards have been excavated and removed from the facility each calendar year. Moving material around the site does not satisfy this requirement. The movement or stockpiling of material excavated at the site does not count toward the 5,000 cubic yards until it is removed from the site.

AGRICULTURAL

As defined by Chapter 240, Zoning.

COMMISSION OR PLANNING COMMISISON

As defined by chapter 1, article 1, § 1-4, definitions.

COMMON BORROW

Material that includes any type of soil (clay, sand or gravel) that is commonly removed and relocated before mining activities begin or that is removed from one location and used as fill material in another location.

COMPREHENSIVE PLAN

As defined by chapter 1, article 1, § 1-4, definitions.

DEVELOPMENT AGREEMENT

A written contract between the operator, the landowner and Eureka Township which outlines all the terms of the permit for a mineral extraction facility, including any additional terms outside this chapter that are imposed by the Town Board.

DEWATERING

The pumping, extraction or removal of subsurface water in order to lower the water table temporarily to access more aggregate.

DUST

Airborne mineral particulate matter.

ENVIRONMENTAL ASSESSMENT WORKSHEET (EAW)

A document specified in Minnesota Rules, part 4410.0200, subpart 24.

ENVIRONMENTAL IMPACT STATEMENT (EIS)

A document specified in Minnesota Rules, part 4410.0200, subpart 26.

EXCAVATION

The movement of soil and minerals or the removal of minerals.

EXTRACTION AREA

Any nonagricultural artificial excavation of earth exceeding 50 square feet of surface area or two feet in depth, excavated or made by the removal from the natural surface of the earth, or sod, soil, sand, gravel, stone or other natural matter, or made by turning or breaking or undermining the surface of the earth.

FILL

As used in this chapter, see SOIL.

FLOODPLAIN

As used in this chapter, the beds proper and the areas adjoining a wetland, lake or watercourse that have been or hereafter may be covered by the regional flood.

HAUL ROUTES

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

INTERIM USE PERMIT

A permit to use land in a manner approved by the Township for a specified period of time.

LANDOWNER

See Chapter 1, Article 1, § 1-4, Definitions.

LEVEL 1 PERMIT

A mineral extraction permit issued to an operation satisfying the description for a level 1 permit in § 165-6 of this chapter. A mineral extraction facility issued a level 1 permit is considered a level 1 mine.

A mineral extraction facility established prior to 2002 with a reclamation plan consistent with a level 1 permit in §165-6 of this chapter is considered a level 1 mine.

LEVEL 2 PERMIT

A mineral extraction permit issued to an operation satisfying the description for a level 2 permit in § 165-6 of this chapter. A mineral extraction facility issued a level 2 permit is considered a level 2 mine. A mineral extraction facility established prior to 2002 with a reclamation plan consistent with a level 2 permit in §165-6 of this chapter is considered a level 2 mine.

LEVEL 3 PERMIT

A mineral extraction permit issued to an operation satisfying the description for a level 3 permit in § 165-6 of this chapter. A mineral extraction facility issued a level 3 permit is considered a level 3 mine. A mineral extraction facility established prior to 2002 with a reclamation plan consistent with a level 3 permit in §165-6 of this chapter is considered a level 3 mine.

MINERAL

Sand, gravel, rock, clay, peat, and similar higher density nonmetallic natural materials.

MINERAL EXTRACTION

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

MINERAL EXTRACTION FACILITY

Any area that is being used for removal, stockpiling, storage, and processing of minerals.

MINERAL EXTRACTION PERMIT

The interim use permit required for mineral extraction by surface excavation activities that will specify a time period for operation. All Mineral Extraction Permits in Eureka Township are limited to Level 1 - 3 mines as described in §165-6 of this chapter.

MINING SUPERINTENDENT

The expert consultant retained by the Town Board to assist in enforcing the terms of this chapter. The expense of the Mining Superintendent will be paid according to the terms of this chapter.

OPERATOR

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

OVERBURDEN

The soil or rock layer which lies above, and that needs to be removed to reach, the materials being mined as part of a mining operation.

PREVIOUSLY PERMITTED MINERAL EXTRACTION FACILITY

Those mineral extraction facilities operating under special mining licenses prior to 2002 that were permitted to continue as legal nonconforming uses under Minnesota Statute § 462.357 subd. 1e without obtaining the Interim Use Permit first required in 2002, so long as the previously permitted mineral extraction facility complied with conditions and performance standards found in Chapter 13, sections 3 through 9 (repealed) and now found in Article XI of this chapter. Only mineral extraction facilities that have been continually operated as required in Minnesota Statutes, section 462.357, subdivision 1e are within this term.

PRINCIPAL USE

The principal use of a mineral extraction facility is the extraction, crushing, screening, mixing, processing, washing, storage and sale of minerals from the facility. The principal use does not include a concrete block plant or a ready-mix concrete plant or an asphalt production plant or a concrete recycling plant or an asphalt recycling plant, except as stated in Article V, § 165-13B and K, and in Article XI, § 165-30 D.

PROCESSING

Any activity which may include the on-site crushing, washing, stockpiling, compounding, or mixing-of sand, gravel, rocks, or similar mineral products from the site into consumable products, such as construction grade sand, gravel, and other similar products.

READY-MIX CONCRETE PLANT

Refers to a facility at which ingredients are mixed to precise specification and then loaded into truck-mounted mixers for delivery to off-site construction projects.

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 Chapter 240, Zoning, and in the Comprehensive Plan.

RECLAMATION PLAN

The plan for reclaiming a mineral extraction facility consistent with this chapter and approved by the Town Board.

RECYCLABLE ASPHALT

Asphalt originated from a road demolition or road repair project in the Township of Eureka.

RECYCLABLE CONCRETE

Concrete originated from a road demolition or road repair project in the Township of Eureka.

SETBACK

As used in this chapter, the area of property surrounding a mineral extraction facility intended as a buffer zone in which no mining activity may take place.

SHORELAND

As used in this chapter, land located within the following distances from public waters: 1,000 feet from the ordinary high-water level of any lake, pond or reservoir, and 300 feet from rivers and streams, or the landward extent of a floodplain designated by the ordinances on a river or stream, whichever is greater.

SOIL

As used in this chapter, the loose surface material that covers most land.

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.

