

Village of Webberville

MINING, EXTRACTION AND QUARRYING ORDINANCE

ORDINANCE NO. 2005-02

AN ORDINANCE OF THE VILLAGE OF WEBBERVILLE, TEXAS, REQUIRING PERMITS FOR CONDUCTING MINING OR QUARRYING OPERATIONS AND THE EXTRACTION OF SAND, AGGREGATE, GRAVEL, MINERALS AND OTHER MATERIALS WITHIN THE VILLAGE; PROVIDING FOR CERTAIN PENALTIES AND REMEDIES;

WHEREAS, the Village of Webberville is in close proximity to 600 acres of active sand and gravel extraction operations and reasonably expects these operations to expand into the Village; and

WHEREAS, the Village Commission of the Village of Webberville understands the necessity of mining and extraction operations and respects the value of private property; and

WHEREAS, the Village Commission seeks to provide for the orderly and safe development of land within its Village Limits [i.e., incorporated municipal boundary] and extraterritorial jurisdiction [ETJ], including the operation of mines or quarries; and

WHEREAS, the construction, operation and expansion of mines and quarries pose unique challenges on the Village in terms of the construction of new roads or the improvement or use of existing roads, future land use planning, and economic development; and

WHEREAS, the Village Commission is concerned about the effects of mining, extraction and quarrying operations, processes, and techniques on the land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change; and

WHEREAS, the Village Commission has obtained broad public input and professional assistance in order to understand the conservation, adaptation, improvement, and restoration of land and related resources affected by mining, so to enact regulations, policies and methods of governmental administration necessary to deal with the special problems posed by large excavations and mines; and

WHEREAS, by and through this Mining, Extraction and Quarrying Ordinance the Village Commission seeks to preserve the health, safety and general welfare of the community as a component of comprehensive land use regulations that provide for orderly growth; and

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF WEBBERVILLE, TEXAS:

1. ENACTMENT CLAUSES

A. Popular Name

This Ordinance may be referred to as the Village of Webberville's "Mining, Extraction and Quarrying Ordinance."

B. Findings of Fact

All of the above premises regarding mining are hereby found to be true and correct legislative and factual findings of the Village Commission of Webberville, and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

C. Purpose

This Ordinance is adopted to promote the public health, safety, morals and general welfare within the Village through the reasonable regulation of mining operations. The purpose of this Ordinance is to protect those who work or reside near mines or quarries, maintain property values, protect air quality and preserve the water resources of the Village.

D. Compliance Required

It shall be unlawful for any person to mine or quarry within the Village in a manner not in compliance with this Ordinance.

E. Scope of Jurisdiction

The provisions of this Ordinance shall apply within the Village Limits [i.e., incorporated municipal boundary of the Village].

F. Applicability

This Ordinance applies to property used or intended for use for commercial or industrial mining or extraction purposes. This Ordinance shall not apply to properties upon which active extraction operations commenced prior to February 27, 2003; nor shall this Ordinance conflict with permits issued by Travis County and/or the Texas Commission on Environmental Quality [TCEQ] prior to February 3, 2003.

G. Effective Date

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

2. DEFINITIONS

A. General

Words and phrases used in this Ordinance shall have the meanings set forth in this section. Words and phrases that are not defined in this Ordinance but are defined in other ordinances of the Village shall be given the meanings set forth in those ordinances. Other words and phrases shall be given their common, ordinary meaning unless the context clearly requires otherwise. Headings and captions are for reference purposes only, and shall not be used in the interpretation of this Ordinance.

B. Specific

- (1) **Applicant** means a person who is seeking mining authorization from the Village in the form of a Mining Permit, Blasting Permit, or Reclamation Plan.
- (2) **Berm** means a mound of earth used to shield, screen, separate and buffer the mining operation from neighboring uses.
- (3) **Blasting** means the practice or occupation of extracting heavy masses of rock, or other materials imbedded in the ground, by means of explosives or incendiary devices.
- (4) **Clear** means to make a material change in the character of the land, including but not limited to the extraction of vegetation, removal of brush, cutting of trees, or modification of the natural grade or slope of the land.
- (5) **Development** means any manmade change in improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. All references to development permits are synonymous to building permits, and no work of any kind shall be performed in the floodplain/floodway without a building/development permit.
- (6) **Excavate** means to use explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes auguring, backfilling, boring, compressing, digging, ditching, drilling, dragging, dredging, grading, mechanical probing, plowing-in, pulling-in, ripping, scraping, jetting, driving, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches. The term includes mining and quarrying. The term does not include excavation or grading when conducted solely in aid of on-site gardening, farming or residential construction.
- (7) **Extraction operation** means the use of a lot or tract of land primarily for extraction of materials [including limestone, rock, sand, gravel, or soil, but not oil or natural gas] for any purpose.