TOWN BOARD OR BOARD

As defined by chapter 1, article 1, § 1-4, definitions.

TOWNSHIP

As defined by chapter 1, article 1, § 1-4, definitions.

WATER TABLE

The upper surface of the zone of saturation. The zone of saturation is where the pores and fractures of the ground are saturated with water as indicated by average water levels in nearby lakes and wetlands that are not perched, water table wells or piezometers emplaced for the purpose of monitoring, or exploration drilling on the subject property. This level fluctuates with changes in precipitation, and it is the highest water table level that is protected.

The surface of the groundwater at which the pressure is atmospheric. Generally, this is the top of the saturated zone.

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 Chapter 240, Zoning.

ZONING ADMINISTRATOR

See § 240-64.

ZONING ORDINANCE

See chapter 240.

Article II: Permits

§ 165-4 Permit required.

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 required in this chapter. A previously permitted mineral extraction facility is not required to obtain an interim use permit but is required to comply

with all of the requirements of Article XI of this chapter. Penalties for operating without a permit will be strictly applied according to Article VI, Termination; Violations and Penalties, hereof.

No new Level 3 mines will be permitted until an existing Level 3 mine in the Township has ceased operating and completed all reclamation.

§ 165-5 Criteria for granting permits.

In granting a permit, the Eureka Town Board shall consider the advice and recommendations of the Planning Commission and the effect of the proposed use upon the health, safety and general welfare of occupants and owners of surrounding lands. Among other things, the following standards shall be considered:

- A. The use must not create an excessive burden 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 agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land.
- C. The structure and site must have an appearance that will not unreasonably create an adverse effect upon adjacent residential properties.
- D. The use must be reasonably related to existing land use.
- E. The use must be consistent with the purposes of Chapter 240, Zoning, and the purposes of the zoning district in which the applicant intends to locate the proposed use.
- F. The use must be in conformance with the Eureka Township Comprehensive Plan.
- G. The use must not cause traffic hazards or congestion.
- H. Existing land uses nearby must not be adversely affected unreasonably by intrusion of noise, glare, dust or general unsightliness.
- I. The use must not cause significant adverse impact to surface water or groundwater resources.
- J. Dewatering to obtain materials intersecting the groundwater shall not be allowed. The use of equipment such as draglines, track hoes and backhoes to obtain materials intersecting groundwater shall be allowed.
- K. Depth of excavation. Excavation and extraction shall not occur beyond the depth set by the Board in the permit. In setting the depth of excavation, the Town Board shall consider the standards stated herein (Article II, § 165-5), as well as recommendations from Dakota County, the Soil and Water Conservation District and the independent engineering firm selected by the Town Board under Article IV, § 165-11E. In addition, the Town Board will consider whether the application is a renewal of an expired permit where the depth was consistent with a previously approved permit.

§ 165-6 Levels of permits.

Interim use permits for mineral extraction will be issued according to the following levels of permits:

- A. Level 1 permit. This is an expedited permit to meet the needs of short-term construction projects. It applies to operations that will not exceed five acres of excavated area to a maximum depth of 20 feet but not to exceed one foot above the water table and will be active for only one operating season. Compliance with reclamation standards is required. The Town Board may waive the environmental assessment worksheet (EAW) requirement in the event there are clearly no environmental concerns. Should an operator desire to expand or extend, the operator will have to apply for a Level 2 or Level 3 permit; in such case the area of the mineral extraction covered by the Level 1 permit will be included in the overall mining area for the required Level 2 or Level 3 permit.
- B. Level 2 permit. This permit applies to operations which will be active for more than one operating season and that will not exceed 10 acres of excavated area to a maximum depth to be determined by the approved site plan but not to exceed one foot above the highest, expected water table elevation. Compliance with reclamation standards is required. An EAW is required for this level of permit. There is a limit of one level 2 permit for any landowner and/or operator.
- C. Level 3 permit. This permit applies to operations that will exceed 10 acres of excavated area to a maximum depth to be determined by the approved site plan but not to exceed one foot above the highest water table elevation expected unless the end use is to be a lake or a wetland. In addition, the proposed mining plan must undergo a technical review by the Department of Natural Resources, Division of Lands and Minerals. Compliance with reclamation standards is required. An EAW is required for this level of permit.

Ready-Mix Concrete Plants are not permitted under any level of mineral extraction permit as either a principal use or an accessory use.

§ 165-7 Zoning.

Mineral extraction as specified in this chapter shall be allowed in all agricultural-zoned districts, as identified in the Eureka Comprehensive Plan and in Chapter 240, Zoning.

§ 165-8 Exceptions.

A mineral extraction permit shall 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 permanent easement areas or rights-of-way.
- C. Curb cuts, utility hookups or street openings for which another permit has been issued by the Township.
- D. Excavation or removal of less than 400 cubic yards of material per year for use on the owner's property.
- E. Excavation or grading for agricultural purposes.

Article III: Mineral Extraction Permit Application

§ 165-9 Application requirements.

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 operator and signature of a legally authorized representative.
- B. Name, address, phone number and signature of the landowner.
- C. Level of permit for which the application is being made.
- D. Acreage and complete legal description of the property on which the mineral extraction will be located, including all contiguous property owned by the landowners.
- E. Acreage and complete legal description of the property on which the mineral extraction permit will apply.
- F. Type and estimated quantity of material to be extracted.
- G. The estimated time required to complete the proposed operation and reclamation, including starting and completion dates.
- H. A description of all vehicles and equipment proposed to be used by the operator in the operation of the facility.
- I. 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.
- J. The total estimated amount of all other daily vehicle traffic from workers, customers, and service vehicles.
- K. A description of the haul routes within the Township to be used in the operation of the facility.
- L. All information necessary to complete an environmental assessment worksheet (EAW).

§ 165-10 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 1/2 mile of the boundaries of the tax 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 1/2 mile of the boundaries of the tax 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 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, site-specific groundwater

conditions and depth to water tables on and within 1/2 mile of the boundaries of the tax 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-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 if required, and operating permits.
- K. A description of the site 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 Town Board.
- 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 the Dakota County Soil and Water Conservation Service and the appropriate watershed management organization as required in Article V, § 165-13U(5).
- 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, shoreland or floodplain areas located within 1,000 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.
- T. A summary of any accommodations from current ordinance requirements requested by the applicant in order to continue previous physical limits such as depths, slopes, and setbacks,

approved in the prior Interim Use Permit, development agreement or reclamation plan for the site which the applicant considers onerous to adjust under the requested new permit.