- (8) **Extraction site** means the location of materials or rock removal or extraction operations as delineated by a plat, site plan or a certificate of occupancy.
- (9) **Excavation** means a pit, quarry, impoundment, dam, ventilation shaft, entryway, refuse bank, dump, stockpile, overburden pile, spoil bank, culm bank, tailing, hole or depression. The term does not include excavation or grading when conducted solely in aid of on-site gardening, farming or residential construction.
- (10) **Mining** means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of soils, sand, aggregate, stone, rock, minerals, ores, or other solid matter. The term includes any activity or process constituting all or part of a process for the extraction or removal of soils, sand, aggregate, stone, rock, minerals, ores, or other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of soils, sand, aggregate, stone, rock, minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use. The term includes excavating, extracting, quarrying and mining. The term does not include any processing of such material. The term does not include excavation or grading when conducted solely in aid of on-site gardening, farming, drilling wells; or building construction performed pursuant to a lawfully issued Village building permit.
- (11) **Mine Site** means the designated parcel of land in the Village for which a Mining Permit has been issued by the Village. The term includes a permitted excavation or extraction site.
- (12) **Operator** means a person who has been issued an Extraction Permit in conformance with this Ordinance.
- (13) **Person** means any human individual or corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
- (14) **Quarry** means the site where aggregates are being or have been removed or extracted from the earth to form the pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.
- (15) **Quarrying** means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.
- (16) **Regulatory authority** means Travis County, the Lower Colorado River Authority, Texas Railroad Commission, Texas Commission on Environmental Quality, Texas Department of Health, US Environmental Protection Agency, or any successor agency.

- (17) **Village** means the Village of Webberville, an incorporated municipality located in Travis County, Texas, its agents and employees.

3. EXTRACTION PERMITS

A. Permit Required

- (1) No person may mine within the Village except in compliance with this Ordinance.
- (2) No person may mine within the Village without first applying for and receiving an Extraction Permit from the Village of Webberville.
- (3) No person may mine within the Village in violation of the terms of a valid Extraction Permit from the Village of Webberville.

B. Plat Required

No person shall divide land for sale, purchase or lease for the purpose of mining or extraction without first making application to the Village for plat approval, and receiving such plat approval from the Village. Other Village regulations regarding plat approval may apply.

C. Term

- (1) Permits shall be valid for no more than four [4] years, unless extended in writing by the Village Commission.
- (2) Permits shall expire if mining operations have not commenced within twelve [12] months of issuance of the permit.
- (3) Mining, extraction and/or quarrying operations must cease within three [3] years of commencement.

D. Applications

Applications for Extraction Permits shall contain five [5] copies of the following information:

- (1) Completed application form; and
- (2) Map drawn to scale delineating the proposed boundaries of the mine site in relation to existing roads and platted subdivisions; and
- (3) Site Development Plan prepared by a professional engineer showing existing and proposed grades, setbacks and improvements; and
- (4) Schedule for proposed days and hours of operation; and
- (5) Schedule for opening mining site, conducting mining operations, commencing reclamation, and completing reclamation; and
- (6) Written description of the type of mining operation and targeted materials; and
- (7) Hydrological study by a professional engineer demonstrating the effects of the proposed mining operation on water availability in aquifer[s], and drainage /stormwater runoff, and explaining the proposed drainage system to be constructed; and

- (8) Environmental Impact Study describing the anticipated impact of the mine on air quality, water quality, and wildlife; and
- (9) Transportation study by a professional engineer designating the anticipated routes of ingress and egress, and evaluating the impact of mine-related vehicular traffic on community transportation patterns; and
- (10) Description of number and type of equipment to be used on the mining site; and
- (11) Proof of fiscal guarantee for reclamation of mining site, as discussed in Section 6; and
- (12) Proof of fiscal guarantee for maintenance and upkeep of the site following the cessation of extraction operations.
- (13) A list of the names and mailing addresses of the owners of all property within 400 feet of any boundary of the proposed extraction site.