Article IV: Permitting Procedure

165-11 Interim use permit. [Amended 6-14-2010 by Ord. No. 2010-1]

- A. Mineral extraction permits shall be considered and processed by the Town Board as interim use permits. The procedures are defined in Chapter 240, Zoning, Article IV, § 240-32. If the Town Board grants the interim use permit, the Town Board shall specify the particular date or the occurrence of the particular event when the permit is to expire. The Town Board may attach conditions to the interim use permit in addition to those set forth in this chapter.
- 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 chapter, outlining the application process and permit requirements.
- C. The application and required supporting information shall be filed with the Planning Commission at its regularly scheduled meeting. If the application is incomplete, the Commission, in writing, within 15 days, will notify the applicant of the additional information required for the application to be complete.
- D. Once the application is deemed complete, the Zoning Administrator shall provide landowners within 1,000 feet of the applicant's property with notification of the application for an interim use permit for mineral extraction via first-class mail.
- E. A registered engineer licensed by the State of Minnesota and qualified in this field shall review the application. The Town Board shall select the engineering firm. The engineer will submit the results of his or her findings, along with any recommendations for actions, to the Planning Commission.
- F. Within 30 days of receipt of the registered engineer's findings and recommendations, the Planning Commission, together with the engineer and Mining Superintendent, shall prepare an environmental assessment worksheet (EAW), according to Minnesota Rules, Chapter 4410. After this process is completed, the Town Board shall determine within 30 days whether an environmental impact statement (EIS) is required.
- G. Upon completion of the environmental review process, the Planning Commission, at its next regularly scheduled meeting, shall process the mineral extraction permit application as an application for an interim use permit, following the procedures for interim use permits defined in Chapter 240, Zoning, Article IV, § 240-32. The Planning Commission may require that the applicant submit additional information to address or clarify any issues raised in the environmental review. The Planning Commission will use the assistance of the Mining Superintendent as it deems necessary. The formal interim use permit application review process shall commence only after completion of the environmental review and upon receipt of additional information required.
- H. Within 30 days of receipt of all additional required information and upon completion of the environmental review process, the Planning Commission shall schedule, provide notice of, and hold a public hearing for the mineral extraction permit, following the procedures defined for interim use permits in Chapter 240, Zoning, Article IV, § 240-32.

- I. After the public hearing, the Planning Commission shall make findings on the permit application and submit recommendations to the Town Board, following the procedures defined for interim use permits in Chapter 240, Zoning, Article IV, § 240-32.
- J. If the Town Board, registered engineer, or Planning Commission cannot act upon the permit application within the permitting time frames specified herein and by state law, the Town Board shall notify the applicant in writing to request an extension of time and stating the reasons for the extension.
- K. Any application that is inconsistent with the Comprehensive Plan will be denied. The applicant has the right to submit an application to the Town Board to amend the Comprehensive Plan, according to procedures established in the Eureka Township Code of Ordinances.
- L. The Town Board shall approve the permit application, deny the permit application or approve the permit application with modification. Modifications may include additional restrictions.
- M. When a permit is approved, the Town Board or its designee shall complete a development agreement, signed by representatives of the Town Board, the landowner and the operator (if different from landowner). Landowner and operator, if different, are jointly responsible for complying with the requirements in the interim use permit. If the identity of either the landowner or the operator changes, the Township must approve the change and the new landowner or operator must sign on and agree to all obligations in the interim use permit and all financial obligations in order for the interim use permit to stay in place. Failure to agree to the terms and conditions of the interim use permit or the development agreement will constitute a terminating event for the interim use permit. The Township may undertake an enforcement action against the operator or landowner, or both, if there is a violation.
- N. 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 12 months from the date of denial. Any change involving structural alterations, enlargement, intensification of use, or similar change not specifically permitted by the interim use permit issued shall require an amended interim use permit and all procedures shall apply as if a new permit were being issued. If the amendment does not include any change involving structural alterations, enlargement, intensification of use, or similar change of the primary use(s), the applicant may amend the originally filed supporting documentation, including a registered engineer's finding stating whether an amended EAW/EIS is required. Upon approval of an amended interim use permit, the development agreement shall also be amended to reflect the amended permit. The Zoning Administrator shall maintain a record of all interim use permits issued, including information on the use, location, and conditions imposed by the Planning Commission and Town Board, time limits, review dates, and such other information as may be appropriate.

§ 165-12 Review of permit.

- A. In February of each year, the Town Board will review all Mineral Extraction Facilities whether the facility operates under a permit issued under this chapter or is classified as a legal nonconforming use under this chapter. By January 31 of each year, the operator will provide the following information to the Planning Commission and the operator must pay the review fees referenced in Article VIII:
 - (1) Evidence of the amount of material removed and any amount of material imported from off site; Evidence should include Reports to Dakota County for Aggregate Taxes as well as company's annual material sales reports for the facility. Evidence must substantiate that the

Mineral Extraction Facility meets minimum tonnage removal requirement to be considered an Active Mining Facility. Failure to do so may trigger requirements for reclamation and/or revocation of continued status as a permitted mine or a nonconforming use as determined by the Town Board.

- (2) Amount of material remaining to be removed;
 - (3) Evidence that bonding and insurance are still in force and effect;
 - (4) A summary list of all complaints and violations during prior year with responses and implemented corrective actions.
 - (5) History of compliance with the mineral extraction regulations within the ordinances and other governmental regulations relating to mining;
 - (6) Each instance of exposure of water table unless the report is for a Level 3 permit;
 - (7) Status of phasing plan;
 - (8) Status of reclamation;
 - (9) Up-to-date list of all vehicles and equipment on site; estimated number of vehicles accessing the facility;
 - (10) Report on condition of haul roads that serve or abut the facility;
 - (11) Status of erosion control measures;
 - (12) Any change in ownership and/or operator; and
 - (13) Other items of information requested by the Town Board.
 - (14) A listing of MSHA violations and their levels and penalties with measures taken in the previous year.
- B. In conjunction with the Mining Supervisor's initial review and report, the Planning Commission will jointly review the Mining Facility Reports and interview representatives of each facility at a meeting to be held in February. After its review, the Planning Commission will make recommendations to the Town Board. In its March 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 chapter, the conditions imposed by the permit and the development agreement. If the Board determines the mineral extraction facility is not in compliance it will take further steps as provided in this chapter.