E. Permit Process

- (1) The Village Commission must conduct two (2) public hearings prior to issuance of an Extraction Permit; and
- (2) The Village must publish notice of the hearing in the official newspaper at least twenty-one (21) days prior to the hearings; and
- (3) The Village must post notice of the hearing in at least three (3) public places within the Village; and
- (4) The Village must provide notice by mail to the owners of all property within four hundred feet (400 ft.) of the perimeter of the proposed mine; and
- (5) The Applicant must submit an application fee in the amount of five hundred dollars (\$ 500) to reimburse the Village for its administrative costs. An application will not be considered administratively complete and ripe for review until the fee has been rendered.

4. ZONING

Extraction Permits may only be issued by the Village for tracts in areas zoned as Industrial District or in a Planned Development District. The uses, development and activities on such sites or tracts shall be in complete compliance with the Zoning Ordinance of the Village of Webberville.

5. OPERATIONAL STANDARDS

A. General requirements

- (1) **Compliance Required:** Mining extraction or quarrying operations shall be conducted in strict compliance with this section.
- (2) **Prohibitions:** No person shall operate a mine or quarry perform any extraction activities inconsistent with the requirements contained in this section.

B. Hours of Operation

- (1) Mines or quarries shall not be operated between the hours of six o'clock [6:00] p.m. and seven o'clock [7:00] a.m. on weekdays. Exceptions may be authorized under this section in cases of urgent necessity and in the interest of public health and safety.
- (2) Mines or quarries shall not be operated on the weekends [i.e., Saturday or Sunday].
- (3) Exceptions may be granted only in the form of a permit from the Mayor, or the Mayor's designee. A permit for urgent necessity may be granted for a period up to three [3] days while the emergency continues, and such permit may be renewed for periods of three [3] additional days while the emergency continues.

C. Height Limitations

Buildings, structures, material piles, and equipment used in mining operations shall not exceed a height of thirty feet [30']. The height shall be measured from the base of the buildings, structures or equipment to the natural grade of the land before any excavation of the land is made.

D. Particulate Matter

- (1) **Dust Control:** The operators of mining operations shall use best available technology to suppress the emission of dust and prevent the dust from migrating offsite.
- (2) **Flyrock:** The operators of mining operations shall use best available technology to prevent flyrock from being cast from the mining site beyond the perimeter.
- (3) **Monitoring:** Operator will install monitoring stations positioned at points around the perimeter of the mining site to be checked daily for compliance with state and/or federal regulations regarding air quality and the emission of particulate matter.

E. Noise Control

Mines shall be operated in a manner that does not cause noise exceeding eighty-five [85] decibels when measured at the property line for the mine site.

F. Truck Routes

Trucks traveling to or from mining operations cannot use any of the internal streets located in residential subdivisions. This prohibition does not apply to trucks making deliveries to customers located in the applicable subdivision. Over-the-road trucks may be permitted to cross over and upon certain streets by permit when necessary to access the mine site. When over-the-road trucks must cross over and upon certain streets to access the mine site, the operator is responsible for the repair and maintenance of the portion of the street used to access the mine. Mine sites must include adequate off-street parking and turn lanes.

G. Perimeter Enhancements

- (1) **Setbacks:** A setback is the distance from the lot line of the mine site to edge of the perimeter berm. The right-of-way width of a public roadway may not be counted toward the calculation of required setbacks. No person shall excavate or extract material within the setback prescribed by this Ordinance. A mining operation must observe the following setbacks:
 - (a) 250 feet from any residential lot line;
 - (b) 300 feet from any school, church, medical facility, or historic landmark,
 - (c) 100 feet from any commercial or retail lot line;
 - (d) 50 feet from any agricultural lot line; or
 - (e) 50 feet from any public street, alley, highway or right-of-way;

- (2) **Security Fencing:** Fencing is an artificially created barrier of wood, stone, metal or a combination thereof, erected to enclose the berm and the mining operation, thus restricting access to the mine site. Height shall be measured from the finished grade of the nearest adjacent public roadway or street. Extraction operations must provide fencing as follows:
 - (a) Maximum height of eight feet [8'].
 - (b) Fencing shall be located at the property line.