Article V: Mineral Extraction Performance Standards

§ 165-13 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 7:00 a.m. and 5:30 p.m., Monday through Friday. A mineral extraction facility may be opened one hour before hours of operation to allow for staging. No Sunday or holiday operations will be allowed.

The holidays are New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and Christmas. When New Year's Day, July Fourth, Thanksgiving or Christmas fall on a Sunday, the following Monday shall be considered the holiday. When New Year's Day, July Fourth, Thanksgiving or Christmas fall on a Saturday, the previous Friday shall be considered the holiday.

- (1) Operators are allowed extensions to the hours of operation for emergencies only. Operators must notify the Township Clerk or a Town Board member in advance of the proposed exception.
 - (2) The Town Board must approve other exceptions to the hours of operation, such as Saturday operation, government agency contracts and other evening work.
- B. Source of minerals. Only minerals from the site shall be processed at the mineral extraction facility; subject, however, to the following exceptions:
- (1) The operator may import off-site minerals onto the subject property for the purpose of mixing with minerals from the subject property provided the imported minerals on an annual basis do not exceed 25% of the minerals extracted from the subject property on an annual basis. Accessory uses may not exceed 25% off-site minerals used in conjunction with each specified accessory use; therefore, off-site minerals may not be aggregated to a single accessory use, allowing a specific accessory use to exceed 25% of off-site minerals used in conjunction with the specific accessory use.
- C. Site Security. Security must be sufficient to protect the community from attractive nuisances. The burden to design and install sufficient security is on the operator and owner who are expected to stay current with industry practices and to stay aware of all risks at the mining facility. If not already included in the security system put in place by the mine, fencing may be required by the Town Board around any section and/or the entire mineral extraction area. When used, fencing at a minimum must be three wires with posts a maximum of 12 feet apart and at least four feet high and in good repair. Berming, no trespassing signs, locked gates at access points, security cameras and lighting including motion sensitive units, and any other site security can also be considered by the Town Board to mitigate the need for fencing on certain areas. The Town Board may require fencing, signs and/or barriers around ponding areas and steeply sloped excavations.
- D. Access. All mineral extraction facilities shall have direct access to a nine-ton or greater capacity road. The Town Board shall set minimum roadway improvements and 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 nine-ton or greater road capacity within the Township. Operators may be granted a special permit to utilize roadways temporarily posted under nine tons, provided adequate surety is provided to cover the costs of repairing any damage to roadways. The Town Board may allow a Level 1 permit holder to use roads that are not nine-ton. Level 2 and Level 3 permits will require any substandard roads utilized by the mineral extraction facility as haul routes to be brought up to a MnDOT standard for nine-ton paved roads. The operator will bear the cost of such an upgrade. 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. Traffic control to assure safety must be maintained.

Trucks shall not queue on public roads while waiting to enter or exit facility. Turn lanes shall be constructed on public roads if deemed necessary by the appropriate road authority, at landowner and/or operator expense. Sufficient truck staging area shall be provided on Mineral Extraction Facility property.

- F. Roadway dust control. Operators will be responsible for dust control on all gravel roads utilized by trucks hauling to or from the Mineral Extraction Facility. Dust control will be required when conditions warrant it and the number of one-way truck trips from the Mineral Extraction Facility exceeds three per hour. The Township reserves the right to require the operator to pay for dust control on any haul route within the Township or those bordering the Township. An operator will consult with, and receive permission from, the Road Supervisor prior to adding gravel or grading a Township road.
- G. Mineral Extraction Facility dust control. The Township shall require dust control in a facility when it is determined that airborne dust from extraction areas, processing activities, stockpiles or internal roadways creates a public nuisance or otherwise adversely impacts surrounding lands. Remedies to dust control may include watering, berming, landscaping and enclosures for processing equipment, and any other means deemed necessary by the Town Board.
- H. 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.
- I. Vibration. Operators shall use all available means deemed necessary by the Town Board to eliminate adverse impacts of vibration from equipment on adjacent properties.
- J. 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 may require other standards it deems reasonably necessary. Increased runoff must be retained on site with retention or detention ponds.
- K. 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, a ready-mix concrete production plant, a concrete recycling plant asphalt production plant, or an asphalt recycling plant shall be strictly prohibited. The storage, stockpiling, sale and mixing of minerals that have been excavated off site are strictly prohibited, except for the mixing of minerals as provided in § 165-13B, as limited to minerals. Accessory uses will terminate when the principal use terminates. Accessory uses may not collectively account for more than 25% of the total mine operations based upon the volume of minerals extracted from the subject property, so that primary uses account for greater than 25% of the total mine operation as measured by volume.
- L. 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.
- M. Setbacks. No extraction activity may occur within 1,000 feet of any dwelling and within 50 feet of any adjacent property line, road right-of-way or public utility. Screeners, crushers, other processing equipment and manufacturing equipment may not be located closer than 1,000 feet from a dwelling nor closer than 100 feet from any adjacent property line, road right-of-way or public utility. 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 also a legal mining operation, the common boundary is not within 1,000 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. Any existing approved setback reduction in an existing approved interim use permit continues to have approved status.

- N. Phasing. Phasing plans must be prepared for all Mineral Extraction Facilities. The operator and landowner must follow the phasing plan approved by the Town Board. No more than 10 acres of land may be exposed to extraction at any one time. A maximum of 25 acres may be utilized at any one time for extraction, processing, staging and stockpiling. Areas where extraction has been completed shall be reclaimed according to the provisions of this chapter, except for that area currently being used in the maximum twenty-five-acre operational area.
- O. Berming. Earthen berms shall be constructed along all road rights-of-way. In the instance where the setback from a residence applies under § 165-13M, then, in addition, earthen berms shall be constructed along the adjoining property line. Berms shall provide screening of the mining activity from the right-of-way and any adjoining property line on which a berm is required. A combination of berms and other screening which has no written objection from any owners of real property located within 1,000 feet of the proposed extraction activity may satisfy this requirement, subject to Town Board approval of the design. In the absence of such an alternate design, berms shall be a minimum of eight feet in height. 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.
- P. Heights. The maximum height of any excavation, temporary crushing equipment, or temporary stockpiles located no less than 1,000 feet from the property line shall be a minimum of eight feet below the average height of the adjacent berms within the mandatory setback.
- Q. Weed control. The operator shall be required to control noxious weeds and mow or harvest other vegetation to maintain reasonable appearance of the site.
- R. Explosives. If the operator desires the use of explosives, a separate interim use permit shall be required for each incident to provide adequate public notice and input.
- S. 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 Mine Safety and Health rules, floodplain management regulations, shoreland management regulations and zoning regulations. No use or structure shall be operated or occupied in such an amount or to such a degree or intensity as to constitute a hazardous condition, or as to unreasonably interfere with the use of other property by any person of normal sensitivities or to otherwise create a public nuisance.
- T. Additional regulations. The Township may impose additional regulations and requirements on the mineral extraction permit to protect the public health, safety, and welfare.
- U. Reclamation. The operator must meet the following minimum standards and conditions regarding reclamation.
 - (1) Reclamation plan. The operator must submit a reclamation plan containing the following elements:

- [a] Intent of reclamation;
- [b] Methods and processes of reclamation;
- [c] Initial condition of mining site;
- [d] Limits of various operational areas;
- [e] Phasing and timing of operations and reclamation including areas to be stripped of overburden.
- [f] Grading plans, on-site topsoil replacement, seeding, mulching, erosion control and sedimentation control specifications;
- [g] Final condition of site, including proposed contours and absolute elevation with respect to the average annual water table, and a potential development plan, if applicable;
- [h] Relation of final site condition to adjoining landforms and drainage features;
- [i] Relation of reclaimed site to planned or established uses of surrounding land;
- [j] A plan for maintenance of reclaimed area; and
- [k] A detailed cost estimate of reclamation.

(2) Reclamation timing. The timing of reclamation activities shall comply with the following:

- [a] It is expected that reclamation will be occurring in phases. Reclamation shall also be completed in step with the opening of new excavation areas of the facility. As-built surveys, soil borings, water table elevation determination, or other testing may be required as part of the review to ensure phased reclamation is completed according to the approved reclamation plan.
- [b] Reclamation shall proceed in a continuous manner throughout the duration of the mining operation and is subject to review and approval at each annual inspection and at the end of the permit period.
- [c] Within three months after the termination of excavation operations or within three months after the expiration of the interim use permit, the operator or landowner shall dismantle buildings and structures incident to mining operation and shall grade the excavation site as well as complete all rehabilitation on the site as provided in the approved reclamation plan.

(3) Water Accumulations. Excavations in a Level 3 mine, resulting in the continued exposure of substantial water areas after reclamation must meet the following requirements (all other Levels of Mines shall not result in water table exposure):

- [a] The water depth must not be less than three feet measured from the average annual water table elevation as measured by piezometer or monitoring well unless a plan for creation of a wetland or marsh has been approved.

- [b] All banks shall be sloped to the water line at a slope which shall not be steeper than four feet horizontal to one foot vertical.
- [c] All banks shall be surfaced with topsoil of a quality at least equal to the topsoil of land areas immediately surrounding and to a depth of at least four inches. All banks shall also be surfaced with sodding or seeding and mulching. Mulch must be properly anchored.
- [d] All topsoil required by the paragraph (c) above shall be planted with trees, shrubs, grasses, or native vegetation, or return to agricultural use.
- [e] Slopes on reclaimed areas shall not be steeper than four feet horizontal to one foot vertical, except in cases where non-erodible conditions are present, and the Planning Commission approves the reclamation plan.
- [f] In man-made groundwater lakes, the bottom contour shall be gradually sloping from the shoreline to the deepest portion of the water body at a maximum slope of six feet horizontal to one foot vertical for at least 100 feet from the shoreline toward the center of the water body. Beyond 100 feet horizontal distance from the shoreline, the slope of the bottom may be no steeper than three feet horizontal to one foot vertical.
- [g] All groundwater lakes or wetlands created as part of the reclamation plan shall comply with state, county, and local laws, regulations, ordinances, requirements, and guidelines, including Minnesota Department of Natural Resources guidelines for surface water creation.

(4) Grading and Backfilling. Excavations not resulting in surface water creation after reclamation, but which must be graded or backfilled, shall meet the following requirements:

- [a] Fill of soil shall be inspected and certified as being clean (free of volatile organic compounds, contaminants, noxious weed seeds and heavy metals) before being used for reclamation; only organic soil shall be used for topsoil.
- [b] Fill of soil shall consist of non-noxious, nonflammable, noncombustible solids.
- [c] The graded or backfilled area shall not collect or permit stagnant water to remain therein.
- [d] The peaks and depressions of the area shall be reduced to a gently rolling topography in substantial conformity to the land area immediately surrounding and which will minimize erosion due to rainfall.
- [e] Graded or backfilled areas shall be surfaced to a depth of at least four inches with topsoil of a quality at least equal to the topsoil of immediately surrounding areas.
- [f] Topsoil required by sub-paragraph (f) above shall be planted with trees, shrubs, grasses, or native vegetation, or return to agricultural use; and inspected to be free of noxious weeds.
- [g] Slopes on reclaimed areas shall not be steeper than four feet horizontal to one foot vertical, except in cases where non erodible conditions are present, and the Planning Commission approves the reclamation plan.