- (3) **Berm:** Berms must at a minimum satisfy applicable state law. Berms must be vegetated to aid in dust suppression and preserve the aesthetic character of the Village. Height shall be measured from the finished grade of the nearest adjacent public roadway or street. Mining operations must construct and maintain the following berms:
 - (a) eight feet [8'] high when adjacent to a residential lot line, school, church, medical facility, or historic landmark; and
 - (b) eight feet [8'] high when adjacent to a commercial or residential lot line; and
 - (c) eight feet [8'] high when adjacent to any public street, alley, highway, or right-of-way.

- (4) **Watershed Protection:** Adequate safeguards must be provided for to ensure that mining and quarrying operations will not adversely affect water wells within the Village.
 - (a) The operators of extraction operations shall use best available technology to protect the quality and availability of subsurface water and the aquifer.
 - (b) Extraction operations must include upstream and downstream water quality monitoring wells. Monitoring wells must be inspected regularly and the data presented to the Village quarterly.
 - (c) As a condition of receiving an Extraction Permit, operators must place funds in escrow or submit a Bond payable to the Village guaranteeing that mining operations will be performed in such a manner as to protect the groundwater in the Village and the underlying aquifer. A bond must be from a licensed surety and in a form to be approved by the Village's legal counsel. The fiscal guarantee must be in an amount

to be determined by the Village Commission at the time of the application for an Extraction Permit.

- (5) **Landscaping:** Setbacks and berms must be landscaped with natural scenery, including lawns, trees, plants and other natural materials such as rock and woodchips.
- (a) The Village Commission finds that landscaping mitigates the adverse effects of mining operations on surrounding properties and the general public. The preservation of existing trees shall be considered a priority by the Village when reviewing permit.
 - (b) Mining operations must either preserve the current landscaping within the setback along the perimeter or improve the landscaping so as to reduce the aesthetic harm caused by the operation.
 - (c) Setbacks and berms must be regularly maintained, including routine mowing between the months of April and November.

H. Blasting Permit

- (1) Blasting is a highly dangerous and disruptive activity that constitutes a public nuisance, and is therefore prohibited in the Village.
- (2) Limited exceptions may be granted under this section upon submission to the Village of documentation from operator's engineer explaining that there are no reasonable alternate means of extraction in the given situation. Prior to any blasting activity or preparation for blasting activity at an extraction site, an appropriate Blasting Permit must be acquired from the regulatory authority.
- (3) No person may conduct blasting within the Village without a valid Permit.
- (4) Blasting Permits shall be limited in duration and site-specific. Blasting Permits must include a detailed statement of mitigation and safety measures that will be implemented by operator in order to protect the public health and safety.

I. Signage

All signs on extraction sites shall comply with all applicable Village regulations.

6. RECLAMATION PLANS

A. Planning

Operators must notify the Village no less than one 180 days prior to the time at which the extraction activities are projected to terminate, or as soon as possible if the projected life of the extraction activity is less than three [3] years. Within thirty (30) days following the notification, the operator shall cooperate with the Village in the Village's effort to perform long range and short term planning related to transportation, traffic, land use, ecological and infrastructure systems. Prior to any redevelopment of the property after termination of the extraction operations, the operator must file a Reclamation Plan with the Village for Village approval. The Reclamation Plan must contain the following information:

- (6) Completed application form; and

- (7) Map drawn to scale delineating the proposed boundaries of the mine site in relation to existing rights-of-way, roads and platted subdivisions; and
- (8) Site Development Plan prepared by professional landscape engineer showing existing and proposed grades, setbacks and landscaping improvements; and
- (9) Contour map with contour lines at intervals no greater than ten [10] feet; and
- (10) Schedule for closing the mining site, commencing reclamation, and completing reclamation within six [6] months of final mining activities; and
- (11) Written description of the type of landscaping to be utilized; and
- (12) Hydrological study by professional engineer demonstrating effect of the proposed reclamation on water quality in aquifer[s] and drainage / stormwater runoff, and explaining proposed drainage system to be constructed; and
- (13) Transportation study by professional engineer evaluating the impact of the proposed reclamation on community transportation patterns; and
- (14) Landscaping plan detailing future efforts regarding reforestation and groundcover; and
- (15) Ownership from title and/or municipal or county roads for adjacent properties and, if known, proposed development of such land; and
- (16) One-hundred-year floodplain limits as identified from the most current flood insurance rate maps published by the Federal Emergency Management Agency [FEMA] for the Village and/or Travis County; and
- (17) Declaration of intent [if any] to transfer the mining site to another party, including another private party, governmental entity, nonprofit corporation, or land trust.