- [h] All reclamation areas which are planned for building purposes shall have a final elevation at least 10 feet above the normal ordinary groundwater level. If public sewer is not available, plans for on-site septic systems must be considered. If the area is backfilled for purposes of future development, the soil must be compacted, and subsequently tested and approved by a licensed soils engineer.
- [i] Drainage. Reclamation shall proceed in a manner that preserves natural and storm drainage entering and leaving the premises. Said drainage shall be altered to the least extent necessary for carrying out reclamation and related activities. Natural and storm drainage shall not be altered in a manner that adversely affects public roads or neighboring uses.
- [j] Cover and Planting. The reclamation area shall be planted with grass, trees, shrubs, or other vegetation to prevent erosion and provide screening and improved aesthetics. Technical assistance and soils data should be obtained from the county agricultural agent, appropriate state and federal officials, conservation districts, and the nearest soil conservation service officer.
- [k] Topsoil. Topsoil that is stripped or removed must be stockpiled and set aside on the site for re-spreading over the reclaimed area unless the quantity is sufficiently in excess of need that the Town Board approves plans for its removal.
- [l] Removal of Structures. All buildings and other structures not otherwise allowed per the Development Agreement shall be removed from the property and the property shall be restored in conformance with the reclamation plan within three months after expiration of a mining permit or termination of a mining operation or within three months after a mining operation has been abandoned for six months.
- [m] Best Practices for Preservation and Restoration of Soil. In order to protect the environment and the public's health, safety, and welfare, applications shall incorporate Best Practice standards into the design, operation, and reclamation of Mineral Extraction Facilities. A list of Best Management Practices for the Preservation and Restoration of Soil is available through the Minnesota Department of Natural Resources at:
https://www.dnr.state.mn.us/water_access/bmp/soil_retention_bmp.html. The Town Board reserves the right to supplement these standards as appropriate.

(5) Soil and Water Conservation District and Watershed Review and Recommendations. As a part of the original application for an interim use permit, the operator shall submit grading plans, phased reclamation plans and water control plans to the Dakota County Soil and Water Conservation District and to the governing bodies of the Township's watersheds 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.

Article VI: Termination; Violations and Penalties

§ 165-14 Termination.

The mineral extraction permit or the right to continue a legal nonconforming use shall be terminated on the happening of any of the following events unless a different process or terms are specified in its Interim Use Permit:

- A. The date or event of termination specified in the interim use permit.
- B. Upon a violation of any applicable laws, rules, or Township Code, or of a condition under which the permit was issued or the right to continue the use was conditioned, but only after the Town Board has first provided written notice to the operator and landowner (if different from the operator) describing the specific violation and steps necessary to be in compliance with the permit or condition and after having been given a reasonable opportunity to remedy the violation. The notice of violation shall inform the operator that failure to correct the violation as directed in the notice may result in the revocation of the interim use permit or right to continue the legal nonconforming use and the time period in which the violation must be corrected.
- C. If the operator fails to correct the violation as described in a notice of violation within the identified correction period, the Town Board may undertake a process to consider and act on the revocation of the interim use permit issued for the operation or the permission for the legal nonconforming use. The Township shall provide the operator and landowner (if different from the operator) at least 10 days written notice of a public hearing before the Town Board to consider the revocation of the interim use permit. The notice shall identify the violation or violations resulting in the proposed revocation. The operator and any other interested party will have an opportunity to be heard during the hearing. The Town Board may revoke the interim use permit or the right to continue the legal nonconforming use if it determines a violation occurred and the operator failed to correct it as directed in the notice of violation. As an alternative to immediate revocation, the Town Board may, in its sole discretion,, allow the operator to enter into a correction agreement with the Township to allow the operation to continue provided it complies with the terms and conditions of the agreement. The correction agreement shall identify any corrective actions the operator must take, may require the posting of a bond or other security related to the performance of the required corrective actions, and may set out such other terms, conditions, and requirements as the Town Board determines are reasonable to ensure the operator corrects any existing violations and remains in compliance with the permit or nonconforming use conditions and all applicable laws, rules, regulations, and ordinances.
- D. Each day that a violation continues beyond the allotted time to repair constitutes a new violation.

§ 165-15 Misdemeanor penalty.

Any person who violates or fails to comply with any provision of this chapter 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 terminated.

§ 165-16 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 proscribed by the Minnesota Department of Health Safe Drinking Water Standards or any natural spring, the Town Board will notify the operator and landowner (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 terminated.

§ 165-17 Complaints.

All complaints must be in writing and available for public viewing unless the Township determines, in its discretion, to keep the identity of the complainant is confidential pursuant to the Minnesota Data Practices Act.

Article VII: Enforcement

§ 165-18 Inspection and enforcement.

The operator grants the Township's officers and representatives, including the Mining Superintendent and Planning Commission, access to the facility during normal operation hours to inspect the mineral extraction facility and enforce the provisions of this chapter. The Township's officers and representatives will check in at the mine office to execute safety work forms and meet any escort required by law. All operators will provide an emergency contact number that the Mining Superintendent can call to arrange escorted access to the mine outside normal business hours if an emergency condition requires immediate access. The initial investigation of any violations of mining ordinances will commence at the Mining Superintendent and Planning Commission level for fact finding and report with recommendations to the Town Board.

§ 165-19 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.

§ 165-20 Development agreement.

A development agreement will be required for all mineral extraction permits, including seasonal extraction permits.

Article VIII: Fees

§ 165-21 Application fee.

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

§ 165-22 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 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 chapter; 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 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 30 days of final action on the matter by the Town Board.

§ 165-23 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 review applications, public hearing, preparation of documents, inspections and enforcement of this chapter, whether a permit is issued or not.

§ 165-24 Fees.

The Town Board shall establish fees by ordinance for the issuance of mineral extraction permits. All mines, including legal nonconforming mines, will be assessed fees for the annual review and the cost of enforcing this ordinance. 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 January 31 of each year for the permits that have not been terminated. Failure to pay review fees and expenses shall be a violation of this chapter. If additional inspections or enforcement actions are required, the cost of that work will be assessed against the mine requiring the work.

§ 165-25 Future impositions.

If in the future the state law enables the Town 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.

Article IX: Financial Guaranty

§ 165-26 Bonds; cash escrow; letter of credit.

The operator must provide and maintain a performance bond, cash escrow or a letter of credit, in a form acceptable to the Township, to guarantee compliance with this chapter and the terms and conditions of the development agreement. The Township shall have the right to use the financial guaranty to remove stockpiles, complete site reclamation, and correct other deficiencies or problems caused by the operator, in the event the operator is in default of the obligations under this chapter. The amount of financial guaranty shall not exceed \$10,000 per acre of the mining operation used for extraction, stockpiling, and processing activities. This amount may be increased by the Town Board with reference to the increase in the Consumer Price Index (CPI) for the Minneapolis-St. Paul Area. The financial guaranty shall remain in full force and effect for a minimum period of nine months or after reclamation or cleanup of the site is complete, whichever is longer.

Article X: Liability Insurance; Indemnification

§ 165-27 Liability insurance.

- A. The operator shall at all times procure and maintain at the operator's expense general public liability insurance, automobile 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 development agreement and under this chapter. Such insurance shall afford protection to a limit of not less than \$1,000,000 in respect to injuries or death to a single person, to a limit of not less than \$5,000,000 in respect to any one accident or occurrence, and to a limit of not less than \$500,000 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.
- B. The certificate shall provide that the Township must be given 30 days' written notice of the cancellation of insurance.

§ 165-28 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.

Article XI: Preexisting Mineral Extraction Facilities

§ 165-29 Preexisting mineral extraction facilities as lawful nonconforming uses.

All mineral extraction facilities that were lawfully established prior to the effective date of this chapter, and that were not discontinued for a period of more than one year since establishment, are subject to the provision of Article I of this chapter and those portions of Articles II-V specified in this article as well as Articles VI-X of this chapter. The Town Board determines the application of these provisions to lawful nonconforming mineral extraction facilities is necessary in order to address potential nuisances created by the facilities and to protect the public health, safety, and welfare. Any nonconforming operation when it was originally established is required to apply for and obtain an interim use permit from the Township prior to expanding the operation.

- A. 1. Two mineral extraction facilities hold IUPs as of the effective date of this chapter. Those facilities will continue to operate under their respective IUPs as legal nonconforming uses. When the IUPs expire, new applications and development agreements fully compliant with Articles II-IV of this chapter must be completed. Beginning in January 2024, these mineral extraction facilities must file reports that satisfy the requirements of §165-12 and must operate in compliance with the performance standards in Article V, except for (N)(Phasing Plan) and (U)(Reclamation Plan) unless those performance standards conflict with its existing interim use permit, development agreement or approved Phasing and Reclamation Plans. If requested by the Mining Superintendent or the Town Board, the holder of a permit will discuss necessary changes to its operations if immediately important to abate a nuisance or to protect public health, welfare, or safety even if its practices are consistent with previous standards or approved plans. If the Town Board cannot reach agreement with the mineral extraction facility, it may take steps to enforce the standards of this chapter as needed to address nuisances created by the noncompliant facility. An operator of one of these mineral extraction facilities may request a reasonable extension of time to comply with any updated performance standards in Article V. The Town Board will grant the request if in its sole judgement good cause is shown.
- B. One mineral extraction facility formerly owned by the State of Minnesota was acquired by another owner after 2002, however the Township has not yet required an application for an interim use permit be filed. The legal property description for this mine is at §165-31. By December 2028 the operator and/or landowner of this mineral extraction facility must have fully complied with Articles II to IV and Article X (n) and (u) of this chapter. Beginning in January 2024, these mineral extraction facilities must file reports that satisfy the requirements of § 165-12 and must operate in compliance with Article V except for (n) and (u). The landowner and/or operator of this mine may request a reasonable extension of time to comply with any enhanced performance standard in Article V. The Town Board will grant the request if in its sole judgement good cause is shown.
- C. There are four mineral extraction facilities that existed prior to 2002 and have continued as lawful nonconforming uses since that time. The legal descriptions for these Previously Permitted Mineral Extraction Facilities are in §165-31. Notwithstanding Article II, § 165-4, those mineral extraction facilities in the Township that exist as of the effective date of this chapter and obtained from the Town Board an annual mining permit prior to calendar year 2002, shall have the right to continue as mineral extraction facilities under the original licenses and as legal nonconforming uses without first obtaining an interim use permit for a mineral extracting facility required by §165-4, as long as there is compliance with the conditions of this article. Compliance with performance standards in Article V (U) (Reclamation Plan) is not required and for a facility that has a reclamation plan and phasing plan approved by the Township and is in compliance with

those plans as of the effective date of this chapter. If requested by the Mining Superintendent or the Town Board, the holder of a permit will discuss necessary changes to its reclamation plan and phasing plan if immediately important to abate a nuisance or to protect public health, welfare, or safety even if its reclamation plan and phasing plan are consistent with previous standards or approved plans. If the Town Board cannot reach agreement with the mineral extraction facility, it may take steps to enforce the reclamation plan and phasing plan standards of this chapter as needed to address a nuisance or to protect public health, welfare, or safety issues created by the nonconforming facility. The mines will provide a comparison of their 2002 reclamation plans in effect versus the 2023 requirements, as outlined in section 165-13(U), highlighting any key differences, in their opinion, within 12 months of new text, for joint discussion with mining superintendent and Planning Commission to better understand related necessity and costs. This right shall run with the applicable property and this right shall be subject to Minnesota Statutes, section 462.357, subdivision 1e.

§ 165-30 Performance standards.

The following performance standards shall apply to all existing mineral extraction facilities in the Township that are permitted to operate by § 165-29(B) of this chapter. These performance standards are either identical to or are updates to the standards previously required in Or. 6, Ch. 13 (repealed):

- A. Hours of operation. Previously permitted mineral extraction facilities shall operate only between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday. Truck loading and hauling of material shall be allowed on Saturdays only between the hours of 7:00 a.m. and 3:00 p.m. A mineral extraction facility may be open one hour before and one hour after the hours of operation to allow for staging and equipment repair. No Sunday or holiday operations will be allowed. The holidays are New Year's Day, Memorial Day, July Fourth, Labor Day, Thanksgiving and, Christmas. When New Year's Day, July Fourth, Thanksgiving or Christmas fall on a Sunday, the following Monday shall be considered the holiday. When New Year's Day, July Fourth, Thanksgiving or Christmas fall on a Saturday, the previous Friday shall be considered the holiday.
 - (1) Operators are allowed extensions to the hours of operation for emergencies only. Operators must notify the Town Clerk or a Town Board member in advance of the proposed exception.
 - (2) The Town Board must approve other extensions to the hours of operation, such as Saturday operation, government agency contracts and other evening work.
- B. Setbacks. Production or processing of minerals shall not be closer than 30 feet to the boundary of any zone where such operations are not permitted, nor shall such production or processing be conducted closer than 20 feet to the boundary of any adjoining property line, nor closer than 200 feet to any adjoining structures, unless the written consent of the fee owner of such adjoining property is first secured. Mineral extraction shall not be made closer than 30 feet to the right-of-way line of any existing or platted street, roadway or highway, except that excavating may be conducted in such limits in order to reduce the elevation thereof in conformity with the existing or platted street, road or highway.
- C. Accessory uses. No accessory use will be allowed in conjunction with the mineral extraction facility unless the accessory use, by separate voting action of the Town Board, is approved by the Town Board. 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 also prohibited, except as stated in § 165-30D. The storage, stockpiling, sale, and mixing of materials that have been excavated off site are strictly

prohibited except for the mixing of materials as provided in § 165-30D.