B. Conservation

The Village places special emphasis on the need for a significant portion of the land used for extraction operations to be restored for conservation purposes. The Village Commission finds that reclaiming the land and dedicating it for public parks, open space, or conservation purposes helps mitigate the long term adverse effects of mining operations on the ecological system in Webberville and on the property values of the mine's neighbors. Accordingly, Conservation Plans and Reclamation Plans are required to address the operator's intentions regarding conservation and restoration efforts on the land.

C. Revisions

Revisions to a Reclamation Plan may be made at any time by submission of a new Reclamation Plan to the Mayor. The Mayor shall notify the Village Commission and Planning Commission of any revision to a Reclamation Plan by reporting on the nature and extent of said revision to the commissions within thirty [30] days of the receipt of a revised Reclamation Plan. The new Reclamation plan shall only be approved by a majority vote of the Village Commission. The Reclamation Plan shall be considered an open record for the purpose of disclosure.

D. Fiscal Guarantees

(1) As a condition of receiving an Extraction Permit, operators must place funds in escrow or submit a Performance Bond payable to the Village guaranteeing that reclamation activities will be properly performed in compliance with the Reclamation Plan approved by the Village. A bond must be from a licensed surety and in a form to be approved by the

Village's legal counsel. The fiscal guarantee must be a performance and payment bond in an amount equal to one hundred percent (100%) of the estimated cost of the approved Reclamation Plan for the quarry site as agreed to by the Village.

(2) As a condition of receiving an Extraction Mining Permit, operators must place funds in escrow or submit a Maintenance Bond payable to the Village guaranteeing the upkeep of the former mine site in accordance with the approved Reclamation Plan. A bond must be from a licensed surety and in a form to be approved by the Village's legal counsel. The fiscal guarantee must be in an amount equal to one hundred percent [100%] of the improvements performed under the Reclamation Plan. The appraisal shall be performed by an appraiser agreeable to the applicant/operator and the Village and the cost of the appraisal shall be paid by the applicant/operator.

7. ENFORCEMENT

A. Inspection

Village inspector[s] shall be allowed access to the mining site during regular business hours.

B. Civil and Criminal Penalties

The Village shall have the power to administer and enforce the provisions of this Ordinance as may be required by governing law. Any person violating any provision of this Ordinance is subject to suit for injunctive relief as well as prosecution for criminal violations. Any violation of this Ordinance is hereby declared to be a nuisance.

C. Criminal Prosecution

Any person violating any provision of this Ordinance shall, upon conviction, be fined a sum not exceeding two thousand dollars [\$2,000.00] per occurrence. Each day that a provision of this Ordinance is violated shall constitute a separate offense. An offense under this Ordinance is a misdemeanor.

D. Civil Remedies

Nothing in this Ordinance shall be construed as a waiver of the Village's right to bring a civil action to enforce the provisions of this Ordinance and to seek remedies as allowed by law, including, but not limited to the following:

- (1) injunctive relief to prevent specific conduct that violates the Ordinance or to require specific conduct that is necessary for compliance with the Ordinance; and
- (2) a civil penalty up to one thousand dollars [\$1,000.00] a day when it is shown that the defendant was actually notified of the provisions of the Ordinance and after receiving notice committed acts in violation of the Ordinance or failed to take action necessary for compliance with the Ordinance;
- (3) In addition to the criminal penalties noted above, the Village Attorney may immediately seek additional remedies at law or in equity to prevent blasting by any party who does not

have a blasting permit; and
(4) other available relief.

8. REPEALER

All Ordinances or parts of Ordinances in force when the provisions of this Ordinance become effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of any such conflict.

9. SEVERABILITY

It is hereby declared to be the intention of the Village Commission that the phrases, clauses, sentences, paragraphs and sections of this Ordinance be severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this Ordinance, and the remainder of this Ordinance shall be enforced as written.

10. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code. Notice was also provided as required by Chapter 52 of the Local Government Code.

PASSED AND APPROVED this, the 15 day of June 2005, by a vote of 2 (ayes) to 0 (nays) to ___ (abstentions) of the Village Commission of the Village of Webberville.

VILLAGE OF WEBBERVILLE

by: Tom Trantham
Tom Trantham, Mayor Pro Tem

ATTEST:

Carol Goodrich
Carol Goodrich, Village Clerk

APPROVED AS TO FORM:

Alan J. Bojorquez, Village Attorney