- D. Source of materials. Only minerals from the site shall be processed at the mineral extraction facility; subject, however, to the following exceptions:
- (1) Recyclable concrete and recyclable asphalt may be crushed and mixed on site if the crushing and mixing do not exceed 15 working days per calendar year and if the recyclable concrete and recyclable asphalt originated from a road demolition or road repair project in the Township of Eureka.
 - (2) The operator may import off-site minerals onto the subject property for the purpose of mixing with minerals from the subject property provided the imported minerals on an annual basis do not exceed 25% of the minerals extracted from the subject property on an annual basis.
- E. Surface water. The mining operation shall in no way be allowed to negatively interfere with surface water drainage nor shall the mining operation be allowed to affect the quality of surface or subsurface water.
- F. Black dirt and topsoil. The excavation or removal of black dirt or topsoil for sale or for use other than on the premises from which the soil is taken, except in connection with the construction or alteration of a building on the premises and the excavation or grading incidental thereto, is prohibited.
- G. [Dewatering. Dewatering to obtain minerals intersecting the groundwater shall not be allowed. The use of equipment, such as draglines, track hoes and backhoes, to obtain minerals intersecting groundwater shall be allowed].
- H. No expansion without obtaining interim use permit. The mining area may not be expanded beyond the boundaries for the mining area that were approved in the annual mining permit for 2002 (previously issued by the Township under now repealed Township Ordinance No. 13. If the operator seeks to expand the mining area, the operator must obtain an interim use permit for the entire mineral extraction facility under Article II, § 165-4, including those portions previously mined as well as the proposed expanded mining area.
- I. The following performance standards in Article V must be met by Previously Permitted Mineral Extraction Facilities. Any mine may request a reasonable extension of time to comply with any enhanced performance standard. The Town Board will grant the request if in its sole judgement good cause is shown. : 165-13 C, D, E, F, G, H, J, L, Q, R, T.

§ 165-31 Legal descriptions of Previously Permitted Mineral Extraction Facilities.

The preexisting mineral extraction facilities that meet the requirements of § 165-29 are only the following four properties in the Township of Eureka, Dakota County, Minnesota, legally described as follows:

- A. Facility No. 1 legal description. The South One-Half of the Northeast Quarter of Section 7, Township 113 North, Range 20 West, containing eighty acres, more or less.
- B. Facility No. 2 legal description. That part of the Northeast Quarter of the Northwest Quarter of Section 7, Township 113 North, Range 20 West, containing 40 acres more or less. The actual area to be mined will be approximately 24 acres.

C. Facility No. 3 legal description. That part of the South Half of the Northwest Quarter of Section 7, Township 113 North, Range 20 West, Dakota County, Minnesota, described as follows:

Beginning at the Southeast corner of the West 1716 feet of the said S 1/2 of the NW 1/4 of the said Section 7; thence North along the East line of the West 1716 feet of the said S 1/2 of the NW 1/4, a distance of 600 feet, more or less, to the North line of the South 600 feet of the said S 1/2 of the NW 1/4; thence West along the said North line of the South 600 feet, a distance of 726 feet, more or less, to the East line of the West 990 feet of the said S 1/2 of the NW 1/4; thence north along the said East line of the West 990 feet, a distance of 720 feet, more or less, to the North line of the said S 1/2 of the NW 1/4; thence East along the said North line to the West line of the East 630 feet of the said S 1/2 of the NW 1/4; thence South along the said West line of the East 630 feet, a distance of 930 feet, more or less, to the South line of the North 930 feet of the said S 1/4 of the NW 1/4; thence East along the said South line of the North 930 feet, a distance of 580 feet, more or less, to the west line of the East 50 feet of the said S 1/2 of the NW 1/4; thence South along the said West line of the East 50 feet, a distance of 390 feet, more or less, to the South line of the said S 1/2 of the NW 1/4; thence West, along said South line to the point of beginning.

D. Facility No. 4 legal description.

The existing 10-acre site where mining has occurred surrounding and including the following parcels: Beginning at the SW corner of Section 6, Township 113 North, Range 20 West, thence East along the South line 600 feet, thence north 200 feet, thence East 355 feet, thence south 200 feet to the South line of Section 6, Township 113, Range 20, then back to the point of beginning; and

Beginning at the NW corner of Section 7, Township 113, Range 20, thence East along the North line 600 feet, thence South 400 feet, thence East 355 feet, thence North 400 feet to the North line of Section 7, Township 113, Range 20, thence West to the point of beginning.

E. Facility No. 5 Legal description.

Tract A: The northerly 930 feet of the easterly 630 feet of the SE 1/4 of the NW 1/4 of Section 7, Township 113, Range 20 West; together with the easterly 50 feet of the SE 1/4 of the NW 1/4 of said Section 7, lying southerly of Tract A hereinbefore described, to be used for haul road purposes only; excepting therefrom the existing highway; containing 13.95 acres, more or less, of which 13.50 acres are for pit, and 0.45 acre is for haul road purposes only.

Article XII: Validity

§ 165-32 Validity; severability.


Should any provision of this chapter be declared by the courts to be invalid, such decision shall not affect the validity of this chapter 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 chapter 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. SEPARABILITY. It is hereby declared to be the intention that the several provisions of these Chapters are separable in accordance with the following: If any court of competent jurisdiction shall adjudge any provision of these Chapters not specifically included in said judgement.

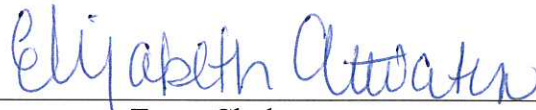
SECTION 3. ADOPTION AND ENACTMENT. This Ordinance shall become effective upon its passage and publication.

SECTION 4. EFFECTIVE DATE. This Ordinance shall be effective upon its passage and the first day of publication.

Dated: March 7, 2023



Town Board Chair



Town Clerk